FEDERAL REGISTER

Vol. 89 Friday,

No. 62 March 29, 2024

Pages 22041–22326

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF ENERGY

10 CFR Part 474

[EERE–2021–VT–0033]

RIN 1904–AF47

Petroleum-Equivalent Fuel Economy Calculation

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) publishes a final rule that revises the value for the petroleum-equivalency factor (PEF). This final rule revises DOE's regulations regarding procedures for calculating a value for the petroleum-equivalent fuel economy of electric vehicles (EVs). The PEF is used by the Environmental Protection Agency (EPA) in calculating light-duty vehicle manufacturers' compliance with the Department of Transportation's (DOT) Corporate Average Fuel Economy (CAFE) standards.

DATES: This rule is effective June 12, 2024.

ADDRESSES: The docket for this rulemaking, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov/docket/EERE-2021-VT-0033.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

FOR FURTHER INFORMATION CONTACT:

Mr. Kevin Stork, U.S. Department of Energy, Vehicle Technologies Office, EE–3V, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (202) 586–8306. Email: *Kevin.Stork@ee.doe.gov.*

Ms. Laura Zuber, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–33, 1000 Independence Avenue SW, Washington, DC 20585. Telephone: (240) 306–7651. Email: *laura.zuber@hq.doe.gov.*

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I. Introduction and Background

In an effort to conserve energy through improvements in the energy efficiency of motor vehicles, in 1975, Congress passed the Energy Policy and Conservation Act (EPCA), Public Law 94–163. Title III of EPCA amended the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 *et seq.*) (the Motor Vehicle Act) by mandating fuel economy standards for automobiles produced in, or imported into, the United States. This legislation, as amended, requires every manufacturer to meet applicable specified corporate average fuel economy (CAFE) standards for their fleets of light-duty vehicles under 8,500 pounds that the manufacturer manufactures in any model year.[1] The Secretary of Transportation (through the National Highway Traffic Safety Administration (NHTSA)) is responsible for prescribing the CAFE standards and enforcing the penalties for failure to meet these standards. 49 U.S.C. 32902. The Administrator of the Environmental Protection Agency (EPA) is responsible for calculating each manufacturer's fleet CAFE value. 49 U.S.C. 32902 and 32904.

On January 7, 1980, President Carter signed the Chrysler Corporation Loan Guarantee Act of 1979 (Pub. L. 96–185). Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979 added a new paragraph (2) to section 13(c) of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (Pub. L. 94–413). Part of the new section 13(c) added paragraph (a)(3) to section 503 of the Motor Vehicle Act. That subsection provides:

If a manufacturer manufactures an electric vehicle, the Administrator [of EPA] shall include in the calculation of average fuel economy under paragraph (1) of this subsection equivalent petroleum based fuel economy values determined by the Secretary of Energy for various classes of electric vehicles. The Secretary shall review those values each year and determine and propose necessary revisions based on the following factors:

[1] The relevant provisions of the CAFE program, including DOE's establishment of equivalent petroleum-based fuel economy values were transferred to Title 49 of the U.S. Code by Public Law 103–272 (July 5, 1984). *See* 49 U.S.C. 32901 *et seq*. The authority for DOE's establishment of equivalent petroleum-based fuel economy values was transferred to 49 U.S.C. 32904(a)(2)(B).

(i) The approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.

(ii) The national average electrical generation and transmission efficiencies.

(iii) The need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) The specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.

49 U.S.C. 32904(a)(2)(B).

Section 18 of the Chrysler Corporation Loan Guarantee Act of 1979 further amended the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 by adding a new paragraph (3) to section 13(c), which directed the Secretary of Energy, in consultation with the Secretary of Transportation and the Administrator of EPA, to conduct a seven-year evaluation program of the inclusion of electric vehicles [2] in the calculation of average fuel economy. As required by section 503(a)(3) of the Motor Vehicle Act, DOE proposed a method of calculating the petroleum-equivalent fuel economy of electric vehicles utilizing a PEF in a new 10 CFR part 474 on May 21, 1980. 45 FR 34008. The rule was finalized on April 21, 1981, and became effective May 21, 1981. 46 FR 22747. The seven-year evaluation program was completed in 1987, and the calculation of the annual petroleum equivalency factors was not extended past 1987.

DOE published a proposed rule for a permanent PEF for use in calculating petroleum-equivalent fuel economy values of electric vehicles on February 4, 1994, and obtained comments from interested parties. 59 FR 5336. Following consideration of comments, DOE's own internal re-examination of the assumptions underlying the proposed rule, and existing regulations for other classes of alternative fuel vehicles, DOE decided to modify the PEF calculation approach proposed in 1994. The 1994 proposed rule was later withdrawn, and DOE proposed a modified approach in a July 14, 1999, notice of proposed rulemaking. 64 FR 37905 (1999 NOPR). DOE published a final rule with a PEF of 82,049 Watt-hours per gallon on June 12, 2000, that amended 10 CFR part 474. 65 FR 36985 (2000 Final Rule). DOE has not updated 10 CFR part 474 since the 2000 Final Rule.

On October 22, 2021, DOE received a petition for rulemaking from the Natural Resources Defense Council (NRDC) and Sierra Club requesting DOE to update its regulations at 10 CFR part 474. DOE published a notice of receipt of the petition on December 29, 2021, and solicited comment on the petition and whether DOE should proceed with a rulemaking. 86 FR 73992.

In April 2023, DOE agreed that the inputs upon which the calculations and PEF values are based were outdated and that the technology and market penetration of EVs has significantly changed since the 2000 Final Rule and granted the petition from NRDC and Sierra Club. When granting the petition, DOE also published a notice of proposed rulemaking. 88 FR 21525 (2023 NOPR).

In the 2023 NOPR, DOE proposed to update the PEF value and revise the methodology used to calculate the PEF. Specifically, the 2023 NOPR proposed the following revisions to the methodology:

- Change the accessory factor, used to account for petroleum-fueled on-board accessories, to 1.
- Revise the generation and transmission efficiency factor by using updated grid mix projection that account for policy changes since June 2000 and more recent data.
- Remove the fuel content factor.

In accordance with these proposed revisions, DOE proposed a revised PEF value of 23,160 Watt-hours per gallon. 88 FR 21525, 21532. In addition, DOE proposed that the revised PEF value would apply to model year (MY) 2027 and later electric vehicles. 88 FR 21525, 21531. DOE also proposed to delete 10 CFR 474.5, which requires DOE to review the PEF value every five years. 88 FR 21525, 21533.

The public comment period for the 2023 NOPR closed on June 12, 2023. DOE received 20 comments on the proposed rule.[3] Several commenters, including the Alliance for Automotive Innovation (Alliance), expressed concern that auto manufacturers would not have sufficient lead time to incorporate changes into their plans for MY 2027 vehicles, given that the new PEF value would significantly impact their CAFE compliance and given that manufacturing changes require significant lead times. On September 14, 2023, DOE issued letters to member companies of the Alliance that invited recipients to provide data, documents, or analysis to clarify the Alliance's concerns in relation to the proposed effective date. DOE also published a Notification of *Ex Parte* Communication and Request for Comments in the **Federal Register**, which stated that DOE sent the September 14, 2023, letters and asked interested stakeholders to provide similar data, documents, or analysis. 88 FR 67682 (Oct. 2, 2023).

DOE received data in response to the letters and the notification and incorporated the data into its analysis. The letters and responses to the letters and the notification are available in the docket.

DOE is finalizing revisions to 10 CFR part 474 and the methods to calculate the PEF value in accordance with the statutory factors in 49 U.S.C. 32904(a)(2)(B). After considering comments, DOE is modifying the methodology as initially proposed in the 2023 NOPR in the following ways:

- Updating the grid mix projection from the 2021 National Renewable Energy Laboratory (NREL) ''95 by 2050'' Scenario to the more current electricity generation forecast in the 2022 NREL ''Standard Scenario Mid-Case,'' which accounts for the latest technology and policies.
- Changing the method of calculating the PEF value from using an average of annual PEF values between MY 2027 to MY 2031 to calculating a PEF value based on the survivability-weighted lifetime mileage schedule of the fleet of vehicles sold during the regulatory period.
- Phasing-out the use of the fuel content factor between MY 2027 and MY 2030 rather than removing it from the PEF equation as of the effective date of the rule, as proposed in the 2023 NOPR.

Each of these changes are discussed in detail in the following sections.

II. Public Comments on the 2023 NOPR

DOE received comments in response to the 2023 NOPR from the individuals and interested parties listed in Table 1. These comments are available in the public docket for this rulemaking. The specific issues relating to the final rule raised by the commenters are addressed in section III of this document. A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[4]

[2] For purposes of paragraph (a)(2) of 49 U.S.C. 32904, EPCA defines an ''electric vehicle'' as ''a vehicle powered primarily by an electric motor drawing electrical current from a portable source.''

[3] DOE received comments from an individual on October 1, 2023, after the comment period closed. Doc. No. 36. Despite the fact that these comments were filed late, DOE considered the issues raised in these comments when reviewing the rule.

[4] The parenthetical reference provides a reference for information located in the docket for this rulemaking. (Docket No. EERE–2021–VT–0033, which is maintained at *www.regulations.gov*). The references are arranged as follows: commenter name, comment docket ID number, page of that document.

TABLE 1—2023 NOPR WRITTEN COMMENTS

Commenter(s)	Abbreviation	Document No.
Gilles DeBrouwer		14
Vivat		15
Anonymous 1		16
Transport Evolved		17
Tesla, Inc	Tesla	18
International Council on Clean Transportation	ICCT	19
Natural Resources Defense Council and Sierra Club	NRDC and Sierra Club	20
Zero Emission Transportation Association	ZETA	21
Ford Motor Company	Ford	22
National Automobile Dealers Association	NADA	23
Porsche Cars	Porsche	24
Alliance for Automotive Innovators	Alliance	25
American Fuel & Petrochemical Manufacturers	AFPM	26
State of California *et al*	California *et al*	27
Our Children's Trust		28
American Council for an Energy Efficient Economy	ACEEE	29
International Union, United Automobile, Aerospace & Agricultural Implement Workers of America	UAW	30
American Free Enterprise Chamber of Commerce *et al*	AmFree *et al*	31
Clean Fuels Development Coalition *et al*	Clean Fuels *et al*	32
Omer Sevindir		36

III. Discussion of Final Rule

A. Statutory Factors

In accordance with 49 U.S.C. 32904, DOE reviewed the equivalent petroleum-based fuel economy values for EVs, including both the current PEF value and the methodology used to calculate that value, which are found in 10 CFR part 474. When reviewing the equivalent petroleum-based fuel economy values for EVs, DOE must consider four factors:

(i) The approximate electrical energy efficiency of the vehicle, considering the kind of vehicle and the mission and weight of the vehicle.

(ii) The national average electrical generation and transmission efficiencies.

(iii) The need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.

(iv) The specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.
49 U.S.C. 32904(a)(2)(B).

Based on more recent data, changes to market conditions, and comments received in response to the 2023 NOPR, DOE is revising the methodology used to calculate PEF and the resulting PEF value in this final rule. DOE discusses its consideration of the statutory factors and its conclusions in the following sections.

B. Current Methodology

10 CFR 474.3 provides the current methodology for determining the equivalent petroleum-based fuel economy values for EVs. First, DOE determines the EVs' urban and highway energy consumption value in Watt-hours (Wh) per mile. To do this, DOE uses the energy consumption values provided by the Highway Fuel Economy Driving Schedule (HFEDS) and Urban Dynamometer Driving Schedule (UDDS) test cycles established by EPA at 40 CFR parts 86 and 600. 10 CFR 474.3(a)(1). DOE then determines the combined energy consumption value by averaging the urban and highway energy consumption values using a weighting of 55 percent urban and 45 percent highway. 10 CFR 474.3(a)(2). Finally, DOE converts this combined energy consumption value (expressed in Wh per mile) to a petroleum-equivalent fuel economy value, which is measured in miles per gallon (mpg), by dividing the PEF (measured in Wh per gallon) by the combined energy consumption value.

The current PEF calculation procedure converts the measured electrical energy consumption of an electric vehicle into a gasoline-equivalent fuel economy of electricity (E_g). 65 FR 36986, 36987. Then, the methodology multiplies the E_g by the fuel content factor (FCF), which is intended to represent the energy content equivalent the alternative fuel to a gallon of gasoline; the accessory factor (AF), which represents possible use of petroleum-powered accessories, such as cabin heater/defroster systems; and the driving pattern factor (DPF), which represents the potential for different uses of EVs compared to internal combustion engine (ICE) vehicles. *Id.* The general form of the PEF equation is:

$$PEF = E_g \times FCF \times AF \times DPF$$

In the 2000 Final Rule, DOE used this equation to calculate the PEF value and determined that the PEF for EVs that do not have any petroleum-powered accessories is 82,049 Watt-hours per gallon (Wh/gal). *See* 10 CFR 474.3(b)(1). For EVs that have petroleum-powered accessories, DOE determined that the PEF is 73,844 Wh/gal. *See* 10 CFR 474.3(b)(2).

C. Revised Methodology

As stated previously, DOE concluded that the current PEF value and methodology were based on outdated data and that the technology and market penetration of EVs has significantly changed since the 2000 Final Rule. Accordingly, in the 2023 NOPR, DOE proposed a revised PEF value and revisions to the methodology used to calculate the PEF. Specifically, the 2023 NOPR proposed changing the accessory factor to 1.0, revising the generation and transmission efficiency factor by using updated electrical grid mix projections, and removing the fuel content factor. The 2023 NOPR also proposed maintaining the driving pattern factor at 1.0.

1. Approximate Electrical Energy Efficiency of EVs

DOE considers the approximate electrical energy efficiency of EVs in determining the PEF value pursuant to 49 U.S.C. 32904(a)(2)(B)(i). As discussed, the current methodology converts the energy consumption of an EV from Wh of electricity to gallons of gasoline based upon energy consumption values provided by Highway Fuel Economy Driving Schedule (HFEDS) and Urban Dynamometer Driving Schedule (UDDS) test cycles established by EPA at 40 CFR parts 86 and 600. *See* 10 CFR 474.3 and

474.4. In the 2023 NOPR, DOE proposed to retain this methodology because it provided an ''accurate measure of the electrical energy efficiency of the relevant EV during typical use and is appropriately utilized in the PEF equation.'' 88 FR 21525, 21527.

One commenter supported maintaining the current energy efficiency regime. Tesla, Doc. No. 18, pg. 2. In addition, although NRDC and Sierra Club did not oppose the current methodology expressly, they urged DOE to ''clarify whether it will use unadjusted dynamometer testing results or adjusted values'' when measuring energy consumption of an EV. NRDC and Sierra Club, Doc. No. 20, pg. 5. NRDC and Sierra Club observed that dynamometer testing overstates real-world performance for vehicles by as much as 30 percent. NRDC and Sierra Club, Doc. No. 20, pg. 5 (*citing* 87 FR 25710, 25720 (May 2, 2022)). Thus, they recommended that DOE consider using adjusted dynamometer values to better approximate the actual electrical efficiency of EVs for use in determining the equivalent petroleum-based fuel economy values for EVs. NRDC and Sierra Club, Doc. No. 20, pg. 5.

Other commenters opposed retaining the current methodology and argued that both HFEDS and UDDS test cycles are unrepresentative of typical use cases of EVs. AFPM, Doc. No. 26, pg. 5; Clean Fuels *et al.,* Doc. No. 32, pg. 3; AmFree, Doc. No. 31, pg. 4. Specifically, these commenters claimed that HFEDS fails to capture the most typical use case of EVs, such as commuting to and from work. AFPM, Doc. No. 26, pg. 5; Clean Fuels *et al.,* Doc. No. 32, pg. 3–4. In addition, they asserted that UDDS fails to capture variations in climate or extended periods of idling. AFPM, Doc. No. 26, pg. 6; Clean Fuels *et al.,* Doc. No. 32, pg. 4. As a result of these and other failures, these commenters argued that these test cycles overestimate the performance of EVs. AFPM, Doc. No. 26, pg. 6; Clean Fuels *et al.,* Doc. No. 32, pg. 4–5. These commenters stated that ''DOE must revisit its chosen procedure and apply more robust and accurate test methods,'' and that DOE's decision to retain the current methodology is arbitrary and capricious. Clean Fuels *et al.,* Doc. No. 32, pg. 5; AFPM, Doc. No. 26, pg. 6. The commenters noted there are other more representative tests currently available, like EPA's 5-cycle formula, to calculate the fuel economy of vehicles. AFPM, Doc. No. 26, pg. 6; Clean Fuels *et al.,* Doc. No. 32, pg. 5; AmFree, Doc. No. 31, pg. 4.

Both of these comments regarding adjusting the dynamometer readings or using different test cycles were addressed in DOE's methodology for calculating the energy consumption of an EV in terms of miles per gallon. DOE notes that DOE's methodology is aligned with EPA's methodology for calculating the compliance fuel economy values for ICE vehicles in the CAFE program. The adjustment and the test cycles recommended by commenters, however, are not used to calculate fuel economy for purposes of CAFE compliance. Rather, the recommended adjustment and test cycles are used to calculate fuel economy for the EPA/DOT Fuel Economy and Environment Label (window sticker).[5] DOE notes that 49 U.S.C. 32904(c) requires EPA to use the ''same procedures for passenger automobiles the Administrator used for model year 1975'' to measure the fuel economy of passenger vehicles for CAFE purposes. Pursuant to this directive, EPA uses the HFEDS and UDDS test cycles to calculate fuel economy for ICE vehicles and does not adjust the dynamometer results. A consistent methodology applied to all auto manufacturers for calculating the fuel economy of ICE vehicles helps to ensure a level playing field. Because the purpose of the PEF is to provide a fuel economy conversion factor for EVs (so that they may be averaged with ICE vehicles for determining CAFE performance) it is reasonable and appropriate to keep all else as equal as possible. Because CAFE compliance for ICE vehicles is determined using the HFEDS and UDDS test cycles, determining EV energy consumption values using those two same test cycles is consistent and reasonable.

In this final rule, as proposed in the 2023 NOPR, DOE retains its current methodology to convert energy consumption of an EV into gallons of gasoline based upon energy consumption values provided by the HFEDS and UDDS test cycles established by EPA at 40 CFR parts 86 and 600. *See* 10 CFR 474.3 and 474.4. DOE determines that using unadjusted dynamometer results from the HFEDs and UDDS to calculate energy consumption for EVs provides a calculation of fuel economy for EVs most comparable to the existing gasoline fuel economy that EPA calculates. Because the PEF value provides a fuel economy conversion factor for EVs (so that they may be averaged with ICE vehicles for determining CAFE performance), it is reasonable and appropriate to adopt a consistent methodology that helps ensure a level playing field.

2. Gasoline-Equivalent Fuel Economy of Electricity

When comparing ICE vehicles with EVs, it is essential to consider the efficiency of the respective upstream processes in the two relevant energy cycles.[6] The critical difference between the processes is that an ICE vehicle burns its fuel on-board, and an EV burns its fuel (the majority of electricity in the U.S. is generated at fossil fuel burning powerplants) off-board. In both cases, the burning of fuels to produce work is the least efficient step of the respective energy cycles. Therefore, the 2000 Final Rule included a term, gasoline-equivalent energy content of electricity (E_g), to express the relative energy efficiency of the full energy cycles of gasoline and electricity. 65 FR 36986, 36987.

Under the current rule, the gasoline-equivalent energy content of electricity, is calculated by multiplying the U.S. average electricity generation efficiency (T_g), the U.S. average electricity transmission efficiency (T_t), and the Watt-hours of energy per gallon of gasoline conversion factor (C)[7], and then dividing that value by the petroleum refining and distribution efficiency (T_p). 65 FR 36986, 36987. The equation calculating the gasoline-equivalent energy content of electricity factor is written as follows.[8]

$$E_g = \frac{T_g \times T_t \times C}{T_p}$$

In the 2000 Final Rule, DOE calculated a gasoline-equivalent energy content of electricity factor of 12,307 Wh/gal by using the following inputs:

[5] Similarly, other commenters, such as Hyundai, suggested that DOE harmonize the PEF with EPA's use of 33,705 Wh/gal used by EPA in its fuel economy labeling. Hyundai, Doc. No. 39, pg. 2.

[6] In this context ''upstream'' means everything prior to storage of energy on the vehicle, also commonly referred to as well-to-tank.

[7] The Watt-hours of energy per gallon of gasoline conversion factor is a standard value, 33705 Wh/gal.

[8] The equation is revised from the form in the 2000 Final Rule to correct a printing error in the 2000 Final Rule. The calculation of E_g is correct in the 2000 Final Rule despite the printing error.

$$E_g = \frac{0.328 \times 0.924 \times 33{,}705 \frac{Wh}{gal}}{0.830} = 12{,}307 \frac{Wh}{gal}$$

65 FR 36986, 36987.

The gasoline-equivalent energy content of electricity factor involves the consideration of the national average electrical generation and transmission efficiencies and the need to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity. 49 U.S.C. 32904(a)(2)(B)(ii) and (iii). In the analysis that follows, DOE updates the electricity generation and transmission efficiency factor and the petroleum refining and distribution efficiency factor used to calculate the gasoline-equivalent fuel economy of electricity.

a. Average Electricity Generation and Transmission Efficiency

The calculation for electricity efficiency considers production of the energy source, generation of electricity from that source, and transmission of the electricity to the EV charging location. The efficiency of the production of the energy source and the generation of electricity from that source vary widely.

In the 2023 NOPR, DOE updated its calculations of the average generation and transmission efficiency for all fuels based on the latest data available. In the 2023 NOPR, DOE used the efficiency data from Greenhouse Gases, Regulated Emissions, and Energy use in Transportation (GREET).[9] To calculate the well-to-tank efficiency for electricity from specific energy sources, DOE multiplied the production efficiency,[10] generation efficiency,[11] and transmission efficiency [12] for each source. The efficiencies of electricity generated from specific sources used in this analysis are provided in Table 2. DOE used the same efficiencies of electricity generated from specific sources in this final rule.

TABLE 2—ELECTRICITY GENERATION AND TRANSMISSION EFFICIENCY BY SOURCE

Energy source	Production efficiency (%)	Generation efficiency (%)	Transmission efficiency (%)	Calculated efficiency (%)
Natural gas	91.81	47.34	95.14	41.35
Coal	97.90	34.55	95.14	32.18
Oil	88.41	31.92	95.14	26.85
Biomass	97.54	21.65	95.14	20.09
Nuclear	97.40	100	95.14	92.67
Solar	100	100	95.14	95.14
Wind	100	100	95.14	95.14
Hydroelectric	100	100	95.14	95.14
Geothermal	100	100	95.14	95.14

i. Efficiency of Renewable and Nuclear Electricity Generation

In the 2023 NOPR, due to the abundance of renewable energy sources such as wind and solar, DOE proposed treating renewable energy sources as effectively 100 percent efficient in their generation. 88 FR 21525, 21530. DOE also treated nuclear electricity generation as effectively 100 percent efficient because, like solar and wind, there is no practical, aggregate resource-availability limitation for nuclear materials. 88 FR 21525, 21530.

Some commenters disagreed with DOE's proposal to treat renewable and nuclear energy generation as effectively 100 percent efficient. AmFree, Doc. No. 31, pg. 4–5; AFPM, Doc. No. 26, pg. 9. These commenters asserted that there is no basis for DOE to assume renewable or nuclear energy generation is 100 percent efficient, and therefore DOE must revise its generation efficiencies for such energy. AmFree, Doc. No. 31, pg. 4–5; AFPM, Doc. No. 26, pg. 9.

In response to these concerns, DOE notes that the methodology accounts for transmission losses from such electricity sources. The DOE interpretation of energy scarcity relies on primary energy sources. As such, with an effectively inexhaustible supply of primary energy—sun, wind, fissile nuclear material—it is not appropriate to use a conversion efficiency with these sources when calculating the PEF. By contrast, fossil energy sources used to generate electricity are large but finite. DOE considers the combustion efficiency of electric generation as part of the full energy lifecycle. Renewable gaseous fuel burned for electricity, though expected to be a small contributor to renewable electricity overall, are treated similarly to fossil natural gas with respect to combustion efficiency. DOE is retaining the 100 percent conversion efficiency assumption for nuclear and renewable generation (other than for renewable natural gas) in this rule.

ii. U.S. Electrical Grid Projections

As discussed in section III.C.3, in this final rule, DOE adopts a methodology that calculates a PEF value based on the expected survivability-weighted lifetime mileage schedule of the fleet of vehicles sold over the regulatory period. DOE recognizes that while the average life of a vehicle is around 15 years, the influence of a fleet of vehicles produced in a given model lasts much longer. To capture this influence, DOE has adopted the survivability-weighted annual vehicle miles traveled parameters from

[9] The GREET model is a life-cycle analysis tool, structured to systematically examine the energy and environmental effects of a wide variety of transportation fuels and vehicle technologies in major transportation sectors (*i.e.,* road, air, marine, and rail) and other end-use sectors, and energy systems. Development of the GREET model by Argonne National Laboratory has been supported by multiple offices of DOE, DOT, and other agencies over the past 28 years. The GREET model is available at *greet.anl.gov/, doi:10.11578/GREET-Net-2021/dc.20210903.1.*

[10] ''Production efficiency'' includes efficiencies related to producing the raw material and transport to the electricity generation facility.

[11] ''Generation efficiency'' relates to the conversion of the limited resources into electricity, *e.g.,* by combustion, heating a boiler, and turning a turbine.

[12] Under GREET, electricity transmission has a national average efficiency of 95.14 percent.

the CAFE model that establishes values for a 40-year span. Beyond 40 years, only an insignificant population of vehicles from that given model year will remain on the road.[13] Thus, calculating a PEF value based on the expected fleet of EVs requires calculating electricity generation and transmission efficiency 40 years into the future. This methodology provides a better representation of how vehicles sold during the regulatory period will be used than did the methodology used in the 2023 NOPR of averaging the calculated annual PEF based on the grid characteristics at the time the vehicles were sold. When calculating electricity generation and transmission efficiency, DOE weights each of the generation source-specific total efficiencies based on that source's share of the entire U.S. electricity grid. This mix of energy sources changes over time and is likely to continue changing in the future. Thus, the mix of electricity generation sources is a critical variable impacting the value of the PEF, consistent with Congressional direction at 49 U.S.C. 32904(a)(2)(B)(ii) and (iii) to consider the national average electrical generation efficiency and the need to conserve all forms of energy.

In the 2023 NOPR, DOE considered numerous projections available in 2022 and selected the projection model 2021 Electrification 95 by 2050, Standard Scenario, from NREL, in which the United States achieves 95 percent renewable generation of electricity by 2050 (NREL 2021 95 by 2050). 88 FR 21525, 21531. In selecting this grid projection, DOE stated that NREL 2021 95 by 2050 is more representative of the likely future grid mix after the effects of recent policy changes, such as those in the Inflation Reduction Act of 2022 (IRA) and the Infrastructure Investment and Jobs Act (IIJA), are fully realized, particularly given that these policies will result in a substantial addition of renewable resources onto the grid. In the 2023 NOPR, DOE noted that it also considered EIA's Annual Energy Outlook (AEO) Reference Case for 2022 (AEO 2022). DOE opted not to use AEO 2022 because it did not incorporate recent policy changes in the IRA. 88 FR 21525, 21531. While NREL 2021 95 by 2050 also did not incorporate IRA impacts, the NREL forecast better represented expected renewable energy growth through 2030 than the AEP 2022 forecast. However, DOE said that for the final rule, it would consider using other projections, such as EIA's AEO for 2023 (AEO 2023), which was not available when DOE conducted its analysis for the 2023 NOPR.

Some commenters supported DOE's decision to use the 95 by 2050 grid projections from NREL's 2021 forecast. Tesla, Doc. No. 18, pg. 3–4; ICCT, Doc. No. 19, pg. 1. Other commenters believed that DOE should use AEO 2023. NRDC and Sierra Club, Doc. No. 20, pg. 3; California *et al.,* Doc. No. 27, pg. 4–5. These commenters noted that the grid projections in AEO 2023 account for policy changes in IRA. They also observed that NHTSA uses the EIA AEO model in the recent CAFE rulemaking. NRDC and Sierra Club, Doc. No. 20, pg. 3. Another commenter stated that DOE should use the ''relative scarcity'' scenario explored in the spreadsheet that accompanied the 2023 NOPR. Alliance, Doc. No. 25, pg. 14.

For this final rule, DOE assessed the grid projections that have become available since 2022. These include AEO 2023, which does account for some impacts of the IRA and IIJA, and the ''relative scarcity'' scenario. After this consideration and analysis, in this final rule, DOE continues to use the NREL model (updated for 2022 data) that it used in the 2023 NOPR, but DOE selects the Standard Scenario Mid-Case instead of the 95 by 2050 Scenario. Specifically, DOE is using the NREL 2022 Standard Scenario, ''Mid-case, nascent techs, current policies'' to forecast the grid mix for the final rule.

Among the factors the Secretary must consider when setting the PEF is ''the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.'' 49 U.S.C. 32904(a)(2)(B)(iii). DOE believes that Congress' directive to set a PEF and to consider the conservation of all forms of energy, including the relative scarcity and value of fuels used to generate electricity, are intended to ensure that average fuel economy of a manufacturer's entire fleet recognize and account for the full energy conservation benefits of EVs relative to ICE vehicles, taking into account both energy conservation overall, and the relative need for and supply constraints of different types of fuels. ''[T]he relative scarcity and value to the United States of all fuel used to generate electricity'' is anticipated by every forecast DOE considered to change over time, largely in response to U.S. government policy decisions regarding ''the need of the United States to conserve energy.'' Renewable and other clean energy sources of electricity are integral in addressing the need to conserve energy and improve energy security, and so current policies are directed at increasing the production of electricity from such energy sources. In this specific statutory context, DOE believes it is particularly important to ensure that the model used to estimate the future energy conservation benefit of EVs focuses on projecting how the mix of renewable and other clean energy generation in the grid will change over the long term. The NREL model has this specific focus. In the 2023 NOPR, DOE selected the 2021 NREL 95 by 2050 scenario because DOE believed it was the closest forecast to *approximately* capture the projected impacts of the IRA, which had been adopted too recently to be fully incorporated into any published projection.[14] Since DOE published the 2023 NOPR, the NREL 2022 forecast has been published. To affect the purposes of this statute, DOE believes the NREL 2022 Standard Mid-case scenario best captures the impact of the IRA and IIJA on renewable and other clean electricity generation over time. As described on NREL's website: ''[e]very year, the Standard Scenarios includes a scenario called the Mid-case that serves as a baseline or middle-ground scenario to reflect what might happen if current trends and conditions continue. The Mid-case has central values for model inputs like technology and fuel costs and how much electricity people use. In addition, the Mid-case represents currently enacted electric sector policies.'' [15] In addition, the AEO scenarios have historically made relatively more conservative assumptions regarding the growth of renewable generation, relative to the NREL model. Because DOE believes that, for the reasons described previously, the 2022 NREL 2022 Standard Scenario, ''Mid-case, nascent techs, current policies'' best captures the impact of the IRA and IIJA on renewable and other clean electricity generation on the U.S. electrical grid for the specific purposes of this rule, DOE used this projection in its calculation of the PEF value. DOE will annually review forecasts for electricity generation and determine if a change is necessary for this value for future model

[13] In its notice of proposed rulemaking that establishes CAFE standards for passenger cars and light trucks for MY 2027–2032, NHTSA estimates the average maximum lifespan of such vehicles to be 40 years. 88 FR 56128 (Aug. 17, 2023); Light Duty Central Analysis, file LD_Central_Analysis.zip, spreadsheet: parameters_ref.xlsx, on tab ''Vehicle Age Date''. Available at *www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CAFE/2023-NPRM-LD-2b3-2027-2035/Central-Analysis/.*

[14] The NREL 2021 forecast did include impacts of some relatively recent policies, such as the IIJA.

[15] *See www.nrel.gov/news/program/2024/nrel-releases-the-2023-standard-scenarios.html.*

years as required by 49 U.S.C. 32904(a)(2)(B).

b. Petroleum Refining and Distribution Efficiency

In the 2023 NOPR, DOE also updated its calculations of the petroleum refining and distribution efficiency factor to reflect the most recent GREET data. 88 FR 21525, 21527. In the 2023 NOPR, DOE used GREET efficiency factors to determine that crude oil production and transportation has an efficiency of 93.96 percent, gasoline refining has an efficiency of 87.01 percent, and gasoline transportation and distribution has an energy efficiency of 99.52 percent. Multiplying these three terms provides an overall well-to-tank petroleum refining and distribution efficiency of 81.36 percent.

NRDC and Sierra Club argued that petroleum refining and distribution efficiency should not be considered when considering the national average electrical generation and transmission efficiency. NRDC and Sierra Club, Doc. No. 20, pg. 4. They asserted that section 32904(a)(2)(B)(ii) only directs DOE to consider ''electrical generation and transmission efficiencies,'' and does not direct DOE to consider petroleum refining and distribution efficiencies or compare them to electric ones. NRDC and Sierra Club, Doc. No. 20, pg. 4. Furthermore, these commenters stated that because nothing in the statute requires DOE to consider petroleum refining and distribution efficiency, DOE should remove the term from the methodology used to calculate PEF. NRDC and Sierra Club, Doc. No. 20, pg. 4.

Comparing electricity and gasoline on an equivalent basis requires consideration of the full energy-cycle energy efficiency from the point of primary energy production through end-use to power a vehicle for both gasoline and electricity. Assessing the full energy cycle of electricity and conventional fuel requires a holistic approach to address energy conservation when energy losses occur at different stages of an energy cycle for different energy products and fuels, such as electricity and gasoline. Moreover, DOE interprets the ''need of the U.S. to conserve energy'' as applying broadly to all forms of energy, which includes petroleum. 49 U.S.C. 32904(a)(2)(B)(iii). Therefore, it is appropriate to assess the full energy cycle of both gasoline and electricity the energy is converted to a useful form at different stages—gasoline onboard the vehicle, electricity upstream—and a reasonable comparison of the two systems requires taking into account the same steps.

Another commenter opposed the calculations for petroleum refining and distribution efficiency because they believed that the data available from the fossil fuel industry is unreliable. Transport Evolved, Doc. No. 17, pg. 2. In this final rule, as with the 2023 NOPR, DOE used the best data available on refining and distribution efficiency by using the efficiency numbers in the GREET model. It is a widely used life-cycle analysis model for vehicle technologies and transportation fuels and has been used in regulation development and evaluation by DOE, EPA, and DOT. The data obtained from the GREET model are reliable.

c. Annual Gasoline-Equivalent Fuel Economy of Electricity

As discussed previously, DOE uses the average electricity generation and transmission efficiency and the petroleum refining and distribution efficiency to determine the gasoline-equivalent fuel economy of electricity (E_g). In order to calculate the electricity generation and transmission efficiency, DOE uses the 2022 NREL Standard Scenario, ''Mid-case, nascent techs, current policies'' to forecast the U.S. electrical grid mix. The annual gasoline-equivalent fuel economy of electricity values used in this analysis are provided in Table 3. The modeling source only goes until 2050, so DOE assumed an unchanging grid for subsequent years.

TABLE 3—ANNUAL GASOLINE-EQUIVALENT FUEL ECONOMY OF ELECTRICITY

Year	Annual E_g (Wh/gal)
2023	21,407
2024	22,299
2025	22,880
2026	23,481
2027	24,897
2028	26,449
2029	27,498
2030	28,595
2031	29,000
2032	29,404
2033	29,788
2034	30,171
2035	30,412
2036	30,651
2037	30,717
2038	30,781
2039	30,836
2040	30,889
2041	30,613
2042	30,349
2043	30,041
2044	29,747
2045	29,490
2046	29,243
2047	29,011
2048	28,787
2049	28,434
2050 and later	28,097

The Alliance argued that the 2000 Final Rule underestimates the fuel economy of EVs because EVs do not use any petroleum (or only minimal amounts through the grid) when operating in fully electric mode. Alliance, Doc. No. 25, pg. 15. They note that the electrical grid has only become more efficient since 2000. Therefore, they argue that the 2027 PEF value should be higher than the 2000 PEF. This argument both misunderstands the purpose of the PEF in the compliance calculations and discounts the DOE's attempt to better align the PEF with the statutory factors prescribed by Congress. The purpose of the PEF is to convert the energy used by EVs to a miles per gallon-equivalent in order to average EV and ICE vehicle fuel economy for determining vehicle manufacturers' CAFE performance. Although DOE agrees that the electrical grid has become more efficient since 2000, in this rulemaking, DOE is holistically reviewing all of the factors used to calculate the PEF, including the use of the fuel content factor. The efficiency of the grid is only one input to these calculations and does not solely determine the final result.

3. Cumulative Gasoline-Equivalent Fuel Economy of Electricity

In the 2023 NOPR, DOE explained that NHTSA's next CAFE regulation was expected to cover MYs 2027–2031 and proposed that the proposed PEF value would be the applicable PEF for calculating EV fuel economy when enforcing the CAFE regulations those model years. 88 FR 21525, 21531. To calculate a PEF value usable over the entire period covered by the next revision of the CAFE regulations, DOE considered a forward-looking approach based on projections for the electricity generation grid in the future. In the 2023 NOPR, DOE only considered the annual calculated PEF over the expected regulatory period and used an average of those values. DOE explained that the average of the annually calculated value of the PEF, based on calendar-year projections for the electric grid, would be applied for MYs 2027 through 2031. 88 FR 21525, 21531.

Several commenters opposed this approach and noted that vehicles are

driven for many years after their initial sale, not just the five years considered in the 2023 NOPR. DeBrouwer, Doc. No. 14, pg. 1; ACEEE, Doc. No. 29, pg. 1–2. On further analysis, and in response to these comments, this final rule adopts a PEF value based on the expected survivability-weighted lifetime mileage schedule of the fleet of vehicles sold during the regulatory period. To determine this, DOE uses the survivability-weighted lifetime mileage schedule derived from NHTSA's CAFE rulemaking.[16] The data that NHTSA used to develop the average annual vehicle miles traveled (VMT) schedule used in its analysis divided the light duty vehicle fleet[17] into three categories: passenger cars, pickup trucks, and Vans/SUVs. Each vehicle category has different scrappage rates and annual driving patterns. For this analysis DOE used a weighted average of 62.4 percent Vans/SUVs, 17.4 percent pickup trucks, and 20.2 percent passenger cars to generate the average annual VMT shown in Table 4 below.[18] DOE uses the same average for the electric-fueled sub-fleet because DOE lacks accurate information about individual automaker plans for electrifying their product lines. Table 4 shows the average annual VMT expected for the fleet of vehicles for the first forty years after initial sale.

TABLE 4—ANNUAL VMT FOR LIGHT DUTY VEHICLE FLEET

Year after initial sale	Annual VMT
1	16,647
2	15,989
3	15,336
4	14,679
5	14,012
6	13,331
7	12,627
8	11,894
9	11,131
10	10,334
11	9,504
12	8,639
13	7,755
14	6,873
15	6,008
16	5,188
17	4,439
18	3,773
19	3,196
20	2,704
21	2,293
22	1,953
23	1,674
24	1,443
25	1,253
26	1,096
27	965
28	856
29	764
30	686
31	564
32	463
33	380
34	312
35	256
36	209
37	171
38	139
39	114
40	92

The current methodology uses the annual gasoline-equivalent fuel economy of electricity to calculate PEF. Thus, the current PEF methodology must be revised to calculate a PEF value based on expected operation of the vehicles sold. To represent the expected operation of these vehicles, DOE calculates a cumulative gasoline-equivalent fuel economy of electricity (CE_g) in Table 5. The cumulative gasoline-equivalent fuel economy of electricity is determined by multiplying the annual gasoline-equivalent fuel economy of electricity by the corresponding annual share of lifetime VMT based on the survivability-weighted lifetime mileage schedule.

TABLE 5—CUMULATIVE GASOLINE-EQUIVALENT FUEL ECONOMY OF ELECTRICITY FOR MY 2027 EVS

Calendar year	Vehicle age	E_g	Annual share of lifetime VMT (%)	Partial CE_g
2027	1	24,898	7.94	1,976
2028	2	26,450	7.62	2,016
2029	3	27,498	7.31	2,011
2030	4	28,596	7.00	2,001
2031	5	29,000	6.68	1,937
2032	6	29,405	6.36	1,869
2033	7	29,789	6.02	1,793
2034	8	30,171	5.67	1,711
2035	9	30,413	5.31	1,614
2036	10	30,651	4.93	1,510
2037	11	30,717	4.53	1,392
2038	12	30,782	4.12	1,268
2039	13	30,836	3.70	1,140
2040	14	30,889	3.28	1,012
2041	15	30,613	2.86	877
2042	16	30,349	2.47	751
2043	17	30,042	2.12	636
2044	18	29,747	1.80	535
2045	19	29,490	1.52	449
2046	20	29,243	1.29	377
2047	21	29,011	1.09	317
2048	22	28,788	0.93	268
2049	23	28,434	0.80	227

[16] *See* NHTSA NPRM Draft Technical Support Document, Chapter 4, p. 4–41, Table 4–12, ''VMT Schedule by Body Style and Age'' for vehicle type breakdown and Section 4.2.2.3.3, ''Estimating the Scrappage Models'', beginning on p. 4–26. NHTSA TSD available at: *www.nhtsa.gov/document/cafe-2027-2032-hdpuv-2030-2035-draft-technical-support-document.*

[17] This rule considers all passenger cars and trucks up to 8,500 pounds to be light-duty vehicles. This aligns to those vehicles that are subject to NHTSA's CAFE regulations for passenger cars and light trucks.

[18] The distribution was derived from the file: LD_Central_Analysis.zip/output/LD_ref/reports_csv/vehicles_report.csv available at: *www.nhtsa.gov/file-downloads?p=nhtsa/downloads/CAFE/2023-NPRM-LD-2b3-2027-2035/Central-Analysis/.*

TABLE 5—CUMULATIVE GASOLINE-EQUIVALENT FUEL ECONOMY OF ELECTRICITY FOR MY 2027 EVS—Continued

Calendar year	Vehicle age	E_g	Annual share of lifetime VMT (%)	Partial CE_g
2050	24	28,097	0.69	193
2051	25	28,097	0.60	168
2052	26	28,097	0.52	147
2053	27	28,097	0.46	129
2054	28	28,097	0.41	115
2055	29	28,097	0.36	102
2056	30	28,097	0.33	92
2057	31	28,097	0.27	76
2058	32	28,097	0.22	62
2059	33	28,097	0.18	51
2060	34	28,097	0.15	42
2061	35	28,097	0.12	34
2062	36	28,097	0.10	28
2063	37	28,097	0.08	23
2064	38	28,097	0.07	19
2065	39	28,097	0.05	15
2066	40	28,097	0.04	12
CE_g	.....	.....	.....	28,996

DOE recognizes that the value of CE_g is substantially higher than the value of E_g used in the 2000 rule (12,307 Wh/gal). This change is due to a combination of: increased fossil generation efficiency; increased renewable generation; the assumption of resource inexhaustibility for nuclear and renewables; increases in electric transmission efficiency; reduction in petroleum production, refining and distribution efficiency; and the use of a forward-looking grid mix. By far the largest impact is due to changes to electricity generation since the 2000 Final Rule. The grid mix used in the 2000 Final Rule had almost no non-hydropower renewable generation, while renewables are forecasted to grow to over half of total electricity generation by 2030. As described previously, DOE treats nuclear, solar, wind, and hydro power as 100 percent efficient based on the effective inexhaustibility of the energy source. In addition, fossil generation now includes a significant amount of combined cycle generation, which has a much higher thermal efficiency than conventional combustion for heat generation. Changes in efficiency due to petroleum production, refining and distribution, and electricity transmission are smaller.

4. Fuel Content Factor

Pursuant to 49 U.S.C. 32904(a)(2)(B), among the factors the Secretary must consider when setting the PEF is ''the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.'' 49 U.S.C. 32904(a)(2)(B)(iii). In the 2000 Final Rule, DOE added the current 1.0/0.15 fuel content factor to the PEF to reward electric vehicles for their ''benefits to the Nation relative to petroleum-fueled vehicles, in a manner consistent with the regulatory treatment of other types of alternative fueled vehicles and the authorizing legislation.'' 65 FR 36986, 36988. In the 2000 Final Rule, DOE explained that it chose the 1.0/0.15 ratio for the fuel content factor (1) for consistency with existing regulatory and statutory procedures for alternative fuel vehicles under 49 U.S.C. 32905, (2) to provide similar treatment of all types of alternative fueled vehicles, and (3) for simplicity and ease of use in calculating the PEF. 65 FR 36986, 36988.

In the 2023 NOPR, DOE proposed removing the fuel content factor and requested comment on its elimination. 88 FR 21525, 21528–21530. DOE stated that it considered the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity in proposing to eliminate the factor. 88 FR 21525, 21528. As discussed in the 2023 NOPR in more detail, in considering the need for energy conservation and the relative scarcity and value of fuels used to generate electricity, in particular DOE emphasized the need to conserve finite petroleum resources. 88 FR 21525, 21529–215230. Conserving petroleum resources can be achieved through increased production and sales of EVs and through fuel economy improvements to ICE vehicles.

In the context of the statutory directive for the PEF and the need to conserve finite petroleum resources, DOE identified in the 2023 NOPR three key reasons supporting removal of the fuel content factor. 88 FR 21525, 21528–21530. First, DOE explained that the fuel content factor does not accurately represent current EV technology or market penetration. Second, DOE stated that applying the current fuel content factor to EVs results in miles per gallon equivalent ratings significantly higher than ICE vehicles. This overvaluing of EVs can allow a few EV models to provide overall compliance with CAFE standards, which in turn permits manufacturers to maintain less efficient ICE vehicles and disincentivizes production of additional EVs. 88 FR 21525, 21529–21530. Third, DOE proposed that the reasoning offered in the 2000 Final Rule in support of the use of 1.0/0.15 as a fuel content factor was not grounded in DOE's authority to set the PEF in section 32904, although DOE also noted that a fuel content factor could potentially be justified under the four factors of section 32904. 88 FR 21525, 21530.

Several commenters supported the elimination of the fuel content factor. California *et al.,* Doc. No. 27, pg. 5; NRDC and Sierra Club, Doc. No. 20, pg. 1–2; Tesla, Doc. No. 18, pg. 3; ICCT, Doc. No. 19, pg. 1; AFPM, Doc. No. 26, pg. 2. Specifically, California *et al.* and AFPM stated that the current fuel content factor is based on an inapplicable statutory section. California *et al.,* Doc. No. 27, pg. 5; AFPM, Doc. No. 26, pg. 2. In addition, NRDC and Sierra Club asserted that the current fuel content factor ''dwarfs the rest of the PEF calculation, and has no factual, legal, or logical connection to electricity/petroleum equivalence.'' NRDC and Sierra Club, Doc. No. 20, pg.

2. Commenters noted that the fuel content factor leads to the overvaluation of EVs, which is counter to the need to conserve energy, particularly petroleum.

Other commenters, however, opposed the elimination of the fuel content factor. For example, the Alliance stated that DOE should focus on the role of the PEF as an incentive for manufacturing EVs, which would keep DOE's analysis more closely tied to the applicable statutory factors. Alliance, Doc. No. 25, pg. 10. Similarly, UAW asserted that the fuel content factor is needed to continue to incentivize the production of EVs. UAW, Doc. No. 30, pg. 1–2. The Alliance and UAW stated that the 2023 NOPR overstated the scale of the EV market and encouraged DOE to ''incorporate a more realistic projection of EV adoption and charging infrastructure build-out.'' Alliance, Doc. No. 25, pg. 7–8; UAW, Doc. No. 30, pg. 2. Furthermore, the Alliance and UAW noted that federal investment and incentives would take time to reach maturity. Alliance, Doc. No. 25, pg. 8; UAW, Doc. No. 30, pg. 2. The Alliance argued that EV purchase incentive provisions in IRA are evidence that Congress believes EVs are not sufficiently commercialized. Alliance, Doc. No. 25, pg. 10. And finally, the Alliance noted that supply constraints and investment limitations impair manufacturers' ability to respond rapidly to changes in the PEF value, arguing that research and production resources are effectively zero-sum. Alliance, Doc. No. 25, pg. 17. The Alliance stated that the proposal could cause manufacturers to divert scarce investment resources to ICE vehicle lines and away from EV production, and noted the difficulty with doing even that, citing a lack of opportunity for engine redesigns, and arguing that engine design and development cycles are typically much longer than three years. *Id.*

After careful consideration of the comments, DOE concludes that removing the fuel content factor will, over the long term, further the statutory goals of conserving all forms of energy while considering the relative scarcity and value to the United States of all fuels used to generate electricity. This is because, as explained in the 2023 NOPR and in more detail below, by significantly overvaluing the fuel savings effects of EVs in a mature EV market with CAFE standards in place, the fuel content factor will disincentivize both increased production of EVs and increased deployment of more efficient ICE vehicles. Hence, the fuel content factor results in higher petroleum use than would otherwise occur.

DOE recognizes, however, the persuasive points made by commenters as to how the fuel content factor will continue to incentivize EV production in the near term. As commenters note, while EV market penetration has dramatically increased, EVs currently represent only approximately 10 percent of new passenger car and light truck sales.[19] Moreover, while the recently adopted IIJA and IRA are in effect, the critical incentives and support for EVs and charging infrastructure that these laws provide are in the early stages of implementation and will become more fully operative and effective over time. DOE agrees with commenters that there is still an opportunity to incentivize additional EV production, and the resulting greater petroleum conservation, through a fuel content factor over the next several years. Thus, as explained in more detail below, DOE is retaining the current fuel content factor through MY 2026, under a revised statutory basis, and then gradually phasing out the fuel content factor by MY 2030.

DOE begins with the statutory text. Congress directed DOE to set the PEF based, in part, on ''the need of the United States to conserve all forms of energy'' and ''the relative scarcity and value to the United States of all fuel used to generate electricity.'' 49 U.S.C. 32904(a)(2)(B)(iii). First, DOE confirms that increased use of EVs, relative to ICE vehicles, would help the United States meet its need to conserve all forms of energy, taking into consideration the relative scarcity and value of all fuel used to generate electricity. As detailed in the 2023 NOPR, EVs are substantially more energy efficient than ICE vehicles on an energy input required basis. In addition, when comparing EVs to ICE vehicles on the basis of their use of scarce fuels, EVs provide even greater fuel conservation benefits when compared to gasoline used in ICE vehicles. *See* 88 FR 21525, 21536 (calculating a significantly higher PEF when using a methodology that compares only vehicle-based petroleum use and electricity production using scarce fossil energy resources). Accordingly, an increased use of EVs, relative to ICE vehicles, would allow the United States to get greater transportation value from relatively scarce fuels, including those used to generate electricity.

These individual-vehicle measures understate the magnitude of the fuel conservation benefits of substantially increasing EV production and use in the near term. Accelerating adoption of EVs now can significantly further accelerate and increase EV market penetration, due to network effects related to expanded demand for and availability of charging infrastructure. These network effects include rapid shifts in consumer acceptance and increased access to immediate incentives, the redeployment of capital and human resources at the firm and country level, accelerated technology development with greater production of vehicles in multiple segments at scale, and increases in domestic battery manufacturing capacity in line with projected market demand. This has been demonstrated based on the EV adoption experience of other countries, which tends to follow an ''S-Curve''—a long period of relatively slow adoption followed by a rapid increase in adoption as EV sales grow.[20] This implies that if EV adoption is accelerated in the near term to reach the tipping point of growth sooner, significantly more EV adoption could result in a shorter timeframe than would otherwise occur. The energy conservation benefits would also accelerate commensurately. Accordingly, DOE concludes that the nation's need to conserve all forms of energy is best served not simply by EV adoption generally, but specifically by accelerating EV adoption in the near term.

Next, DOE evaluates the maturity of the EV market and the sufficiency of the incentives, other than the fuel content factor, for EV production and sales in the near term. As DOE stated in the 2023 NOPR, since the 2000 Final Rule, EV technology has matured and the market share of EVs is growing. 88 FR 21525, 21528. Advances in electrification technology have resulted in improved performance and efficiency and reduced costs. 88 FR 21525, 21529. Commenters also noted that technology development, infrastructure

[19] DOE, Plug-in EV Sales in December of 2023 Rose to 9.8% of All Light-Duty Vehicles Sales in the U.S., January 15, 2024. Available at *www.energy.gov/eere/vehicles/articles/fotw-1325-january-15-2024-plug-ev-sales-december-2023-rose-98-all-light-duty.*

[20] *See* International Energy Agency, *Global EV Outlook 2022,* (May 2022), available at *www.iea.org/reports/global-ev-outlook-2022;* Energy and Power Group, Department of Engineering Science, University of Oxford, *Forecast of electric vehicle uptake across counties in England: Dataset from S-curve analysis,* (Dec. 2021), available at *www.sciencedirect.com/science/article/pii/S2352340921009379?via%3Dihub;* European Commission, Joint Research Centre, *Analysis and testing of electric car incentive scenarios in the Netherlands and Norway* (2020), available at *www.sciencedirect.com/science/article/pii/S0040162519301210#fig0004.*

deployment, and especially recent changes to Federal law, such as the IRA and the IIJA, provide significant incentives for tremendous investment in the entire EV ecosystem. These incentives are driving investments in further technological development of EVs and charging infrastructure, production (especially domestic production) of EVs, components such as batteries and chargers, and production of supply chain components, including critical minerals. These laws also provide multiple substantial incentives for EV purchases and leases, private purchases, and installation of charging infrastructure, and the build-out of a nationwide public charging system.

It is critical to note, however, that the EV market is still small relative to ICE vehicles, and while these incentives are already driving massive industry investments, it will take some years for all these investments to fully translate into production and sales. Further, although consumer purchase incentives are currently available, only a relatively limited number of vehicles qualify for a portion or all of the available credits. Over the next six years, these incentives will increasingly result in greater EV deployment on the roads, as their effectiveness phases in over time. For example, as a result of component sourcing requirements and developing supply chains in the EV battery sector, DOE projected that an increasing share of electric vehicles will benefit from IRA tax incentives between 2023 and 2032, with a fleetwide average credit increasing from $3,900 per vehicle in 2023 to $6,000 in 2032 (nominal dollars).[21] Similarly, DOE's IIJA-enabled investments in enabling infrastructure, such as EV fast charging and domestic EV component manufacturing, will scale over time as projects are identified, permitted, and constructed. Considering the timing over which the bulk of the IIJA and IRA EV incentives will become fully effective, DOE concludes that there is still a fuel conservation benefit from additional EV incentives in the near term. By 2030, DOE expects that the EV market will be sufficiently developed that further support from the fuel content factor will be unnecessary.

As noted previously, commenters disagreed whether the fuel content factor incentivizes or disincentivizes EV production. On the basis of the record before it, DOE concludes that the answer is: it depends. In other words, the effect of the fuel content factor on manufacturer EV production will vary according to the maturity of the EV market and the effectiveness of other available incentives at the time DOE applies the fuel content factor and resulting PEF value. Vehicle manufacturers indicate that the present fuel content factor is an important incentive for current EV production. *See* Alliance, Doc. No. 25, pg. 7–8; Porsche, Doc. No. 24, pg. 2. By significantly increasing the PEF, the fuel content factor makes it relatively more cost-effective for manufacturers to improve their fleets' average fuel economy by selling more EVs. Where manufacturers are not yet adequately incentivized to develop, manufacture, and market EVs, as is currently the case, an inflated fuel content factor can increase EV adoption and the accompanying petroleum conservation in the near term. In the context of an emerging market for EVs, this additional near-term EV production is disproportionately valuable in leveraging network effects and further accelerating EV adoption and petroleum conservation. Because including the fuel content factor when calculating the PEF value can increase EV adoption, in the near term, which results in greater petroleum conservation, retaining the fuel content factor in the near term is consistent with ''the need of the United States to conserve all forms of energy.'' *See* 49 U.S.C. 32904(a)(2)(B)(iii).

However, as explained in the 2023 NOPR, an ''artificially inflate[d]'' fuel content factor may conversely allow manufacturers to meet CAFE standards with fewer EVs and little improvement in their ICE fleets. As also explained in the 2023 NOPR, the higher the PEF, the greater the value of each EV for compliance purposes, and the fewer EVs (or improvements in ICE fuel economy savings) are needed. DOE expects this effect to predominate as the incentives for producing and selling EVs, such as those included in IRA and IIJA, ramp up and as the EV market grows. Once manufacturers are selling relatively large numbers of EVs, giving each EV a higher effective fuel economy for CAFE compliance purposes is less likely to incentivize greater EV production and more likely simply to eliminate the need for ICE fuel economy improvements, given the statutory structure of the CAFE program.

In the 2023 NOPR, DOE explained its view that ''current EV technology and market penetration'' are sufficiently developed such that further incentives for EVs through the PEF are unnecessary. 88 FR 21525, 21534. Based on DOE's review of comments and further analysis, DOE concludes that incentives provided by IRA and IIJA, coupled with the expansion of supporting infrastructure, such as public fast chargers, and increasing consumer interest in EVs, will eventually provide adequate incentives, and the anticipated network effects, to achieve widespread EV adoption. DOE thus affirms the analysis in the 2023 NOPR that, at such time, a fuel content factor will reduce, and eventually eliminate, the net energy conservation benefit of incentivizing EV deployment through the fuel content factor.

Although the 2023 NOPR identified recent changes, such as IRA and IIJA incentives, as reasons to remove the fuel content factor (88 FR 21525, 21534), because these incentives will not be fully available when the PEF becomes effective, DOE concludes that EVs will remain inadequately incentivized for purposes of energy conservation over the next few years.[22] Additionally, DOE expects a continued reduction in battery prices from innovation and economies of scale, resulting in lower purchase price and increased competitiveness of EVs by 2030. Accordingly, DOE expects that incentivizing EVs through a fuel content factor will reduce petroleum use in the near term. Based on DOE's determination that EVs will be adequately incentivized for purposes of energy conservation by 2030, DOE has determined that the fuel content factor can be, and ought to be, phased out by 2030.

DOE concludes that, for a limited time, retaining a fuel content factor in the PEF calculation is likely to incentivize manufacturers' production of EVs in the near term. DOE determines that phasing out a fuel content factor, as compared to removing it over a single model year, will help manufacturers continue to invest in the EV transition and serve as a near-term incentive for vehicle manufacturers to invest in and sell EVs, thereby contributing to the reduced consumption of petroleum by accelerating the widespread adoption of EVs in the United States during this pivotal time. Moreover, given the industry's concern that revising the PEF value over the course of a single model year could actually *slow* EV adoption in the near term, due to the potential need for industry to rapidly shift investment from EV development back to interim

[21] *See* Department of Energy, ''Estimating Federal Tax Incentives for Heavy Duty Electric Vehicle Infrastructure and for Acquiring Electric Vehicles Weighing Less Than 14,000 Pounds,'' March 11, 2024. Available at *https://www.regulations.gov/docket/EERE-2021-VT-0033*.

[22] *See, e.g.,* IRA, Section 50142 (provides $3 billion to DOE's Advanced Technology Vehicle Manufacturing Loan Program through September 30, 2028, for loans to manufacture clean vehicles and their components in the United States); IRA, Section 50143 (provides $2 billion to the U.S. Treasury through September 30, 2031, to provide grants for the domestic production of EVs).

ICE based vehicle development, a phase in of the revised value would be more consistent with the statute and better spur the technological transition that will ultimately result in greater energy conservation. In addition, by phasing in a new PEF value over several years, the risk for manufacturers of expediting their investment in EV technology is reduced, because they are able to spread product changes (and associated research and production dollars) over more model years. Alleviating this risk for manufacturers is likely to result in an increase in EV development and adoption in the near term. For these reasons, DOE determines that immediate and complete removal of the fuel content factor from the PEF calculation would not serve the need of the United States to conserve energy.

In addition, DOE finds that there is an adequate statutory basis for retaining the fuel content factor for a limited time period. As stated in the 2023 NOPR, DOE concludes that it need not rely upon 49 U.S.C. 32905 to apply a fuel content factor to EVs. 88 FR 21525, 21530. That provision applies to the use of alternative fuels, not to EVs. Section 32904(a)(2)(B), which requires the Secretary to consider, among other things, ''the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity,'' does, however, provide a basis to apply a fuel content factor to the PEF calculation in the circumstances where applying such a fuel content factor would in fact conserve energy. As discussed previously, in this final rule DOE finds that for the immediate near term the fuel content factor serves to incentivize EV production, and hence to conserve energy, specifically petroleum. Accordingly, currently the fuel content factor meets the statutory directive to set the PEF taking into account the need ''to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity.'' 49 U.S.C. 32904(a)(2)(B). DOE also finds in this rule, however, that as the EV market matures and the incentives under the IRA and IIJA become more powerful, the fuel content factor will rapidly shift from incentivizing EV production and energy conservation to undercutting the effectiveness of other requirements for energy conservation. These conclusions support the current use, and eventual phase-out, of the fuel content factor.

Therefore, to reflect its declining net conservation benefit, the PEF calculation methodology in this final rule will gradually increase the denominator of the fuel content factor, starting with the currently applicable 1.0/0.15 factor in MY 2026 and increasing the denominator to a value of 1.00 by MY 2030. Given the date of 2030 for full phase out, DOE will reduce the impact of the fuel content factor by increasing the denominator of the factor by 4four equal increments of 0.2125 over MYs 2027 through 2030. The annual increase in the fuel content factor denominator value will decrease the factor's value until it is phased out in MY 2030. The fuel content factor for MYs 2026 to 2030 is represented in Table 6.

TABLE 6—FUEL CONTENT FACTOR FOR MY 2026 TO 2030

Model year	2026	2027	2028	2029	2030
Fuel content factor	1/0.15	1/0.3625	1/0.575	1/0.7875	1

5. Accessory Factor

The 2000 Final Rule added an accessory factor to the PEF calculation to account for petroleum-fueled on-board accessories, such as cabin heaters, defrosters, or air-conditioning, which were envisioned as an approach to avoid low energy-density and/or low power-density limitations of battery technology at the time.[23] No EVs currently produced include such accessories and it is unlikely that future EVs will include them. Furthermore, plug-in hybrid electric vehicles (PHEVs) petroleum-fueled on-board accessories are distinct from gasoline consumption, with a fuel economy weighted according to the expected percentage of driving attributed to charge-depleting and charge-sustaining modes. Therefore, in the 2023 NOPR, DOE proposed to set the accessory factor equal to 1.00 in its calculation. Two commenters supported setting the accessory factor to 1. NRDC and Sierra Club, Doc. No. 20, pg. 7; California *et al.,* Doc. No. 27, pg. 3–4. These commenters agreed with DOE's determination that no EVs in production use petroleum powered accessories. No commenter opposed setting the accessory factor equal to 1.00. Accordingly, as proposed in the 2023 NOPR, DOE sets the accessory factor equal to 1.00 in its PEF calculation.

6. Driving Pattern Factor

In the 2000 Final Rule, DOE established a driving pattern factor to account for the statutory criterion in 49 U.S.C. 32904(a)(2)(B)(iv). The purpose of the driving pattern factor is to recognize the fact that electric vehicles may be used differently than gasoline vehicles, primarily due to their shorter range and longer ''refueling'' times. Then-existing EPA regulations, however, did not make driving-pattern-based adjustments to the fuel economy of various classes of gasoline vehicles when calculating a manufacturer's CAFE value, even though gasoline-powered vehicles are also used in many different ways. 64 FR 37907, 37908. Therefore, DOE set the driving pattern factor at 1.00 because it believed that EVs offer capabilities like those of conventional gasoline-powered vehicles. 65 FR 36986, 36987. In the 2023 NOPR, DOE did not propose a change to the driving pattern factor and proposed keeping the driving pattern factor at 1.00. 88 FR 21525, 21530. DOE stated that it continued to believe that EVs are equivalently capable vehicles that are likely to be used similarly to gasoline-powered or hybrid-electric vehicles. 88 FR 21525, 21530.

DOE received comments that supported the proposed driving pattern factor. For example, NRDC, Sierra Club, the Alliance, and California *et al.,* supported a driving pattern factor of 1.0 and agreed that current EVs are full utility vehicles. NRDC and Sierra Club, Doc. No. 20, pg. 7; Alliance, Doc. No. 25, pg. 27; California *et al.,* Doc. No. 27, pg. 6.

By contrast, AFPM opposed the proposed driving pattern factor and asserted that the driving patterns and use of ICE vehicles are different from that of EVs, primarily due to range considerations for EVs. AFPM, Doc. No. 26, pg. 16. AFPM asserted that DOE should analyze specific patterns of use of EVs compared to ICE vehicles. AFPM, Doc. No. 26, pg. 16. In its comments, AFPM claimed that EVs are more likely to be driven shorter distances for purposes such as commuting or running

[23] For example, in the mid-1990s, the experimental Ford Ecostar vehicle, a two-door, small van, included a diesel-powered heater while being powered primarily by a sodium-sulfur battery with notable power density limitations and a very high operating temperature.

errands, as compared to ICE vehicles, which are more associated with longer trips and towing. AFPM, Doc. No. 26, pg. 17.

In addition, AFPM cited a study by *iSeeCars.com* that examined used-vehicle listings showing that used-EVs had driven fewer miles than used-ICE vehicles.[24] However, a more recent study [25] noted that the *iSeeCars.com* study methodology is biased toward examining older vehicles with lower EV ranges because it explored used-EV listings from 2016–2022 from the secondary market, and the more recent study advocated for updating the *iSeeCars.com* study to reflect newer EVs. A range of annual miles have been found in previous studies of BEV use ranging from 6,300 miles per year to 12,522 miles per year.[26] Another study by University of California-Davis researchers found that long-range BEVs are driven significantly more than short-range BEVs and more than ICE vehicles.[27] That same study uncovered other factors influencing the number of miles that EVs are driven, such as how many additional ICE vehicles are operated within a household. Many early EV adopters owned several vehicles, thus reducing the miles operated by each vehicle. While some EVs are currently driven less than comparable conventional vehicles, the difference between them is clearly shrinking. Moreover, current and growing EV ranges support DOE's position that EVs are equivalently capable vehicles likely to be used similarly to ICE vehicles or hybrid electric vehicles.

Accordingly, as proposed in the 2023 NOPR, DOE maintains the driving pattern factor at 1.00 in this final rule. DOE continues to believe that current EVs are equivalently capable vehicles that are likely to be used similarly to gasoline-powered or hybrid-electric vehicles. In addition, the deployment of a national charging network, enabled by the DOT's National Electric Vehicle Infrastructure program along with additional private investment, will help ensure EVs can continue to match the utility and driving demands of ICE vehicles. DOE maintains that current EVs are full-utility vehicles, capable of comparable performance and range to conventional counterparts.

7. Revised PEF Value

As discussed in the preceding sections, DOE concluded that the current PEF value and methodology were based on outdated data and that the technology and market penetration of EVs has significantly changed since the 2000 Final Rule. In this final rule, DOE uses the following equation to calculate the PEF:

$$PEF = CE_g \times FCF \times AF \times DPF$$

Where CE_g, or cumulative E_g, is the sum of annual gasoline-equivalent energy content of electricity (E_g) over the 40-year survivability-weighted lifetime mileage schedule (in Wh/gal), FCF is the fuel content factor (unitless and taking the value indicated in Table 6, above), AF is the accessory factor (unitless and equal to 1), and DPF is the driving pattern factor (unitless and equal to 1). In Sections III.C.3, III.C.4, III.C.5, and III.C.6, DOE calculated the values for CE_g, FCF, AF, and DPF respectively. The CE_g is 28,996 Wh/gal and AF and DPF are each 1.0. In addition, the final rule gradually reduces the fuel content factor, starting with the currently applicable 1.0/0.15 factor in MY 2026 and phasing out to a factor of 1.0/1.00 by MY 2030, *see* Section III.C.4 for a full discussion. Table 7 provides the inputs for MY 2024 to MY 2030 EVs. The final rule adopts the PEF values for the model years specified in Table 7.

TABLE 7—REVISED PEF VALUES FOR MY 2024–MY 2030 EVS AND LATER

Model year	CE_g	FCF	AF	DPF	PEF
2024–2026	[a] 12,307	1/0.15	[b] 1.0	1.0	82,049
2027	28,996	1/0.3625	1.0	1.0	79,989
2028	28,996	1/0.575	1.0	1.0	50,427
2029	28,996	1/0.7875	1.0	1.0	36,820
2030 and later	28,996	1.0	1.0	1.0	28,996

[a] 12,307 Wh/gal is the E_g for MY 2024–2026, not the CE_g as the revised PEF methodology does not apply to MY 2024–2026 EVs.
[b] Assumes no petroleum-powered accessories for MY 2024–2026 EVs.

Several commenters, mainly auto manufacturers and their representatives, opposed the revised PEF value.[28] Some commenters argued that DOE should maintain the PEF established in the 2000 Final Rule. Porsche, Doc. No. 24, pg. 1; NADA, Doc. No 23, pg. 2–3; UAW, Doc. No. 30, pg. 1. They noted that the consistent PEF has provided regulatory certainty to automakers and that the PEF is an important planning tool and regulatory incentive in the context of CAFE compliance strategies that rely on the existing PEF to improve efficiency. Porsche, Doc. No. 24, pg.1; NADA, Doc. No. 23, pg. 2–3. NADA claimed that unless CAFE standards are lowered, changing the PEF as proposed will force automobile manufacturers to alter CAFE compliance strategy by reverting to investing more in costly ICE

[24] iSeeCars, The Most and Least Driven Electric Cars. Available at *www.iseecars.com/most-driven-evs-study.*

[25] Zhao *et al.,* ''Quantifying electric vehicle mileage in the United States'', Joule, Volume 7, Issue 11, 15 November 2023, pg. 2537–2551. Available at *doi.org/10.1016/j.joule.2023.09.015.*

[26] Davis, L.W., How much are electric vehicles driven? Appl. Econ. Lett. 26, 1497–1502 (2019), available at *www.tandfonline.com/doi/full/10.1080/13504851.2019.1582847;* Tal, G., Raghavan, S.S., Karanam, V.C., Favetti, M.P., Sutton, K.M., Ogunmayin, J.M., Lee, J.H., Nitta, C., Kurani, K., Chakraborty, D. *et al.,* advanced plug-in electric vehicle travel and charging behavior final report (2020), available at *csiflabs.cs.ucdavis.edu/~cjnitta/pubs/2020_03.pdf;* Burlig, F., Bushnell, J., Rapson, D., and Wolfram, C., Low energy: estimating electric vehicle electricity use. AEA Pap. Proc. 111, 430–435 (2021), available at *www.aeaweb.org/articles?id=10.1257/pandp.20211088;* Rush, L., Zhou, Y., and Gohlke, D., Vehicle residual value analysis by powertrain type and impacts on total cost of ownership (2022), available at *www.osti.gov/biblio/1876197;* Jia, W., and Chen, T.D., Beyond adoption: examining electric vehicle miles traveled in households with zero-emission vehicles. Transp. Res. Rec. 2676, 642–654 (2022), available at *journals.sagepub.com/doi/10.1177/03611981221082536;* Chakraborty, D., Hardman, S., and Tal, G., Integrating plug-in electric vehicles (PEVs) into household fleets-factors influencing miles traveled by PEV owners in California. Travel Behaviour and Society 26, 67–83 (2022), available at *doi.org/10.1016/j.tbs.2021.09.004.*

[27] UC Davis, Advanced Plug-in Electric Vehicle Travel and Charging Behavior Final Report, April 10, 2020. Available at *csiflabs.cs.ucdavis.edu/~cjnitta/pubs/2020_03.pdf.*

[28] DOE notes that these commenters opposed the revised PEF value proposed in the 2023 NOPR. In this final rule, the revised PEF value differs from the PEF value proposed in the 2023 NOPR. Specifically, the final rule retains the fuel content factor and phases it out over MY 2027 to MY 2030. In addition, the final rule uses an updated NREL projection of the electrical grid. Overall, these differences result in a greater PEF value for MY 2027 to MY 2030 EVs than proposed in the 2023 NOPR.

vehicle technology improvements or incur penalties. NADA, Doc. No 23, pg. 2. Porsche stated that if PEF must change, then the change should be phased in to reduce the effect on auto manufacturers. Porsche, Doc. No. 24, pg. 6.

DOE has a specific task of developing a PEF value that accounts for EV efficiency, national electrical generation and transmission efficiencies, conservation of all energy types and the relative scarcity and value of all fuels used to generate electricity, and EV driving patterns compared to petroleum-fueled vehicles. Although the Department has not changed the PEF value for over 23 years, DOE has statutory authority to review the PEF value on an annual basis. After reviewing the current PEF value and inputs, DOE determined that it was necessary to revise the PEF value consistent with the statutory factors identified in section 32904(a)(2)(B) and described above in greater detail. The revised PEF value reflects updated inputs upon which PEF values are calculated and advancements in the technology and market penetration of EVs since the 2000 Final Rule.

8. Compliance Period

As noted in the 2023 NOPR, DOE proposed that the new PEF value take effect with MY 2027 vehicles. 88 FR 21525, 21531. DOE explained that NHTSA's next CAFE regulation was expected to cover MYs 2027–2031 and that the proposed PEF value would be the applicable PEF for calculating EV fuel economy for those model years. 88 FR 21525, 21531. DOE stated that having a fixed PEF value for the CAFE standard period improves NHTSA's ability to set CAFE standards that are the maximum feasible average fuel economy level and provides greater certainty to stakeholders from year to year. 88 FR 21525, 21531. DOE requested comment on this approach.

DOE received comments on this approach from numerous and diverse stakeholder groups, including non-governmental organizations, auto manufacturers and their representatives, energy and agricultural interest groups, and members of the public. Some commenters, such as NRDC and Sierra Club, supported the proposed effective date and agreed that DOE should conduct its most in-depth reviews of the PEF to coincide with anticipated CAFE rulemakings. NRDC and Sierra Club, Doc. No. 20, pg. 6.

In contrast, most auto manufacturers and automotive industry representatives opposed the proposed effective date and asserted that incorporating PEF-driven changes into existing product plans for MY 2027 vehicles would be challenging. The Alliance explained that several years of lead time is necessary to incorporate technologies into new vehicles, electric or ICE. Alliance, Doc. No. 25, pg. 17. In particular, the Alliance noted that by the time the PEF rule is finalized, it is likely to be near the market introduction of MY 2025 vehicles and asserted that ''[e]ngine design and development cycles are typically much longer than three years.'' Alliance, Doc. No. 25, pg. 17.

On September 14, 2023, DOE issued letters to member companies of the Alliance that invited recipients to provide data, documents, or analysis to clarify the concerns the Alliance expressed on behalf of its member companies in its response to comments on the 2023 NOPR in relation to the proposed effective date. DOE received responses from several Alliance member companies that provided data on how the proposed PEF value could affect their ability to comply with proposed CAFE standards for MYs 2027 to MY 2031. Specifically, Hyundai, Toyota, Stellantis, Mitsubishi, and the Alliance indicated that the proposed PEF value could lead to challenges complying with the proposed CAFE standards. Alliance, Doc. No. 25, pg. 6, 10, 11; Hyundai Doc. No. 38, pg. 1; Toyota, Doc. No. 54, pg. 1; Stellantis, Doc. No. 53, pg. 6–7; Mitsubishi, Doc. No. 50, pg. 1 Alliance, Doc. No. 25, pg. 6, 10, 11.

In response to this request for clarification on the lead-time challenges expressed by the Alliance on behalf of its member companies, several commenters opposed delaying the implementation date beyond what was proposed in the 2023 NOPR. These commenters echoed comments from AFPM and stated that DOE lacks authority to postpone the effective date because DOE is required to review the PEF annually. *See* Tesla, Doc. No. 18, pg. 2; NRDC and Sierra Club, Doc. No. 20, pg. 2; AmFree *et al.,* Doc. No. 31, pg. 3. Additionally, these commenters also observed that lead time challenges are not included amongst the statutory factors DOE must consider when reviewing the PEF. Tesla, Doc. 18, pg. 2; AmFree *et al.,* 31, pg. 2.

Although DOE is sensitive to the concerns of auto manufacturers, 49 U.S.C. 32904 clearly identifies the factors DOE must consider when reviewing the PEF. DOE has a specific task of developing a PEF that accounts for EV efficiency, national electrical generation and transmission efficiencies, conservation of all energy types and the relative scarcity and value of fuels used to generate electricity, and EV driving patterns compared to petroleum-fueled vehicles. *See* 49 U.S.C. 32904(a)(2)(B). While NHTSA is required to provide 18 months of lead time for new CAFE standards per 49 U.S.C. 32902, lead time is not included in the factors that DOE must consider in its required annual review of the PEF. DOE is not required to consider lead time. However, DOE believes that applying the revised PEF beginning with MY 2027 vehicles is reasonable This will provide automotive manufacturers with more time to incorporate a new PEF than is required under the mandate that DOE review the PEF each year and determine if revisions to the PEF are required. Moreover, as DOE explained in the 2023 NOPR, applying revised PEF values to a predictable schedule provides greater certainty to stakeholders from year to year. Accordingly, as proposed in the 2023 NOPR, the revised PEF value will apply beginning with MY 2027 EVs.

9. Annual Review

In the 2023 NOPR, DOE stated that the statutory directive for an annual review is sufficient to require DOE to review the PEF. Accordingly, DOE proposed to delete section 10 CFR 474.5, which currently requires DOE to review 10 CFR part 474 every five years. 88 FR 21525, 21533. DOE stated that it would review the PEF value annually and if DOE determined that the PEF value needed to be changed, DOE would initiate a rulemaking to revise the value PEF appropriately. DOE also noted its intention to seek stakeholder input for its annual reviews through available methods (*e.g.,* requests for information). 88 FR 21525, 21533.

Several commenters opposed the deletion of 10 CFR 474.5. NRDC and Sierra Club, Doc. No. 20, pg. 6; California *et al.,* Doc. No. 27, pg. 7–8. These commenters acknowledged that DOE must review the PEF value on an annual basis and supported DOE's intention to seek stakeholder input during these annual reviews. However, they stated that § 474.5 requirements for public participation and publication are warranted to ensure DOE fulfills its statutory responsibilities to review the PEF. NRDC and Sierra Club, Doc. No. 20, pg. 6; California *et al.,* Doc. No. 27, pg. 7–8. Instead of deleting § 474.5, NRDC and Sierra Club suggested that DOE revise § 474.5 to reflect the review process described in the 2023 NOPR. NRDC and Sierra Club, Doc. No. 20, pg. 6.

DOE does not believe additional regulation regarding public review is necessary for DOE to meet its statutory responsibilities. The public is

authorized to petition DOE should DOE neglect its duties.[29] In addition, if DOE determines that it is necessary to change the PEF value, this will require revisions to 10 CFR part 474, which would require DOE to publish a notice of proposed rulemaking and request comments. Thus, any revisions to the PEF value or changes to the methodology will be published in the **Federal Register** and the public may file comments, making the language in § 474.5 requiring public participation and publication unnecessary. Accordingly, in this final rule, DOE deletes § 474.5 as proposed in the 2023 NOPR.

DOE also received comments that expressed concern that DOE would only change the revised PEF value for MYs 2027–2031 if there is a ''compelling reason'' to change the PEF calculation. AFPM, Doc. No. 26, pg. 4 (*citing* 88 FR 21525, 21533). However, AFPM noted that the statute does not require a compelling reason to change the PEF value. AFPM, Doc. No. 26, pg. 4. DOE agrees that 49 U.S.C. 32904 does not require a ''compelling reason'' to change the PEF calculation. However, DOE did not intend to imply such a requirement exists. Rather, as explained previously, in this final rule, DOE provides the PEF values for MYs 2024 EVs and later. The 2023 NOPR expressed DOE's view that it was unlikely that over the near term, annual reviews will identify sufficient changes in the inputs to warrant revising the PEF value. Regardless, if DOE concludes during an annual review that grid mix projections or any other changes result in a PEF value that meaningfully differs from the revised PEF values set forth in this final rule, DOE will take steps to revise the PEF accordingly.

IV. Responses to Additional Comments

A. Revisions to Section 474.3

One commenter noted that the 2023 NOPR proposed revisions to 10 CFR 474.3 that remove all description of the PEF value that applies to EVs prior to MY 2027. Alliance, Doc. No. 25, pg. 27. It was not DOE's intention to imply that there would be no PEF value from the effective date of the final rule to MY 2027. Accordingly, DOE revises § 474.3 to retain the current regulatory description relating to the PEF value that applies to EVs prior to MY 2027. This clarification requires revisions to the definition of the ''petroleum-equivalency factor'' in 10 CFR 474.2. DOE revises the definition of ''petroleum-equivalency factor'' to reference the new paragraphs in § 474.3 that provide the revised PEF values applicable to MY 2027 EVs and later.

B. Consideration of All Forms of Energy Conservation

Commenters suggested that DOE needed to consider all forms of energy conservation. AFPM, Doc. No. 26, pg. 12–16. For example, AFPM asserted that DOE did not account for resource depletion associated with transitioning to renewable electricity (*e.g.,* constraints on critical minerals for EV batteries and copper for transmission wiring), energy used to develop and manufacture EVs and infrastructure, and barriers to new renewable energy projects. AFPM suggested that DOE consider lifecycle energy demand associated with production of batteries, minerals, concrete, transition and storing, and charging infrastructure.

DOE notes in response that energy use associated with production of vehicles and components are incorporated in the lifecycle analysis methodology within GREET, which does include energy use of all associated vehicle materials. Charging infrastructure does not impact vehicle fuel economy, with the exception of grid losses, which are accounted for. Other factors, such as commodity pricing and supply, are beyond the factors DOE is directed to consider.

In contrast, the Alliance asserted that DOE's rulemaking should focus only on the lifetime petroleum consumption of passenger vehicles. However, such a limited focus is not supported by the statute. Developing ''equivalent petroleum based fuel economy values[,]'' as required in 49 U.S.C. 32904, requires DOE to develop a way to equate EV fuel economy in miles per kWh with a miles per gasoline gallon equivalent. If Congress wanted DOE to only consider petroleum consumption of EVs in calculating PEF, it would not have required DOE to consider the national average electrical generation and transmission efficiencies. 49 U.S.C. 32904(a)(2)(B)(ii). In addition, Congress would not have identified four distinct factors for DOE to consider when reviewing the equivalent petroleum-based fuel economy values of EVs. In particular, the statutory language about ''the need of the United States to conserve all forms of energy and the relative scarcity and value to the United States of all fuel used to generate electricity'' would be superfluous. DOE must consider all of the factors presented by Congress and it cannot isolate a single factor, such as petroleum consumption, and use it exclusively when calculating the PEF value. However, this final rule does give special consideration to the capability of EVs to conserve scarce fuels like petroleum, including by retaining a fuel content factor through 2030, as discussed in Section III.C.4.

C. Need for Multiple PEF Values

AFPM also asserted that one PEF for all EVs of different types and sizes is inappropriate, and instead, there should be PEF values that reflect actual energy efficiency of various classes of EVs during real world operation. However, the PEF is not designed to reflect the actual energy efficiency of various classes of EVs. Rather, the PEF value is a conversion factor between the forms of energy that are used in a vehicle, specifically to convert a Watt-hour of electricity into a gallon of gasoline for purposes of fuel economy regulation. The energy efficiency of various classes of EVs are determined by calculating the EV's combined electrical energy consumption value. An EV's combined energy consumption value is not considered when calculating the PEF value, but it is part of the equation to calculate the EV's petroleum-equivalent fuel economy. 10 CFR 474.3(a). To determine an EV's petroleum-equivalent fuel economy, one divides the appropriate PEF value by the EV's combined energy consumption value. 10 CFR 474.3(a)(3).

Because the combined electrical energy consumption value already accounts for the energy efficiency of different types and sizes of EVs, DOE determines that having multiple PEF values is unnecessary here. DOE agrees, however, that 49 U.S.C. 32904(a)(2)(B) would allow DOE to apply various factors to the CE_g when calculating the PEF value for ''various classes of electric vehicles,'' if DOE determined that such factors were necessary. For example, 49 U.S.C. 32904(a)(2)(B)(iv) requires DOE to consider ''the specific patterns of use of electric vehicles compared to petroleum-fueled vehicles.'' In this final rule, DOE determines that current classes of EVs are equivalently capable vehicles that are likely to be used similarly to ICE vehicles. Accordingly, DOE maintains a driving pattern factor as 1.0. However, if there were a class of EVs that are used differently than ICE vehicles, then DOE could include a different driving pattern factor to reflect this different use when calculating the PEF value for such vehicles. DOE will monitor the field and consider whether including different driving pattern

[29] AFPM stated that its comments to the 2023 NOPR are also a petition for a rulemaking to update the PEF for 2024/25. DOE will undertake an annual review process. Therefore, AFPM's petition is premature at this time.

factors for different classes of EVs is appropriate during its annual reviews.

D. Impact of Revised PEF on Plug-In Hybrid Electric Vehicles

Some stakeholders commented on the application of the PEF to Plug-in Hybrid EVs (PHEVs) and argued that PHEVs were disproportionately advantaged by the new PEF. Tesla, Doc. No. 18, pg. 4; ZETA, Doc. No. 21, pg. 2. Specifically, they asserted that revised PEF value would decrease the fuel economy of PHEVs to approximately 60 to 75 percent of their current levels. However, according to these commenters, the revised PEF value would decrease the fuel economy of battery EVs (BEVs) to approximately 30 percent of their current levels. These commenters stated that DOE should address this ''skewed incentive'' because the revised PEF value would favor the inefficient PHEVs over more efficient BEVs. Tesla, Doc. No. 18, pg. 4; ZETA, Doc. No. 21, pg. 2.

The PEF value is used to convert the measured electrical energy consumption of an EV into a gasoline-equivalent fuel economy of electricity. For PHEVs, which consume both electricity and petroleum, PEF only applies to the measured electrical energy consumption and does not apply to the energy consumption of petroleum. Accordingly, the impact of a decreased PEF value on the fuel economy of a PHEV is less than the impact of a decreased PEF value on the fuel economy of a BEV, which consumes only electricity. In addition, the fuel economy of a BEV is still significantly greater than that of a PHEV. Accordingly, under the revised PEV value, auto manufacturers are still incentivized to invest in the more efficient BEVs.

E. Compliance With NHTSA and EPA Standards

Several commenters expressed concerns that the revised PEF value would negatively affect auto manufacturers' ability to comply with NHTSA's CAFE standards and EPA's standards related to greenhouse gas (GHG) emissions. Ford and the Alliance asserted that the proposed PEF value would cause the NHTSA and EPA compliance programs to become misaligned. Alliance, Doc. No. 25, pg. 21; Ford, Doc. No. 22, pg. 2. Several commenters stated that the revised PEF would expose auto manufacturers to additional penalties associated with noncompliance with the NHTSA and or EPA compliance programs. Ford, Doc. No. 22, pg. 2; Alliance Doc. No. 25, pg. 6, 10, 11.

DOE has carefully considered the impact of the revised PEF value under the factors in section 32904. The imposition of any penalties associated with noncompliance with the CAFE and GHG programs is not within the considerations required by section 32904(a)(2)(B) and is therefore outside the scope of this rulemaking. Because NHTSA and EPA are responsible for the CAFE and GHG compliance programs, those agencies are in the best position to consider any such concerns from commenters.

F. Related Rulemakings

Several commenters expressed concerns with the timing of the DOE's rulemaking and noted that EPA and NHTSA were considering their GHG and CAFE standards. For example, the Alliance asserted that DOE should defer action on the 2023 NOPR to allow NHTSA and EPA to finalize their pending rulemakings first.[30] Porsche also objected to the publication of 2023 NOPR prior to the release of the proposed CAFE rule. Specifically, Porsche argued that DOE is prejudging the relevancy of the PEF value to future CAFE standards that had not been proposed at the time of the 2023 NOPR. Porsche, Doc. No. 24, pg. 5.

DOE is obligated to complete the PEF rulemaking without further delay, given that an assessment of the PEF value is several years past due. In the 2023 NOPR, DOE acknowledged that the inputs upon which the calculations and PEF values in current 10 CFR part 474 are based are outdated, and the technology and market penetration of electric vehicles has significantly changed since the 2000 Final Rule. 88 FR 21525, 21526. DOE is statutorily mandated to review the PEF annually and to revise it as necessary. Such review is neither contingent upon nor tied to NHTSA and EPA rulemakings, and any impact of the PEF value on other programs is not part of the factors DOE must consider. Accordingly, DOE is not deferring this statutorily required action to update the PEF.

G. Miscellaneous

DOE received a number of comments that are outside the scope of its authority or outside the scope of this rulemaking. For example, Transport Evolved argued that automakers should not be permitted to transfer CAFE credits from year-to-year or with other automakers. Transport Evolved, Doc. No. 17, pg. 2. In addition, Transport Evolved stated that CAFE calculations should account for the size of vehicles, specifically by reducing the benefit for ''larger, heavier, more inefficient vehicles.'' Transport Evolved, Doc. No. 17, pg. 2. However, these comments from Transport Evolved relate to standards or programs administered by other federal agencies, NHTSA's CAFE program and the greenhouse gas and fuel economy calculations of EPA and NHTSA, and are, therefore, outside the scope of this rulemaking.

Our Children's Trust stated that the revised PEF value would authorize a level of GHG emissions that exceed levels safe for children. Our Children's Trust, Doc. No. 28, pg. 1. The PEF value does not authorize (or limit) GHG emissions. In this final rule DOE addresses the statutorily mandated factors for consideration in establishing the PEF value. The comments expressed concerns outside the scope of the PEF or the statutory factors.

UAW suggested that DOE incorporate a more realistic projection of EV adoption and charging infrastructure in the considerations, with an eye towards ensuring domestic manufacturing and the relevant supply chain. UAW, Doc. No. 30, pg. 2. In section III.3, DOE explained its methodology for deriving the PEF value.

Omer Sevindir asserted that the change to the PEF will hinder the ability of individuals who prefer ICE vehicles to acquire them. Doc. No. 36, pg. 1. The PEF value does not dictate market strategy for automakers. Each automaker selects its own manufacturer-specific CAFE compliance strategy and determines the vehicle models it will offer for sale.

An anonymous commenter suggested that DOE nationalize the oil and gas industry. This comment is not relevant to the scope of this rulemaking.

V. Revisions to 10 CFR Part 474

A. 10 CFR 474.3

In the 2023 NOPR, DOE proposed revising § 474.3 by revising paragraph (b) and adding paragraph (c). Proposed paragraph (b) stated that the PEF value is 23,160 Watt-hours per gallon. 88 FR 21525, 21539. Proposed paragraph (c) provided that the PEF value applies to MY 2027 and later EVs. 88 FR 21525, 21539. As previously discussed, DOE received comments that stated the proposed revisions to § 474.3 would remove all description of the PEF value that applies to EVs prior to MY 2027. Alliance, Doc. No. 25, pg. 27. It was not DOE's intention to imply that there would be no PEF value from the effective date of the final rule to MY

[30] Alliance, Doc. No. 25, pg. 24. DOE notes that several auto manufacturers and their representatives made similar arguments in their letters responded to the September 14, 2023, letters.

2027. Accordingly, DOE revises § 474.3 to retain the current regulatory description relating to the PEF value that applies to EVs prior to MY 2027. Specifically, DOE revises paragraph (b) to clarify that the current PEF value applies to pre-MY 2027 EVs. DOE also adds paragraph (c)–(f) to provide PEF values for MY2027 to MY 2030 and later vehicles. These revised PEF values reflect the decreasing fuel content factor that applies to MY 2027 to MY 2030 EVs.

The revisions to § 474.3 also necessitate revisions to the definition for ''petroleum equivalency factor'' in § 474.2 to include references to new paragraphs (c)–(f).

B. Appendix to Part 474

In the 2023 NOPR, DOE also proposed revisions to the appendix to part 474. The proposed revisions to the sample petroleum-equivalent fuel economy calculations reflected the proposed revised PEF. In the final rule, DOE amends the appendix to part 474 to reflect the revisions to the PEF methodology and PEF value adopted in the final rule. For example, the sample calculation reflects the revised PEF value for MY 2029, which includes a fuel content factor of 1/0.7875. In addition, the DOE revises the appendix to clarify that the fuel content factor is part of the calculation of PEF, not the calculation of petroleum-equivalent fuel economy. Instead, to calculate the petroleum-equivalent fuel economy, one divides the PEF by the combined electrical energy consumption value.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866, 13563 and 14094

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review,'' 76 FR 3821 (Jan. 21, 2011) and amended by E.O. 14094, ''Modernizing Regulatory Review,'' 88 FR 21879 (April 11, 2023), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') within the Office of Management and Budget (OMB) has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.

For the reasons stated in this preamble, this regulatory action is consistent with these principles. As a preliminary matter, we note that the PEF is a numeric value determined through a highly technical analysis, which bounds DOE's discretion in deriving the value. Once calculated, the PEF has no independent effects, but serves as an input to calculations that other agencies perform. Thus, the general costs and benefits that could be attributed to these revisions are somewhat removed from this action, and DOE has not attempted to quantify them here. From a qualitative perspective, however, as discussed in section III.C, DOE expects the decision to retain a fuel content factor over the next several years, when combined with the revised PEF value and methodology to result in greater petroleum conservation by incentivizing EV production and adoption. On the other hand, the phaseout of the fuel content factor and the use of the revised PEF value may lead some manufacturers to incur additional costs, because of the potential effects of the revised PEF value on the average fuel economy of their fleets. The fact that the fuel content factor is phased out over four years, however, should have the effect of mitigating any such costs.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to the OIRA for review. OIRA has determined that this action constitutes a significant regulatory action within the scope of section 3(f) of E.O. 12866. Accordingly, this action was subject to review by OIRA.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by E.O. 13272, *Proper Consideration of Small Entities in Agency Rulemaking,* 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990. The Department has made its procedures and policies available on the Office of General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The final rule revises DOE's regulations on electric vehicles regarding procedures for calculating a value for the petroleum-equivalent fuel economy of EVs for use in the CAFE program administered by DOT. Once calculated, the PEF has no independent effects, but serves as an input to calculations that other agencies perform. Because this final rule does not directly regulate small entities but instead only amends a factor used to calculate the average fuel economy of a manufacturer's entire fleet, DOE certifies that this final rule will not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required.[31] *Mid-Tex Elec. Co-Op, Inc.* v. *F.E.R.C.,* 773 F.2d 327 (1985). Accordingly, DOE certifies that this rule would not have a significant economic impact on a substantial number of small entities, and, therefore, no regulatory flexibility analysis is required. DOE transmitted a certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

The final rule does not impose new information or record keeping requirements. Accordingly, OMB

[31] DOE notes that passenger vehicle manufacturers that manufacture fewer than 10,000 vehicles per year can petition NHTSA to have alternative CAFE standards. *See* 49 U.S.C. 32902(d).

clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act of 1969

DOE analyzed this regulation in accordance with the National Environmental Policy Act of 1969 (''NEPA'') and DOE's NEPA implementing regulations (10 CFR part 1021). DOE's regulations include a categorical exclusion for amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended. 10 CFR part 1021, subpart D, appendix A5. This rulemaking qualifies for categorical exclusion A5 because this final rule, which amends an existing rule or regulation does not change the environmental effect of the rule or regulation being amended, no extraordinary circumstances exist that require further environmental analysis, and it otherwise meets the requirements for application of a categorical exclusion. *See* 10 CFR 1021.410. Because this rule revises and updates the PEF value to ensure that it continues to serve the statutory purpose of conserving energy and conserving petroleum, given changes in circumstances that would diminish the effectiveness of the prior PEF value over time, this rule does not change the environmental effect of the prior rule. Thus, DOE concludes that this rulemaking to amend 10 CFR part 474 does not change the environmental effect of 10 CFR part 474. In addition, no extraordinary circumstances exist that would require further environmental analysis and the final rule otherwise meets the requirements for application of categorical exclusion A5.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The E.O. requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The E.O. also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. *See* 65 FR 13735. DOE examined this final rule and determined that it will not preempt State law and will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of Government. No further action is required by E.O. 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct, rather than a general standard and promote simplification and burden reduction. Section 3(b) of E.O. 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met, or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule does meet the relevant standards of E.O. 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a) and (b)). The section of UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed ''significant intergovernmental mandate'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA (62 FR 12820) (also available at *www.energy.gov/gc/office-general-counsel*). This final rule contains neither an intergovernmental mandate nor a mandate that may result in the expenditure of $100 million or more in any year by State, local, and tribal governments, in the aggregate, or by the private sector, so these requirements under the Unfunded Mandates Reform Act do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE concludes that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (Mar. 18, 1988), that this final rule will not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR

8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed the final rule under the OMB and DOE guidelines and concludes that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA, a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under E.O. 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. The final rule amends a factor used to calculate CAFE compliance and is not expected to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, OIRA has not designated this rule as a significant energy action. Accordingly, the requirements of E.O. 13211 do not apply.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule prior to its effective date. The report will state that the Office of Information and Regulatory Affairs has determined that this rule meets the criteria set forth in 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 10 CFR Part 474

Electric power, Energy conservation, Motor vehicles, Research.

Signing Authority

This document of the Department of Energy was signed on March 18, 2024, by Jeffrey Marootian, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 19, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends part 474 of Chapter II of Title 10 of the Code of Federal Regulations as set forth below:

PART 474—ELECTRIC AND HYBRID VEHICLE RESEARCH, DEVELOPMENT, AND DEMONSTRATION PROGRAM; PETROLEUM-EQUIVALENT FUEL ECONOMY CALCULATION

■ 1. The authority citation for part 474 continues to read as follows:

Authority: 49 U.S.C. 32901 *et seq.*

■ 2. Amend § 474.2 by revising definition for ''Petroleum-equivalency factor'' to read as follows:

§ 474.2 Definitions.

* * * * *

Petroleum equivalency factor means the values specified in § 474.3, paragraphs (b) through (f) of this part, which incorporate the parameters listed in 49 U.S.C. 32904(a)(2)(B) and are used to calculate petroleum-equivalent fuel economy.

* * * * *

■ 3. Amend § 474.3 by revising the introductory text of paragraph (b) and adding paragraphs (c), (d), (e), and (f) to read as follows:

§ 474.3 Petroleum-equivalent fuel economy calculation.

* * * * *

(b) For model year (MY) 2024, MY 2025, and MY 2026 electric vehicles, the petroleum-equivalency factors are as follows:

* * * * *

(c) For MY 2027 electric vehicles, the petroleum-equivalency factor is 79,989 Watt-hours per gallon.

(d) For MY 2028 electric vehicles, the petroleum-equivalency factor is 50,427 Watt-hours per gallon.

(e) For MY 2029 electric vehicles, the petroleum-equivalency factor is 36,820 Watt-hours per gallon.

(f) For MY 2030 and later electric vehicles, the petroleum-equivalency factor is 28,996 Watt-hours per gallon.

§ 474.5 [Removed and Reserved]

■ 4. Remove and reserve § 474.5.

■ 5. Revise appendix A to to 474 to read as follows:

Appendix A to Part 474—Sample Petroleum-Equivalent Fuel Economy Calculations

Example 1: Battery Electric Vehicle (BEV)

A battery electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 Watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 Watt-hours per mile. The vehicle is not equipped with any petroleum-powered accessories. The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55 percent urban, and 45 percent highway:

combined electrical energy consumption value = (0.55 * urban) + (0.45 * highway) = (0.55 * 265) + (0.45 * 220) = 244.75 Wh/mile

The petroleum-equivalent fuel economy is:

PEF ÷ combined electrical energy consumption value

Thus, fuel economy for the example vehicle in MY 2030 would be:

$$BEV\ Fuel\ Economy = \frac{28{,}996\ \frac{\mathrm{Wh}}{\mathrm{gal}}}{244.75\ \frac{Wh}{mi}} = 118.47\ \mathrm{MPGe}$$

where MPGe is miles per gallon equivalent.

Example 2: Plug-In Hybrid Electric Vehicle

A plug-in hybrid electric vehicle is tested in accordance with Environmental Protection Agency procedures and is found to have an Urban Dynamometer Driving Schedule energy consumption value of 265 Watt-hours per mile and a Highway Fuel Economy Driving Schedule energy consumption value of 220 Watt-hours per mile in charge depleting mode, a combined gasoline fuel economy of 50.0 miles per gallon in charge sustaining mode, and an all-electric range corresponding to a percentage utilization of 60 percent travel on electricity and 40 percent travel on gasoline.

The combined electrical energy consumption value is determined by averaging the Urban Dynamometer Driving Schedule energy consumption value and the Highway Fuel Economy Driving Schedule energy consumption value using weighting factors of 55 percent urban, and 45 percent highway to be 244.75 Wh/mile, which corresponds to 118.47 miles/gal equivalent as shown above for a BEV (using the MY 2030-and-beyond PEF value of 28,997 Wh/gal).

The PHEV fuel economy is calculated by dividing one by the sum of the percentage utilization for petroleum and electricity divided by their respective fuel economy.

In this case:

$$PHEV\ Fuel\ Economy = \frac{1}{\frac{0.60}{118.47\ \text{MPGe}} + \frac{0.40}{50.00\ \text{MPG}}} = 76.5\ \text{MPGe}$$

[FR Doc. 2024–06101 Filed 3–28–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 24, 25, 35, and 192

[Docket ID OCC–2022–0002]

RIN 1557–AF26

FEDERAL RESERVE SYSTEM

12 CFR Parts 207 and 228

[Regulation BB; Docket No. R–1830]

RIN 7100–AG75

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 345 and 346

RIN 3064–AG03

Community Reinvestment Act; Supplemental Rule

AGENCY: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Interim final rule; technical amendments; correction.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (together referred to as the agencies, and each, individually, the agency) are issuing this supplemental rulemaking related to the agencies' Community Reinvestment Act (CRA) final rule issued on October 24, 2023, and published in the **Federal Register** on February 1, 2024 (2023 CRA Final Rule). The rulemaking has two components. First, the agencies are adopting an interim final rule that amends, and requests comment on, the applicability date of the facility-based assessment areas provision and public file provision included in the 2023 CRA Final Rule. Second, the agencies are adopting a final rule that makes technical amendments to the 2023 CRA Final Rule and related regulations. In addition to the rulemaking, this document makes a correction to the preamble to the 2023 CRA Final Rule regarding the OCC's Unfunded Mandates Reform Act (UMRA) regulatory analysis.

DATES:

Effective date: This rule (including interim final rule and technical amendments) is effective on April 1, 2024.

Comment due date: Comments on the interim final rule (regarding the applicability date for §§ 25.16, 25.43, 228.16, 228.43, 345.16, and 345.43) must be received by May 13, 2024.

ADDRESSES: Comments should be directed to:

OCC: Commenters are encouraged to submit comments through the Federal eRulemaking Portal. Please use the title ''Community Reinvestment Act; Supplemental Rule'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov:* Go to *https://regulations.gov/*. Enter ''Docket ID OCC–2022–0002'' in the search box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments, please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* site, please call (866) 498–2945 (toll free) Monday–Friday, between 8 a.m. and 7 p.m. ET during Federal business weekdays, or email *regulationshelpdesk@gsa.gov*.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2022–0002'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information provided such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

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screen. For assistance with the *Regulations.gov* site, please call (866) 498–2945 (toll free) Monday-Friday, during Federal business weekdays, between 8 a.m. and 7 p.m. ET, or email *regulationshelpdesk@gsa.gov.*

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Board: You may submit comments, identified by Docket No. R–1830 and RIN 7100–AG75, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

Instructions: All public comments are available from the Board's website at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C Street NW, Washington, DC 20551, between 9 a.m. and 5 p.m. during Federal business weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: You may submit comments, identified by RIN 3064–AG03, by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.* Follow instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AG03 on the subject line of the message.
- *Mail:* James P. Sheesley, Assistant Executive Secretary, Attention: Comments RIN 3064–AG03, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street NW building (located on F Street NW) on Federal business weekdays between 7 a.m. and 5 p.m.

Public Inspection: Comments received, including any personal information provided, may be posted without change to *https://www.fdic.gov/resources/regulations/federal-register-publications/.* Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of this document will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT:

OCC: Heidi M. Thomas, Senior Counsel, or Emily Boyes, Counsel, Chief Counsel's Office, (202) 649–5490; or Vonda Eanes, Director for CRA and Fair Lending Policy, or Cassandra Remmenga, CRA Modernization Program Manager, Bank Supervision Policy, (202) 649–5470, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 711 to access telecommunications relay services.

Board: Dorian Hawkins, Counsel; S. Caroline (Carrie) Johnson, Manager; Lorna Neill, Senior Counsel; Amal Patel, Senior Counsel; or Jaydee DiGiovanni, Counsel; Division of Consumer and Community Affairs or Cody Gaffney, Senior Attorney; Legal Division, Board of Governors of the Federal Reserve System at (202) 452–2412. For users of TDD–TYY, (202) 263–4869 or dial 711 from any telephone anywhere in the United States.

FDIC: Pamela A. Freeman, CRA Program Manager, Supervisory Policy Branch, Division of Depositor and Consumer Protection, (202) 898–6859; Sherry Ann Betancourt, Counsel, Legal Division, (202) 898–6560; Alys V. Brown, Senior Attorney, Legal Division, (202) 898–3565, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Introduction

The CRA [1] requires the agencies to assess a bank's [2] record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the bank's safe and sound operation. Upon completing this assessment, the statute requires the agencies to ''prepare a written evaluation of the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods.'' [3] The statute further provides that each agency must consider a bank's CRA performance ''in its evaluation of an application for a deposit facility by such institution.'' [4] The agencies implement the CRA and establish the framework and criteria by which the agencies assess a bank's performance through their individual CRA regulations.[5]

On October 24, 2023, the agencies issued the 2023 CRA Final Rule amending their CRA regulations to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The 2023 CRA Final Rule was published in the **Federal Register** on February 1, 2024,[6] and it takes effect on April 1, 2024, with staggered applicability dates of April 1, 2024, January 1, 2026, and January 1, 2027.

As described in more detail below, this supplemental rulemaking includes two parts. First, the agencies are issuing an interim final rule to extend the applicability date of the facility-based assessment areas provision and the public file provision in the 2023 CRA Final Rule (§§ ____.16 and ____.43,

[1] 12 U.S.C. 2901 *et seq.*

[2] For purposes of this **SUPPLEMENTARY INFORMATION**, the term ''bank'' includes insured national and State banks, Federal and State savings associations, Federal branches as defined in 12 CFR part 28, insured State branches as defined in 12 CFR 345.11(c), and State member banks as defined in 12 CFR part 208, except as provided in 12 CFR ____.11(c). *See also* note 5.

[3] 12 U.S.C. 2906(a).

[4] 12 U.S.C. 2903(a)(2).

[5] *See* 12 CFR parts 25 (OCC), 228 (Regulation BB) (Board), and 345 (FDIC). For clarity and to streamline references, citations to the agencies' common CRA regulations are provided in the following format: 12 CFR ____.xx. For example, references to 12 CFR 25.16 (OCC), 228.16 (Board), and 345.16 (FDIC) are streamlined as follows: ''12 CFR ____.16.''

[6] 89 FR 6574 (Feb. 1, 2024).

respectively) from April 1, 2024, to January 1, 2026. The agencies are requesting comment on these changes.

Second, the agencies are issuing a final rule that makes technical amendments to those amendments adopted in the 2023 CRA Final Rule and related regulations. These technical amendments do not change the substance or meaning of the 2023 CRA Final Rule. As discussed in more detail in this **SUPPLEMENTARY INFORMATION**, the technical amendments to the 2023 CRA Final Rule are as follows:

- The agencies are jointly (1) amending the transition provision (§ ____.51) to clarify the applicability date of the public notice provision (§ ____.44); and (2) amending the strategic plan provision (§ ____.27) to correct an omission from the agency-specific amendments.
- The Board and the FDIC are (1) correcting a cross-reference in an otherwise incomplete amendatory instruction for appendix B (Calculations for the Community Development Tests); and (2) amending their agency-specific versions of appendix G, which reproduces the CRA regulations in effect on March 31, 2024 (legacy CRA regulations), to reflect separate amendments made to the bank asset-size thresholds since the issuance of the 2023 CRA Final Rule.
- The Board is making a technical amendment to its authority section in § 228.11.

Further, the agencies are making technical amendments to their regulations implementing the CRA sunshine requirements of the Federal Deposit Insurance Act[7] (CRA Sunshine regulations) (12 CFR parts 35 (OCC), 207 (Regulation G) (Board), and 346 (FDIC)) and the OCC is making technical amendments to its community and economic development entities, community development projects, and other public welfare investments regulation (Public Welfare Investment regulation) (12 CFR part 24) to update cross-references to their CRA regulations to conform with changes made by the 2023 CRA Final Rule. The OCC also is updating a cross-reference to the agency's CRA regulation in its conversions from mutual to stock form regulation (12 CFR part 192).

Finally, this document corrects language in the preamble of the **Federal Register** document issuing the 2023 CRA Final Rule with respect to the OCC's UMRA[8] discussion.

[7] Codified at 12 U.S.C. 1831y.

[8] 2 U.S.C. 1531 *et seq.*

II. Interim Final Rule

As described below, the agencies are issuing an interim final rule to extend the applicability date of the facility-based assessment areas provision and the public file provision in the 2023 CRA Final Rule (§§ ____.16 and ____.43, respectively) from April 1, 2024, to January 1, 2026. The agencies are requesting comment on these changes.

Facility-based assessment areas (Section ____.16). Section ____.16 of the 2023 CRA Final Rule provides that a bank must delineate one or more facility-based assessment areas within which the agencies evaluate the bank's record of helping to meet the credit needs of its entire community. This section prescribes the types of deposit-taking facilities that trigger the requirement to delineate a facility-based assessment area, the geographic requirements of a facility-based assessment area, and other limitations on the delineation of facility-based assessment areas. For example, § ____.16(b)(2) provides that, except as provided in § ____.16(b)(3), each of a bank's facility-based assessment areas must consist of a single metropolitan statistical area (MSA), one or more contiguous counties within an MSA, or one or more contiguous counties within the nonmetropolitan area of a State. Section ____.16(b)(3) provides that an intermediate bank or a small bank may adjust the boundaries of its facility-based assessment areas to include only the portion of a county that it reasonably can be expected to serve, further stipulating that such a facility-based assessment area must consist of contiguous whole-census tracts and comply with the limitations in § ____.16(c).[9]

As published in the **Federal Register** on February 1, 2024, § ____.51(a) of the 2023 CRA Final Rule provides that the facility-based assessment areas requirements in § ____.16 apply as of April 1, 2024. In the course of implementation work, the agencies have identified and considered issues arising due to this applicability date, including potential uncertainty raised by some banks regarding how to comply with § ____.16 as of April 1, 2024. As a result, and as discussed further below, the agencies are extending the applicability date of § ____.16 to January 1, 2026.

Specifically, the agencies recognize that § ____.16 references certain provisions and terms of the 2023 CRA Final Rule that do not apply until January 1, 2026.[10] For example, § ____.16(a) references ''the performance tests and strategic plan described in § ____.21'' of the 2023 CRA Final Rule, which are not applicable until January 1, 2026.[11] Additionally, the asset-size thresholds for intermediate small banks and large banks in the agencies' legacy CRA regulations[12] (which apply during the transition period) and the asset-size thresholds for intermediate banks and large banks in the 2023 CRA Final Rule[13] (which apply as of January 1, 2026) are different. Thus, certain banks that will be considered large banks during the transition period may be considered intermediate banks after the transition period ends, on January 1, 2026. As a result, these large banks will be required to delineate facility-based assessment areas consisting of full counties beginning on April 1, 2024;[14] however, once they are re-designated as intermediate banks as of January 1, 2026, these same banks will have the option to delineate facility-based assessment areas consisting of partial counties.[15] Finally, delineating facility-based assessment areas under new requirements beginning April 1, 2024, involves evaluating banks according to different facility-based assessment area delineation standards within a single year.

On further consideration, the agencies are aligning the applicability date of § ____.16 with the applicability date of the performance tests[16] and other geographic area provisions[17]—January 1, 2026—to promote greater stability

[9] Section ____.16(c) provides that facility-based assessment areas may not reflect illegal discrimination and may not arbitrarily exclude low- or moderate-income census tracts. *See* § ____.16(c)(1) and (2).

[10] *See* § ____.51(a)(2)(i) (listing the provisions of the 2023 CRA Final Rule that apply as of January 1, 2026, including § ____.12 (Definitions) and § ____.21 (Evaluation of CRA performance in general)).

[11] *See* § ____.51(a).

[12] *See* § 25.12(u) of appendix G to 12 CFR part 25 (OCC); § 228.12(u) of appendix G to 12 CFR part 228 (Board); and § 345.12(u) of appendix G to 12 CFR part 345 (defining ''small bank'' and ''intermediate small bank''). *See also* 88 FR 87895 (Dec. 20, 2023) and OCC Bulletin 2023–40 (December 26, 2023) for bank asset-size thresholds effective as of January 1, 2024.

[13] *See* §§ 25.12 (OCC); 228.12 (Board); and 345.12 (FDIC) (defining ''intermediate bank'' and ''large bank'') as amended by the 2023 CRA Final Rule.

[14] *See* § ____.16(b)(2).

[15] *See* § ____.16(b)(3).

[16] *See* § ____.22 (Retail lending test), § ____.23 (Retail services and products test), § ____.24 (Community development financing test), § ____.25 (Community development services test), and § ____.26 (Limited purpose banks), § ____.29 (Small bank performance evaluation), and § ____.30 (Intermediate bank performance evaluation). *See also* § ____.27 (Strategic plan).

[17] *See* § ____.17 (Retail lending assessment areas), § ____.18 (Outside retail lending areas), and § ____.19 (Areas for eligible community development loans, community development investments, and community development services).

and certainty for banks and other stakeholders in transitioning to the provisions of the 2023 CRA Final Rule. In addition, by moving the applicability date to the beginning of a calendar year, the interim final rule will eliminate potential confusion resulting from evaluating banks according to different facility-based assessment area delineation standards within a single year.

Content and availability of public file (Section ____.43). Section ____.43 of the 2023 CRA Final Rule requires a bank to maintain a public file, in either paper or digital format, that includes specific information related to the bank's branches, services, and performance in helping meet community credit needs. Section ____.51(a) of the 2023 CRA Final Rule provides that the public file provision in § ____.43 applies as of April 1, 2024.

As detailed in the 2023 CRA Final Rule, § ____.43 largely retains the public file requirements of the agencies' legacy CRA regulations,[18] with revisions to clarify aspects of the requirements and to reflect relevant terminology and provisions of the 2023 CRA Final Rule.[19] Under the agencies' legacy CRA regulations, a bank's entire public file must be available for public inspection upon request at no cost: (1) at its main office; and (2) if a bank operates in more than one State, at one branch office in each of these States.[20] The 2023 CRA Final Rule revised the agencies' legacy CRA regulations to require any bank with a public website to include its CRA public file on its website.[21] If a bank does not maintain a public website, the 2023 CRA Final Rule requires a bank to maintain public file information consistent with the agencies' legacy CRA regulations—namely, at the main office and, if an interstate bank, at one branch office in each State.[22]

As with § ____.16, the agencies believe that moving the applicability date of § ____.43 from April 1, 2024, to January 1, 2026, will alleviate potential confusion in complying with the public file requirements and promote greater stability and certainty for banks and other stakeholders in transitioning to the provisions of the 2023 CRA Final Rule. Consistent with the considerations discussed above regarding § ____.16, the agencies recognize that § ____.43 references certain provisions and terms of the 2023 CRA Final Rule that do not apply until January 1, 2026, or January 1, 2027.[23] For example, § ____.43 refers to terms defined in § ____.12 of the 2023 CRA Final Rule that do not apply until January 1, 2026, such as ''facility-based assessment areas;'' [24] ''retail lending assessment areas;'' [25] ''operations subsidiaries'' or ''operating subsidiaries;'' [26] ''large bank;'' [27] and ''small bank.'' [28]

In addition, aligning the applicability date of § ____.43 with the performance tests of the 2023 CRA Final Rule—January 1, 2026—will ensure consistency in the public file requirements concerning consumer loans during the transition to the 2023 CRA Final Rule. Under the public file provision of the agencies' legacy CRA regulations, the public file of a bank (other than a small bank or a bank that was a small bank during the prior calendar year, as defined in the agencies' legacy CRA regulations [29]) must include data pertaining to any category of consumer loans the bank has elected to have considered under the lending test.[30] Section ____.43 of the 2023 CRA Final Rule, however, does not require disclosure of consumer loan information in the public file because most consumer loans will be considered qualitatively under the Retail Services and Products Test (§ ____.23),[31] with the exception of automobile loans for certain banks as specified in the Retail Lending Test provision of the 2023 CRA Final Rule (§ ____.22). Again, these performances tests are not applicable until January 1, 2026.[32]

In the preamble to the 2023 CRA Final Rule, the agencies noted their commitment to engage with stakeholders in the implementation process and ensure that all stakeholders understand the regulatory requirements.[33] Consistent with this commitment, the agencies have determined that extending the applicability date of §§ ____.16 and ____.43 to January 1, 2026, is the most clear, timely, and effective way to avoid potential uncertainty that could result from an April 1, 2024 applicability date for these provisions. The agencies remain committed to providing guidance and related resources on §§ ____.16 and ____.43, as well as all other aspects of the 2023 CRA Final Rule.

Although these amendments take effect on April 1, 2024, to coincide with the effective date of the 2023 CRA Final Rule, the agencies are requesting public comment on the changes to the applicability date for the facility-based assessment areas and public file provisions in §§ ____.16 and ____.43, respectively.

III. Technical Amendments

The agencies are issuing a final rule that makes technical amendments to the 2023 CRA Final Rule and related regulations, as described below. These technical amendments do not change the substance or meaning of the 2023 CRA Final Rule.

Public notice (Section ____.44). The agencies are amending the 2023 CRA Final Rule to clarify the agencies' intention that banks may continue to use the CRA Notice in the agencies' legacy CRA regulations until January 1, 2026. Section ____.44 of the 2023 CRA Final Rule requires a bank to provide a CRA Notice in the public area of its main office and each of its branches, as set forth in appendix F, that includes, among other things, information about the availability of a bank's public file, the appropriate Federal financial supervisory agency's CRA examination schedule, and how a member of the public may provide public comment. The posting requirement in § ____.44 is substantively the same as the longstanding CRA public notice requirement in 12 CFR ____.44 (referencing the CRA Notice in appendix B) of the agencies' legacy CRA regulations, which are reproduced in

[18] *See* 12 CFR ____.43 of the agencies' legacy CRA regulations.

[19] *See* 89 FR 6574, 7082–7085 (Feb. 1, 2024). For example, for reasons explained in the 2023 CRA Final Rule, the agencies clarified the meaning of ''current year'' in provisions requiring banks to include in the public file: all written comments received from the public for the current year and the prior two calendar years related to the bank's performance in helping to meet community credit needs, along with any responses by the bank (§ ____.43(a)(1)); and a list of branches opened or closed by the bank during the current year and each of the prior two calendar years (§ ____.43(a)(4)). Specifically, ''current year'' was clarified to require updates to the public file ''on a quarterly basis for the prior quarter by March 31, June 30, September 30, and December 31.'' *See* § ____.43(a)(1) and (a)(4).

[20] *See* 12 CFR ____.43(c)(1) of the agencies' legacy CRA regulations.

[21] *See* § ____.43(c)(1).

[22] *See* § ____.43(c)(2).

[23] *See* § ____.51(a)(2)(i) (listing the provisions of the 2023 CRA Final Rule that apply as of January 1, 2026, including § ____.12 (Definitions) and § ____.21 (Evaluation of CRA performance in general), and January 1, 2027 (Reporting requirements)).

[24] *See* § ____.43(a)(6) and (c)(2)(ii)(B).

[25] *See* § ____.43(a)(6).

[26] *See* § ____.43(b)(1) and (b)(2)(i).

[27] *See* § ____.43(b)(2)(ii).

[28] *See* § ____.43(b)(3).

[29] *See* § ____.12(u) of the agencies' legacy CRA regulations; *see also* 88 FR 87895 (Dec. 20, 2023) and OCC Bulletin 2023–40 (Dec. 26, 2023) (asset-size of a ''small bank'' as of Jan. 1, 2024).

[30] *See* § ____.43(b)(1)(i) of the agencies' legacy CRA regulations.

[31] *See* 89 FR 6574, 7084 (Feb. 1, 2024).

[32] *See* § ____.51(a)(2)(i).

[33] *See* 89 FR 6574, 7093 (Feb. 1, 2024).

the 2023 CRA Final Rule as appendix G.[34]

Section ____.51(a) of the 2023 CRA Final Rule provides that the public notice requirements in § ____.44 apply as of April 1, 2024, but § ____.51(a) of the 2023 CRA Final Rule also provides that the CRA Notice reproduced in appendix F is applicable on January 1, 2026. Further, § ____.51(a) provides that, with respect to provisions that are not applicable until after April 1, 2024, banks must instead comply with relevant provisions of the agencies' legacy CRA regulations, set forth in appendix G to the 2023 CRA Final Rule.[35] Thus, because appendix F expressly does not apply until January 1, 2026, banks would need to comply with § ____.44 of the 2023 CRA Final Rule as of April 1, 2024, but use the CRA Notice in appendix G of the 2023 CRA Final Rule, which is the same notice banks were required to use prior to the 2023 CRA Final Rule.

The agencies are amending § ____.51(a)(2)(i) to align the applicability date of the substantive public notice requirements in § ____.44 with the applicability date of the CRA Notice in appendix F. The amendment to move the applicability date of § ____.44 of the 2023 CRA Final Rule to January 1, 2026, has no substantive effect. By providing that both § ____.44 and appendix F are applicable as of January 1, 2026, amended § ____.51(a)(2)(i) clarifies the agencies' intention in the 2023 CRA Final Rule that banks may continue to use the CRA Notice in the agencies' legacy CRA regulations, as provided in appendix G, to comply with public notice requirements until January 1, 2026.

Asset-size thresholds. As noted, appendix G of the 2023 CRA Final Rule includes the agencies' legacy CRA regulations, and reflects those regulations as of the date the agencies adopted the 2023 CRA Final Rule, October 24, 2023. Since that date, the agencies have increased the bank asset-size thresholds based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, pursuant to the annual inflation adjustment mechanism in the agencies' legacy CRA regulations,[36] and the Board and the FDIC have amended their regulations to reflect this increase.[37] These new asset-size thresholds are: (1) for small banks, less than $1.564 billion as of December 31 of either of the prior two calendar years; and (2) for intermediate small banks, at least $391 million as of December 31 of both of the prior two calendar years and less than $1.564 billion as of December 31 of either of the prior two calendar years. The Board and the FDIC are updating the asset-size thresholds in appendix G to reflect these updated thresholds so that appendix G remains consistent with their legacy CRA regulations, as intended.

Agency-specific technical amendments. The agencies are adopting a technical amendment to the agency-specific amendments in the 2023 CRA Final Rule to add a missing conforming amendment in their strategic plan provisions, § ____.27. This amendment changes ''[Operations subsidiaries or operating subsidiaries]'' to ''Operation subsidiaries'' for the Board and ''Operating subsidiaries'' for the OCC and the FDIC. The Board and the FDIC also are adopting technical amendments to correct errors in amendatory instructions 50.c. and 73.c. in the 2023 CRA Final Rule that made the instructions inoperable. These amendments correct cross-references in appendix B (Calculations for the Community Development Tests) to the 2023 CRA Final Rule. Further, the Board is making a technical amendment to its authority section in § 228.11 of the 2023 CRA Final Rule to replace ''the Federal Reserve'' with ''the Board.''

CRA Sunshine regulations and OCC Public Welfare Investment regulation. The agencies are amending their CRA Sunshine regulations [38] to update the cross-references explained below to conform with changes made by the 2023 CRA Final Rule.[39] In 2001, the OCC, the Board, the FDIC, and the Office of Thrift Supervision (OTS) published joint rules to implement the CRA sunshine requirements of section 48 of the Federal Deposit Insurance Act, which were contained in section 711 of the Gramm-Leach-Bliley Act.[40] This statute requires nongovernmental entities or persons, insured depository institutions, and affiliates of insured depository institutions that are parties to certain agreements in fulfillment of the CRA to make the agreements available to the public and the appropriate agency and to file annual reports concerning the agreements with the appropriate agency. The CRA Sunshine regulations contain a number of cross-references to the agencies' CRA regulations.

In addition, the OCC is amending its Public Welfare Investment regulation, 12 CFR part 24, to update cross-references to its CRA regulation, 12 CFR part 25, to conform with changes made by the 2023 CRA Final Rule.[41] Part 24 currently provides that a national bank or national bank subsidiary may make an investment if the investment primarily benefits low- and moderate-income individuals, low- and moderate-income areas, or other areas targeted by a governmental entity for redevelopment, or the investment would receive consideration under 12 CFR 25.23 as a ''qualified investment.''

The conforming amendments to the agencies' CRA Sunshine regulations and the OCC's Public Welfare Investment regulation update the cross-references from provisions in the agencies' legacy CRA regulations to reference the appropriate provisions in appendix G of the 2023 CRA Final Rule. As noted above, appendix G reproduces the agencies' legacy CRA regulations, which apply to banks until superseded by the provisions of the 2023 CRA Final Rule that become applicable on January 1, 2026, or January 1, 2027. The agencies will update the cross-references in the CRA Sunshine regulations again in the future to reflect the appropriate provisions in the 2023 CRA Final Rule prior to these future applicability dates.

Technical amendment to 12 CFR part 192. The OCC regulations governing how a savings association may convert from mutual to stock form of ownership, 12 CFR part 192, currently include a cross-reference to the OCC's former CRA regulation for savings associations, 12 CFR part 195. The OCC integrated its CRA regulation for savings associations into 12 CFR part 25 and repealed part 195 in 2021.[42] The OCC is updating this cross-reference, contained in 12 CFR

[34] *See* appendix G to 12 CFR part 25 (appendix B) (OCC); appendix G to 12 CFR part 228 (appendix B) (Board); and appendix G to 12 CFR part 345 (appendix B) (FDIC).

[35] *See* § ____.51(a)(2)(iii) (cross-referencing § ____.51(a)(2)(i) and (ii)).

[36] See §§ ____.12(u)(2) of the agencies' legacy CRA regulations.

[37] 88 FR 87895 (Dec. 20, 2023). The OCC does not amend its CRA regulation to reflect the annually adjusted asset-size thresholds. Instead, it issues an OCC Bulletin to announce the revised thresholds. *See* OCC Bulletin 2023–40 (December 26, 2023).

[38] *See* 12 CFR parts 35 (OCC), 207 (Regulation G) (Board), and 346 (FDIC).

[39] *See* 89 FR 6574, 6579 (Feb. 1, 2024) (explaining in footnote 14 of the 2023 CRA Final Rule that the agencies would, at a later date, evaluate other rules that cross-reference to the CRA regulations to identify conforming changes that may be appropriate).

[40] *See* 66 FR 2052 (Jan. 10, 2001). Since this issuance, the OTS's CRA Sunshine regulation and its rulemaking authority for the CRA sunshine requirements for Federal savings associations transferred to the OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, 1522 (2010).

[41] The Board's public welfare investment regulations do not cite to its CRA regulations, and thus do not need to be amended. *See* 12 CFR 208.22. The FDIC does not have public welfare investment regulations.

[42] *See* 86 FR 71328 (Dec. 15, 2021).

192.200(c), to now refer to 12 CFR part 25.

IV. Regulatory Analysis

Administrative Procedure Act

The interim final rule and technical amendments are effective on April 1, 2024. The Administrative Procedure Act[43] (APA) generally requires public notice and an opportunity for comment before a rule becomes effective.[44] However, the APA provides that the notice-and-comment requirements do not apply ''when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.''[45]

In addition, the APA requires that rules be published not less than 30 days before their effective date.[46] However, the APA provides that the requirement for a 30-day delay before the effective date of a rule does not apply: (1) for substantive rules which grant or recognize an exemption or relieve a restriction; (2) for interpretative rules and statements of policy; or (3) as otherwise provided by the agency ''for good cause found and published with the rule.''[47]

As described below, the agencies have determined that there is good cause for adopting the amendments in the interim final rule without advance notice and comment and with less than 30 days before its effective date, and for adopting the technical amendments as a final rule without notice and comment and with less than 30 days before its effective date.

Interim final rule. The agencies have determined that advance public comment on the amendment to extend the applicability date of § ____.16 (Facility-based assessment areas) and § ____.43 (Content and availability of public file) of the 2023 CRA Final Rule to January 1, 2026, is impracticable, unnecessary, or contrary to the public interest. Compared to the legacy CRA regulations, § ____.16 requires certain changes to the requirements for delineating CRA assessment areas based on a bank's deposit-taking facilities,[48] and § ____.43 similarly requires banks to make certain adjustments to comply with changes to the public file requirements.[49] As discussed further in the **SUPPLEMENTARY INFORMATION** of this preamble, the agencies have determined that extending the applicability date of §§ ____.16 and ____.43 to January 1, 2026, will facilitate bank understanding of, and compliance with, these provisions; allay potential uncertainty that may be associated with an April 1, 2024 applicability date; and further secure a stable transition from the agencies' legacy CRA regulations to the provisions of the 2023 CRA Final Rule, for the benefit of all stakeholders. To realize these benefits, the relief provided by this interim final rule is needed on or before April 1, 2024. Advance public comment would impede effectuation of the interim final rule in time to provide the necessary relief.

For the reasons stated above, the agencies also find good cause for this amendment to be effective less than 30 days after publication in the **Federal Register**, on April 1, 2024. In particular, the agencies note both the time-sensitive nature of providing the relief, with the applicability date of §§ ____.16 and ____.43 otherwise being April 1, 2024, but also that, consistent with another enumerated exception from APA timing requirements noted above, the amendment provides relief from new requirements in §§ ____.16 and ____.43.[50]

While the agencies believe that there is good cause to issue this interim final rule without advance notice and comment and with an effective date of April 1, 2024, the agencies are interested in the views of the public and request comment on moving the applicability date of §§ ____.16 and ____.43 from April 1, 2024, to January 1, 2026.

Technical amendments. As explained further in the **SUPPLEMENTARY INFORMATION** of this preamble, the amendment to add § ____.44 (Public notice) to the provisions that will apply on January 1, 2026, is a technical amendment with no substantive effect. Amending the applicability date for the public notice provision facilitates compliance by clarifying that banks may continue to use the CRA Notice in the agencies' legacy CRA regulations[51] until appendix F becomes applicable on January 1, 2026. The agencies therefore find that public comment regarding this amendment is impracticable, unnecessary, or contrary to the public interest. For the same reasons, the agencies also find good cause for an exception to the APA 30-day notice requirement. Providing that this amendment takes effect on April 1, 2024, clarifies the application of these provisions and ensures that banks have timely certainty of the CRA Notice form they may use as of the 2023 CRA Final Rule's April 1, 2024, effective date.

The technical amendments to the bank asset-size thresholds in the Board's and the FDIC's appendix G of the 2023 CRA Final Rule update these thresholds to reflect subsequent amendments to the thresholds, so that the Board's and FDIC's appendix G remains consistent with the legacy CRA regulations, as intended. The Board and the FDIC issued these amendments through a final rule published in the **Federal Register** after they approved the 2023 CRA Final Rule.[52] Accordingly, the Board and the FDIC find good cause for an exemption from the APA's public notice and comment procedures because public comment regarding these amendments is unnecessary. In addition, the agencies find that good cause exists for these amendments to be effective less than 30 days after publication in the **Federal Register** because the thresholds in appendix G of the Board's and the FDIC's CRA regulations will be immediately inaccurate as of April 1, 2024, absent the amendments in this final rule.

The technical amendments that update cross-references in the agencies' CRA Sunshine regulations and the OCC's Public Welfare Investment regulation correct citations that will be inaccurate as of April 1, 2024, when the 2023 CRA Final Rule is effective, and do not change the substance or meaning of the affected regulations. The agencies accordingly find good cause for an exemption from the APA's public notice and comment procedures because public comment regarding these amendments is unnecessary. In addition, the agencies find that good cause exists for these amendments to be effective less than 30 days after publication in the **Federal Register** because the citations of the affected regulations will be immediately inaccurate as of April 1, 2024, absent the amendments in this final rule. Similarly, the OCC's amendment to its conversions from mutual to stock form regulation corrects an outdated cross-reference and has no substantive effect. Therefore, the OCC finds good cause for an exemption from the APA's public notice and comment provision and the 30-day effective date provision because public comment and a delayed effective

[43] 5 U.S.C. 551 *et seq.*

[44] *See* 5 U.S.C. 553(b)(A) and (B).

[45] 5 U.S.C. 553(b)(B).

[46] *See* 5 U.S.C. 553(d).

[47] 5 U.S.C. 553(d)(1)–(3).

[48] *See* 89 FR 6728–6735 (Feb. 1, 2024).

[49] *See* 89 FR 7082–7085 (Feb. 1, 2024).

[50] *See* 5 U.S.C. 553(d)(1) and (3).

[51] *See* appendix B to the agencies' legacy CRA regulations in appendix G of the 2023 CRA Final Rule.

[52] *See* 88 FR 87895 (Dec. 20, 2023).

date on this amendment are unnecessary.

Congressional Review Act

For purposes of the Congressional Review Act,[53] the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major rule.'' If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication. The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in—(1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.[54] The agencies will submit the interim final rule and technical amendments to the OMB for this major rule determination. As required by the Congressional Review Act, the agencies will submit the appropriate report to Congress and the Government Accountability Office for review.[55]

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 [56] states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The agencies have determined that the interim final rule and technical amendments do not create any new, or revise any existing, collections of information pursuant to the Paperwork Reduction Act.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA),[57] an agency must consider the impact of its rules on small entities. Specifically, section 3 of the RFA requires an agency to provide a final regulatory flexibility analysis with a final rule unless the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities [58] and publishes this certification and a statement of its factual basis in the **Federal Register**. However, the RFA does not apply to a rulemaking when a general notice of proposed rulemaking is not required.[59] As described above, the agencies have determined that they are not required to publish a general notice of proposed rulemaking for the interim final rule or for the technical amendments. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA),[60] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, an agency must consider, consistent with principles of safety and soundness and the public interest: (1) any administrative burdens that the rule will place on depository institutions, including small depository institutions and customers of depository institutions; and (2) the benefits of the rule.

Section 302(b) of RCDRIA [61] provides that new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions must generally take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.

The interim final rule and technical amendments do not impose any additional reporting, disclosure, or other new requirements. Instead, the interim final rule extends the applicability date of the 2023 CRA Final Rule's facility-based assessment areas provision and public file provision, while the technical amendments make non-substantive changes to the agencies' CRA regulations, the agencies' CRA Sunshine regulations, the OCC's Public Welfare Investment regulation, and the OCC's mutual to stock conversion regulation. Therefore, subsections (a) and (b) of section 302 of RCDRIA are not applicable to this rulemaking action. However, the amendments made by this rulemaking action are effective on April 1, 2024, which is the first date of a calendar quarter.

Plain Language

Section 722(a) of the Gramm-Leach-Bliley Act [62] requires each Federal banking agency to use plain language in its proposed and final rulemakings. In this document, the agencies use plain language.

Unfunded Mandates Reform Act

As a general matter, the UMRA [63] requires the OCC to prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation and currently $182 million) in any one year. However, the UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published.[64] As described above, the OCC has found good cause for an exception to the APA's notice and comment for the interim final rule and technical amendments. Therefore, the OCC has not prepared an economic analysis of the rule under the UMRA.

V. Federal Register Correction

The OCC is making a correction to its UMRA discussion in the preamble to the 2023 CRA Final Rule (RIN 1557–AF15). This correction clarifies the OCC's expenditure estimates in consideration of the 2023 CRA Final Rule transition provisions.

Correction

In rule document 2023–25797 at 89 FR 6574 in the issue of February 1, 2024, on page 7106, in the second column, the second paragraph that carries over to the third column is corrected to read as follows:

Were the final rule to require full compliance within the first 12 months of the transition period, the OCC estimates that expenditures to comply with mandates during those twelve months would not exceed approximately $91.8 million (approximately $7.9 million associated with increased data collection, recordkeeping or reporting; $82 million for large banks to collect, maintain, and report annually

[53] 5 U.S.C. 801 *et seq.*

[54] *See* 5 U.S.C. 804(2).

[55] *See* 5 U.S.C. 801(a)(1).

[56] 44 U.S.C. 3501–3521.

[57] 5 U.S.C. 601 *et seq.*

[58] Small Business Administration regulations currently define small entities to include banks and savings associations with total assets of $850 million or less, and trust banks with total assets of $47.0 million or less. *See* 13 CFR 121.201, Section 52—Finance and Insurance, Subsectors 522 (Credit Intermediation and Related Activities) and 523 (Securities, Commodity Contracts, and Other Financial Investments and Related Activities).

[59] *See* 5 U.S.C. 603 and 604.

[60] 12 U.S.C. 4802(a).

[61] 12 U.S.C. 4802(b).

[62] 12 U.S.C. 4809(a).

[63] 2 U.S.C. 1531 *et seq.*

[64] *See* 2 U.S.C. 1532(a).

geographic data on deposits; and $1.9 million for banks' strategic plan submissions).[1644] Under the final rule transition provisions, banks have longer than one year, until January 1, 2026, for most substantive provisions, and January 1, 2027, for the reporting requirements, to fully comply with the rule. Therefore, the OCC concludes that the final rule will not result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted for inflation and currently $182 million annually) in any one year. Accordingly, the OCC has not prepared the budgetary impact statement.

* * * * *

[1644] Several commenters addressed the OCC's UMRA analysis of the proposed rule. Some of these commenters stated that the agency underestimated burden of the proposed rule, and others noted that the OCC provided insufficient information about its actual calculations. In drafting the final rule, the OCC considered these comments and made changes from the proposal where appropriate.

List of Subjects

12 CFR Part 24

Community development, Credit, Investments, Low and moderate income housing, Manpower, National banks, Reporting and recordkeeping requirements, Rural areas, Small businesses.

12 CFR Part 25

Community development, Credit, Investments, National banks, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 35

Community development, Credit, Freedom of information, Investments, National banks, Reporting and recordkeeping requirements.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 207

Banks, Banking, Community development, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 228

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 345

Banks, Banking, Community development, Credit, Investments, Reporting and recordkeeping requirements.

12 CFR Part 346

Banks, Banking, Savings associations.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble and under the authority of 12 U.S.C. 93a and 2905, the Office of the Comptroller of the Currency amends chapter I of title 12 of the Code of Federal Regulations as follows:

PART 24—COMMUNITY AND ECONOMIC DEVELOPMENT ENTITIES, COMMUNITY DEVELOPMENT PROJECTS, AND OTHER PUBLIC WELFARE INVESTMENTS

■ 1. The authority citation for part 24 is revised to read as follows:

Authority: 12 U.S.C. 24(Eleventh), 93a, 481, and 1818.

§ 24.2 [Amended]

■ 2. Amend § 24.2 by:

■ a. In the introductory text of paragraph (c), removing ''12 CFR 25.23'' and adding ''§ 25.23 of appendix G to 12 CFR part 25'' in its place.

■ b. In paragraph (f), removing ''12 CFR 25.12(m)'' and adding ''§ 25.12(m) of appendix G to 12 CFR part 25'' in its place.

§ 24.3 [Amended]

■ 3. Amend § 24.3 by removing ''12 CFR 25.23'' and adding ''§ 25.23 of appendix G to 12 CFR part 25'' in its place.

§ 24.7 [Amended]

■ 4. Amend § 24.7 in paragraph (b) by removing ''12 CFR 25.23'' and adding ''§ 25.23 of appendix G to 12 CFR part 25'' in its place.

PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

■ 5. The authority citation for part 25 continues to read as follows:

Authority: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

§ 25.27 [Amended]

■ 6. Amend § 25.27 in the headings of paragraphs (c)(4) and (c)(4)(i) by removing the text ''[*Operations subsidiaries or operating subsidiaries*]'' wherever it appears and adding the text ''*Operating subsidiaries*'' in its place.

§ 25.51 [Amended]

■ 7. Amend § 25.51 in paragraph (a)(2)(i) by removing the text ''§§ 25.12 through 25.15, 25.17 through 25.30, and 25.42(a)'' and adding the text ''§§ 25.12 through 25.30, 25.42(a), 25.43, and 25.44'' in its place.

PART 35—DISCLOSURE AND REPORTING OF CRA–RELATED AGREEMENTS

■ 8. The authority citation for part 35 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 1831y, and 5412(b)(2)(B).

■ 9. Amend § 35.1 by revising paragraph (c) to read as follows:

§ 35.1 Purpose and scope of this part.

* * * * *

(c) *Relation to Community Reinvestment Act.* This part does not affect in any way the Community Reinvestment Act of 1977 (CRA) (12 U.S.C. 2901 *et seq.*), part 25 of this chapter (Community Reinvestment Act and Interstate Deposit Production Regulations), or the OCC's interpretations or administration of that Act or part 25.

* * * * *

■ 10. Amend § 35.4 by revising paragraph (a)(2) to read as follows:

§ 35.4 Fulfillment of the CRA.

(a) * * *

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 25.22 of appendix G to 12 CFR part 25, including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 25.23 of appendix G to 12 CFR part 25;

(iii) Delivering retail banking services, as described in § 25.24(d) of appendix G to 12 CFR part 25;

(iv) Providing community development services, as described in § 25.24(e) of appendix G to 12 CFR part 25;

(v) In the case of a wholesale or limited-purpose insured depository

institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 25.25(c) of appendix G to 12 CFR part 25;

(vi) In the case of a small insured depository institution, any lending or other activity described in § 25.26(a) of appendix G to 12 CFR part 25; or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 25.27(f) of appendix G to 12 CFR part 25.

* * * * *

§ 35.6 [Amended]

■ 11. Amend § 35.6 in paragraph (b)(7) by removing ''(12 CFR 25.43)'' and adding ''of appendix G to 12 CFR part 25'' in its place.

§ 35.11 [Amended]

■ 12. Amend § 35.11 in paragraph (d) by removing ''(12 CFR 25.43)'' and adding ''of appendix G to 12 CFR part 25'' in its place.

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

■ 13. The authority citation for part 192 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.,* 5412(b)(2)(B); 15 U.S.C. 78c, 78l, 78m, 78n, 78w.

§ 192.200 [Amended]

■ 14. Amend § 192.200 in paragraph (c) introductory text by removing ''under 12 CFR part 195'' and adding ''under 12 CFR part 25'' in its place.

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons discussed in the preamble, the Board of Governors of the Federal Reserve System amends chapter II of title 12 of the Code of Federal Regulations as follows:

PART 207—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS (REGULATION G)

■ 15. The authority citation for part 207 continues to read as follows:

Authority: 12 U.S.C. 1831y.

■ 16. Amend § 207.4 by revising paragraph (a)(2) to read as follows:

§ 207.4 Fulfillment of the CRA.

(a) * * *

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 228.22 of appendix G to 12 CFR part 228, including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 228.23 of appendix G to 12 CFR part 228;

(iii) Delivering retail banking services, as described in § 228.24(d) of appendix G to 12 CFR part 228;

(iv) Providing community development services, as described in § 228.24(e) of appendix G to 12 CFR part 228;

(v) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 228.25(c) of appendix G to 12 CFR part 228;

(vi) In the case of a small insured depository institution, any lending or other activity described in § 228.26(a) of appendix G to 12 CFR part 228; or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 228.27(f) of appendix G to 12 CFR part 228.

* * * * *

§ 207.6 [Amended]

■ 17. Amend § 207.6 in paragraph (b)(7) by removing ''Regulation BB (12 CFR 228.43)'' and adding ''appendix G to 12 CFR part 228'' in its place.

§ 207.11 [Amended]

■ 18. Amend § 207.11 in paragraph (d) by removing ''Regulation BB (12 CFR 228.43)'' and adding ''appendix G to 12 CFR part 228'' in its place.

PART 228—COMMUNITY REINVESTMENT (REGULATION BB)

■ 19. The authority citation for part 228 continues to read as follows:

Authority: 12 U.S.C. 321, 325, 1828(c), 1842, 1843, 1844, and 2901 *et seq.*

§ 228.11 [Amended]

■ 20. Amend § 228.11 in paragraph (a) introductory text by removing ''authorizing the Federal Reserve:'' and adding ''authorizing the Board:'' in its place.

§ 228.27 [Amended]

■ 21. Amend § 228.27 in the headings of paragraphs (c)(4) and (c)(4)(i) by removing the text ''[*Operations subsidiaries or operating subsidiaries*]'' wherever it appears and adding the text ''*Operations subsidiaries*'' in its place.

§ 228.51 [Amended]

■ 22. Amend § 228.51 in paragraph (a)(2)(i) by removing the text ''§§ 228.12 through 228.15, 228.17 through 228.30, and 228.42(a)'' and adding the text ''§§ 228.12 through 228.30, 228.42(a), 228.43, and 228.44'' in its place.

Appendix B to Part 228 [Amended]

■ 23. Amend appendix B in paragraphs III.c.1 and 2 by removing the text ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding the text ''§ 228.42(b) or 12 CFR 25.42(b) or 345.42(b)'' in its place.

■ 24. Amend appendix G by revising § 228.12(u)(1) to read as follows:

Appendix G to Part 228—Community Reinvestment Act (Regulation BB)

* * * * *

§ 228.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.564 billion. *Intermediate small bank* means a small bank with assets of at least $391 million as of December 31 of both of the prior two calendar years and less than $1.564 billion as of December 31 of either of the prior two calendar years.

* * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons discussed in the preamble, the Federal Deposit Insurance Corporation amends chapter III of title 12 of the Code of Federal Regulations as follows:

PART 345—COMMUNITY REINVESTMENT

■ 25. The authority citation for part 345 continues to read as follows:

Authority: 12 U.S.C. 1814–1817, 1819–1820, 1828, 1831u and 2901–2908, 3103–3104, and 3108(a).

§ 345.27 [Amended]

■ 26. Amend § 345.27 in the headings of paragraphs (c)(4) and (c)(4)(i) by removing the text ''[*Operations subsidiaries or operating subsidiaries*]'' wherever it appears and adding the text ''*Operating subsidiaries*'' in its place.

§ 345.51 [Amended]

■ 27. Amend § 345.51 in paragraph (a)(2)(i) by removing the text ''§§ 345.12 through 345.15, 345.17 through 345.30, and 345.42(a)'' and adding the text ''§§ 345.12 through 345.30, 345.42(a), 345.43, and 345.44'' in its place.

Appendix B to Part 345 [Amended]

■ 28. Amend appendix B in paragraphs III.c.1 and 2 by removing ''12 CFR 25.42(b), 228.42(b), or 345.42(b)'' and adding ''§ 345.42(b) or 12 CFR 25.42(b) or 228.42(b)'' in its place.

■ 29. Amend appendix G by revising § 345.12(u)(1) to read as follows:

Appendix G to Part 345—Community Reinvestment Regulations

* * * * *

§ 345.12 Definitions.

* * * * *

(u) * * *

(1) *Definition. Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.564 billion. *Intermediate small bank* means a small bank with assets of at least $391 million as of December 31 of both of the prior two calendar years and less than $1.564 billion as of December 31 of either of the prior two calendar years.

* * * * *

PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

■ 30. The authority citation for part 346 continues to read as follows:

Authority: 12 U.S.C. 1831y.

■ 31. Amend § 346.4 by revising paragraph (a)(2) to read as follows:

§ 346.4 Fulfillment of the CRA.

(a) * * *

(2) *Activities given favorable CRA consideration.* Performing any of the following activities if the activity is of the type that is likely to receive favorable consideration by a Federal banking agency in evaluating the performance under the CRA of the insured depository institution that is a party to the agreement or an affiliate of a party to the agreement—

(i) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 345.22 of appendix G to 12 CFR part 345, including loan purchases, loan commitments, and letters of credit;

(ii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 345.23 of appendix G to 12 CFR part 345;

(iii) Delivering retail banking services as described in § 345.24(d) of appendix G to 12 CFR part 345;

(iv) Providing community development services, as described in § 345.24(e) of appendix G to 12 CFR part 345;

(v) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 345.25(c) of appendix G to 12 CFR part 345;

(vi) In the case of a small insured depository institution, any lending or other activity described in § 345.26(a) of appendix G to 12 CFR part 345; or

(vii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 345.27(f) of appendix G to 12 CFR part 345.

* * * * *

§ 346.6 [Amended]

■ 32. Amend § 346.6 in paragraph (b)(7) by removing the text ''12 CFR 345.43'' and adding the text ''§ 345.43 of appendix G to 12 CFR part 345'' in its place.

§ 346.11 [Amended]

■ 33. Amend § 346.11 in paragraph (d) by removing the text ''12 CFR 345.43'' and adding the text ''§ 345.43 of appendix G to 12 CFR part 345'' in its place.

Michael J. Hsu,

Acting Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, on March 21, 2024.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024–06497 Filed 3–28–24; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2000; Project Identifier MCAI–2023–00415–T; Amendment 39–22678; AD 2024–03–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports that some overheat detection sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill, which can result in an inability to detect hot bleed air leaks. This AD requires maintenance records verification, and if an affected part is installed, would prohibit the use of certain Master Minimum Equipment List (MMEL) items under certain conditions by requiring revising the operator's existing Minimum Equipment List (MEL). This AD also requires testing the overheat detection sensing elements, marking each serviceable sensing element with a witness mark, and replacing each nonserviceable part with a serviceable part. This AD also prohibits the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective May 3, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 3, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2000; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for

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

Material Incorporated by Reference:

- For Bombardier service information identified in this final rule, 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*.
- For Liebherr-Aerospace Toulouse SAS service information identified in this final rule, contact Liebherr-Aerospace Toulouse SAS, 408, Avenue des Etats-Unis-B.P.52010, 31016 Toulouse Cedex, France; telephone +33 (0)5.61.35.28.28; fax +33 (0)5.61.35.29.29; email *techpub.toulouse@liebherr.com;* website *liebherr.aero*.
- 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. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–2000.

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:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on November 15, 2023 (88 FR 78251). The NPRM was prompted by AD CF–2023–17, dated March 8, 2023 (Transport Canada AD CF–2023–17) (also referred to as the MCAI), issued by Transport Canada, which is the aviation authority for Canada. The MCAI states that Bombardier received reports from the supplier of the overheat detection sensing elements of a manufacturing quality escape. Some of the sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill. This condition can result in an inability to detect hot bleed air leaks, which can cause damage to surrounding structures and systems and prevent continued safe flight and landing.

In the NPRM, the FAA proposed to require maintenance records verification, and if an affected part is installed, would prohibit the use of certain MMEL items under certain conditions by requiring revising the operator's existing MEL. The NPRM also proposed to require testing the overheat detection sensing elements, marking each serviceable sensing element with a witness mark, and replacing each nonserviceable part with a serviceable part. The NPRM also proposed to prohibit the installation of affected parts under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2000.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from NetJets. The following presents the comment received on the NPRM and the FAA's response to the comment.

Request for Clarification on Location of Date of Manufacture

NetJets requested a statement be added to paragraph (h) of the proposed AD that the date of manufacture can be found in the aircraft maintenance logbook, in addition to the identification plate of the airplane on certain airplanes. This information is stated in Transport Canada AD CF–2023–17, Part II, paragraph (A). NetJets further stated that Bombardier no longer stamps a date on the airframe data plate.

The FAA agrees the date of manufacture can be found either on the identification plate of certain airplanes or in the aircraft maintenance logbook. The FAA has amended paragraph (h) of this AD to specify the two locations where the date of manufacture can be found.

Change to NPRM Applicability

Paragraph (c) of this AD has been revised to clarify that the applicability is limited to certain serial numbers, which are also identified in Transport Canada AD CF–2023–17.

Conclusion

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022, which specifies part numbers for affected sensing elements.

The FAA reviewed the following Bombardier service bulletins, which specify procedures for testing each leak detection loop (LDL) sensing element installed on the airplane, marking each serviceable sensing element with a witness mark, and replacing each nonserviceable part with a serviceable part. These documents are distinct since they apply to different airplane models and configurations.

- Bombardier Service Bulletin 700–1A11–36–005, Basic Issue, dated December 23, 2022;
- Bombardier Service Bulletin 700–36–026, Basic Issue, dated December 23, 2022;
- Bombardier Service Bulletin 700–36–5002, Basic Issue, dated December 23, 2022;
- Bombardier Service Bulletin 700–36–5501, Basic Issue, dated December 23, 2022; and
- Bombardier Service Bulletin 700–36–6002, Basic Issue, dated December 23, 2022;
- Bombardier Service Bulletin 700–36–6501, Basic Issue, dated December 23, 2022.

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

Costs of Compliance

The FAA estimates that this AD affects 160 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 140 work-hours × $85 per hour = $11,900	$0	Up to $11,900	Up to $1,904,000.

The FAA has received no definitive data on which to base the cost estimates for the on-condition actions specified in this AD. The FAA estimates it takes up to 1.5 hours to replace one sensor.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–03–08 Bombardier, Inc.: Amendment 39–22678; Docket No. FAA–2023–2000; Project Identifier MCAI–2023–00415–T.

(a) Effective Date

This airworthiness directive (AD) is effective May 3, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes, certificated in any category, serial numbers 9002 through 9879 inclusive, 9998, and 60001 and subsequent.

(d) Subject

Air Transport Association (ATA) of America Code: 36, Pneumatic.

(e) Unsafe Condition

This AD was prompted by reports that some overheat detection sensing elements of the bleed air leak detection system were manufactured with insufficient salt fill. The FAA is issuing this AD to address non-conforming sensing elements of the bleed air leak detection system. The unsafe condition, if not addressed, could result in an inability to detect hot bleed air leaks and consequent damage to surrounding structures and systems, which could prevent continued safe flight and landing.

(f) Compliance

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

(g) Definitions

For the purpose of this AD, the definitions specified in paragraphs (g)(1) through (3) of this AD apply.

(1) The following Model BD–700–1A10 and BD–700–1A11 airplane groups are identified in (g)(1)(i) through (iv) of this AD:

(i) Group A airplanes: serial numbers (S/N) 9002 through 9151 inclusive, and 9153.

(ii) Group B airplanes: S/N 9152, 9154 through 9879 inclusive, 9998, 60001 through 60041 inclusive, 60043, 60044, 60045, and 60051.

(iii) Group C airplanes: S/N 60042, 60046, 60047, 60049, 60053, and subsequent.

(iv) Group D airplanes: S/N 60048, 60050, and 60052.

(2) An affected part is a sensing element marked with a date code A0448 through A2104 inclusive and having an LTS/Kidde part number specified in Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022, unless that sensing element meets the criteria specified in paragraph (g)(2)(i) or (ii) of this AD.

(i) The sensing element has been tested as specified in Section 3 of the Accomplishment Instructions of Kidde Aerospace and Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, or earlier revisions, and has been found to be serviceable; and the sensing element has been marked on one face of its connector hex nut and packaged as specified in Section 3.C. of the Accomplishment Instructions of Kidde Aerospace and Defense Service Bulletin CFD–26–1, Revision 6, dated February 28, 2022, or earlier revisions.

(ii) The sensing element has been tested and found to be serviceable as specified in paragraph (j) of this AD; and the sensing element has been marked on one face of one connector hex nut with one green mark, as specified in Figure 4 (the figure is representative for all sensing elements) in the Accomplishment Instructions of the applicable Bombardier service bulletin (BA SB) in figure 1 to paragraph (g)(2)(ii) of this AD.

Figure 1 to Paragraph (g)(2)(ii)—Applicable Service Information

BILLING CODE 4910–13–P

Airplane Model (Marketing Designation)	**Applicable BA SB**
BD-700-1A10 (Global Express & Global Express XRS)	SB 700-36-026
BD-700-1A11 (Global 5000)	SB 700-1A11-36-005
BF-700-1A11 (Global 5000 featuring Global Vision Flight Deck)	SB 700-36-5002
BD-700-1A10 (Global 6000)	SB 700-36-6002
BD-700-1A11 (Global 5500)	SB 700-36-5501
BD-700-1A10 (Global 6500)	SB 700-36-6501

(3) A serviceable part is a sensing element that is not an affected part.

(h) Maintenance Records Verification

For Groups A and C whose airplane date of manufacture, as identified on the identification plate of the airplane or in the aircraft maintenance logbook, is on or before July 27, 2022 (the effective date of Transport Canada AD CF–2022–38): Within 60 days after the effective date of this AD, examine the airplane maintenance records to verify whether any affected part has been installed since the airplane date of manufacture, as identified on the identification plate of the airplane or in the aircraft maintenance logbook.

(1) If the maintenance records confirm that an affected part has been installed, or if it cannot be confirmed that an affected part has not been installed, paragraphs (i) and (j) of this AD must be complied with within the applicable compliance times specified in paragraphs (i) and (j) of this AD.

(2) For Groups A and C airplanes: if the maintenance records confirm that no affected parts have been installed since airplane date of manufacture, then paragraphs (i) and (j) of this AD are not applicable.

(i) Minimum Equipment List (MEL) Revision

For Groups B and D airplanes, and Groups A and C airplanes required by paragraph (h) of this AD: Within 90 days after the effective date of this AD, revise the operator's existing MEL by incorporating the information specified in figures 2 through 8 to paragraph (i) of this AD, as applicable. This may be done by inserting a copy of this information into the operator's existing MEL.

Figure 2 to Paragraph (i)—MMEL Item 36–12–01

MMEL Item 36-12-01

1. System & Sequence No Item No de système/série article	2. Number Installed Nombre d'article installés	3. Number Required For Dispatch Nombre d'articles à expédier	4. Remarks or Exceptions
36 - PNEUMATICS 12-01 Bleed Leak Detection Loops C	18	9	(O) Either loop A or loop B may be inoperative provided redundant loop in the same zone is operative.

1. PLACARD

(1) Put a BLEED LEAK DETECTION LOOPS INOPERATIVE placard on the instrument panel.

2. OPERATIONS (O)

Before each flight:

(1) Make sure that the aeroplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the aeroplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the BATT MASTER switch to ON.
2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.
3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, make sure that the EICAS primary display shows as follows:

i. If the Advisory L BLEED FAULT or R BLEED FAULT shows, DISPATCH IS PERMITTED.

Note: If the Advisory L BLEED FAULT or R BLEED FAULT shows, it confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the Advisory L BLEED FAULT or R BLEED FAULT does not show, DISPATCH IS NOT PERMITTED.

Note: If the Advisory L BLEED FAULT or R BLEED FAULT does not show, it confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the aeroplane.

e. If required, set APU BLEED to AUTO.

Figure 3 to Paragraph (i)—MMEL Item

BILLING CODE 36–12–01–1

MMEL Item 36-12-01-1

1. System & Sequence No Item No de système/série article	2. Number Installed Nombre d'article installés	3. Number Required For Dispatch Nombre d'articles à expédier	4. Remarks or Exceptions
36 - PNEUMATICS			
12-01 Bleed Leak Detection Loops C	18	9	(O) Either loop A or loop B may be inoperative provided redundant loop in the same zone is operative.
1) Wing Anti-Ice Leak C	12	6	(M) (O) One loop in each section may be inoperative provided: a) Power-up BIT test is performed on system prior to each dispatch into icing, and b) Cause of WING ANTI-ICE FAULT Advisory message is confirmed by maintenance.

1. PLACARD

(1) Put a WING ANTI-ICE LEAK INOPERATIVE placard on the instrument panel.

2. OPERATIONS (O)

Before each flight:

(1) Make sure that the aeroplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the aeroplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the BATT MASTER switch to ON.
2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.
3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, make sure that the EICAS primary display shows as follows:

i. If the Advisory WING A/ICE FAULT shows, DISPATCH IS PERMITTED unless step (2) of the Maintenance (M) procedure under (3) below does not pass, in which case DISPATCH IS NOT PERMITTED.

Note: If the Advisory WING A/ICE FAULT shows, it confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the Advisory WING A/ICE FAULT does not show, DISPATCH IS NOT PERMITTED.

Note: If the Advisory WING A/ICE FAULT does not show, it confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the aeroplane.

e. If required, set APU BLEED to AUTO.

3. MAINTENANCE (M)

The requirement to perform this section is conditional on (1)(c)(i) under the Operations (O) procedure above.

(1) Power-up BIT test is performed on system prior to each dispatch into icing.

(2) The cause of the WING ANTI-ICE FAULT Advisory message is to be confirmed by maintenance personnel to make sure that no section has encountered a dual loop failure.

Figure 4 to Paragraph (i)—MMEL Item

BILLING CODE 36–12–01–2

MMEL Item 36-12-01-2

1. System & Sequence No Item No de système/série article	2. Number Installed Nombre d'article installés	3. Number Required For Dispatch Nombre d'articles à expédier	4. Remarks or Exceptions
36 - PNEUMATICS			
12-01 Bleed Leak Detection Loops C	18	9	(O) Either loop A or loop B may be inoperative provided redundant loop in the same zone is operative.
...			...
2) Trim Air Leak C	2	1	(O) Except for ER operations, one loop may be inoperative.

1. PLACARD

(1) Put a TRIM AIR LEAK INOPERATIVE placard on the instrument panel.

2. OPERATIONS (O)

Before each flight:

(1) Make sure that the aeroplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the aeroplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the BATT MASTER switch to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, make sure that the EICAS primary display shows as follows:

i. If the Advisory TRIM AIR FAULT shows, DISPATCH IS PERMITTED.

Note: If the Advisory TRIM AIR FAULT shows, it confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the Advisory TRIM AIR FAULT does not show, DISPATCH IS NOT PERMITTED.

Note: If the Advisory TRIM AIR FAULT does not show, it confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the aeroplane.

e. If required, set APU BLEED to AUTO.

Figure 5 to Paragraph (i)—L BLEED FAULT

L BLEED FAULT

CAS Indication	1.	2. Dispatch Consideration
L BLEED FAULT (Advisory)	C	(O) Aircraft may be dispatched provided, prior to each flight: a) None of the following messages are also posted: – R BLEED SYS FAIL Caution; – R WING ANTI-ICE FAIL Caution; – XBLEED FAIL Caution; – R BLEED FAULT Advisory; – WING ANTI-ICE FAULT Advisory; b) Left PRV and left HPSOV open and close correctly in response to L BLEED OFF switch selection, as indicated on Synoptic Page; c) Left HPSOV is open at engine idle and closed at high thrust settings, as indicated on Synoptic Page; d) WING XBLEED FROM R is selected and remains open; and e) Operations are not conducted in known or forecast icing conditions.

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the aeroplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the aeroplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the BATT MASTER switch to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, make sure that the EICAS primary display shows as follows:

i. If the Advisory L BLEED FAULT shows, DISPATCH IS PERMITTED.

Note: If the Advisory L BLEED FAULT shows, it confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the Advisory L BLEED FAULT does not show, DISPATCH IS NOT PERMITTED.

Note: If the Advisory L BLEED FAULT does not show, it confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the aeroplane.

e. If required, set APU BLEED to AUTO.

2. OPERATIONS (O)

Before each flight and after engine start:

(1) On the EICAS primary display, make sure that the messages that follow do not show:

– R BLEED SYS FAIL (Caution)
– R WING ANTI-ICE FAIL (Caution)
– XBLEED FAIL (Caution)
– R BLEED FAULT (Advisory)
– WING ANTI-ICE FAULT (Advisory)

(2) Make sure that the left Pressure Regulator Valve (PRV) and left High Pressure Shut Off Valve (HPSOV) open and close as follows:

a. On the BLEED/AIR COND control panel, set the L ENG BLEED switch to OFF.

b. On the BLEED/ANTI-ICE synoptic page, make sure that the left PRV and left HPSOV show closed.

c. On the BLEED/AIR COND control panel, set the L ENG BLEED switch to AUTO.

d. On the BLEED/ANTI-ICE synoptic page, make sure that the left PRV and left HPSOV show open.

(3) Make sure that the left High Pressure Shut Off Valve (HPSOV) switching operates as follows:

a. Slowly advance the left throttle to high thrust setting.

b. On the BLEED/ANTI-ICE synoptic page, make sure that the left HPSOV shows closed.

c. Slowly retard the left throttle to engine idle.

d. On the BLEED/ANTI-ICE synoptic page, make sure that the left HPSOV shows open.

(4) On the ANTI-ICE control panel, set the WING XBLEED to FROM R for the rest of the flight.

(5) Operations are not conducted in known or forecast icing conditions.

Figure 6 to paragraph (i)—R BLEED FAULT

R BLEED FAULT

CAS Indication	1.	2. Dispatch Consideration
R BLEED FAULT (Advisory)	C	(O) Aircraft may be dispatched provided, prior to each flight: a) None of the following messages are also posted: – L BLEED SYS FAIL Caution; – L WING ANTI-ICE FAIL Caution; – XBLEED FAIL Caution; – L BLEED FAULT Advisory; – WING ANTI-ICE FAULT Advisory; b) Right PRV and right HPSOV open and close correctly in response to R BLEED OFF switch selection, as indicated on Synoptic Page; c) Right HPSOV is open at engine idle and closed at high thrust settings, as indicated on Synoptic Page; d) WING XBLEED FROM L is selected and remains open; and e) Operations are not conducted in known or forecast icing conditions.

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the aeroplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the aeroplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the BATT MASTER switch to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, make sure that the EICAS primary display shows as follows:

i. If the Advisory R BLEED FAULT shows, DISPATCH IS PERMITTED.

Note: If the Advisory R BLEED FAULT shows, it confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the Advisory R BLEED FAULT does not show, DISPATCH IS NOT PERMITTED.

Note: If the Advisory R BLEED FAULT does not show, it confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the aeroplane.

e. If required, set APU BLEED to AUTO.

2. OPERATIONS (O)

Before each flight and after engine start:

(1) On the EICAS primary display, make sure that the messages that follow do not show:

– L BLEED SYS FAIL (Caution)
– L WING ANTI-ICE FAIL (Caution)
– XBLEED FAIL (Caution)
– L BLEED FAULT (Advisory)
– WING ANTI-ICE FAULT (Advisory)

(2) Make sure that the right Pressure Regulator Valve (PRV) and right High Pressure Shut Off Valve (HPSOV) open and close as follows:

a. On the BLEED/AIR COND control panel, set the R ENG BLEED switch to OFF.

b. On the BLEED/ANTI-ICE synoptic page, make sure that the right PRV and right HPSOV show closed.

c. On the BLEED/AIR COND control panel, set the R ENG BLEED switch to AUTO.

d. On the BLEED/ANTI-ICE synoptic page, make sure that the right PRV and right HPSOV show open.

(3) Make sure that the right High Pressure Shut Off Valve (HPSOV) switching operates as follows:

a. Slowly advance the right throttle to high thrust setting.

b. On the BLEED/ANTI-ICE synoptic page, make sure that the right HPSOV shows closed.

c. Slowly retard the right throttle to engine idle.

d. On the BLEED/ANTI-ICE synoptic page, make sure that the right HPSOV shows open.

(4) On the ANTI-ICE control panel, set the WING XBLEED to FROM L for the rest of the flight.

(5) Operations are not conducted in known or forecast icing conditions.

Figure 7 to Paragraph (i)—WING A/ICE FAULT

WING A/ICE FAULT

CAS Indication	1.	2.	Dispatch Consideration
WING A/ICE FAULT (Advisory)	C	(O)	Aircraft may be dispatched provided, prior to each departure: a) Flight is not conducted in known or forecast icing conditions; b) A power-up test is performed by cycling WING A/ICE switch from OFF to ON; and c) None of the following CAS messages are also posted: – ICE DETECT FAIL Caution; – L BLEED SYS FAIL Caution; – R BLEED SYS FAIL Caution; – ICE DETECT FAULT Advisory; – L BLEED FAULT Advisory; – R BLEED FAULT Advisory.

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the aeroplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the aeroplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the BATT MASTER switch to ON.

2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.

3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, make sure that the EICAS primary display shows as follows:

i. If the Advisory WING A/ICE FAULT shows, DISPATCH IS PERMITTED.

Note: If the Advisory WING A/ICE FAULT shows, it confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the Advisory WING A/ICE FAULT does not show, DISPATCH IS NOT PERMITTED.

Note: If the Advisory WING A/ICE FAULT does not show, it confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the aeroplane.

e. If required, set APU BLEED to AUTO.

2. OPERATIONS (O)

Before each flight and after engine start:

(1) Perform a power-up test as follows:

a. On the ANTI-ICE control panel, cycle the WING switch from OFF to ON.

b. On the EICAS primary display, make sure that the following CAS status message is shown:

– WING A/ICE ON

c. On the EICAS primary display, make sure that the following CAS messages are not shown:

– L WING A/ICE FAIL (Caution)
– R WING A/ICE FAIL (Caution)

(2) On the EICAS primary display, make sure that the following CAS messages are not shown:

– ICE DETECT FAIL (Caution)
– L BLEED SYS FAIL (Caution)
– R BLEED SYS FAIL (Caution)
– ICE DETECT FAULT (Advisory)
– L BLEED FAULT (Advisory)
– R BLEED FAULT (Advisory)

(3) Operations are not conducted in known or forecast icing conditions.

Figure 8 to Paragraph (i)—TRIM AIR FAULT

TRIM AIR FAULT

CAS Indication	1.	2. Dispatch Consideration
TRIM AIR FAULT (Advisory)	C	(O) Aircraft may be dispatched provided: a) Duct temperature indications are operative for all three ducts; b) Either HASOV showing incorrect indication on Synoptic page is verified CLOSED; and c) L PACK FAIL or R PACK FAIL Caution messages are not displayed.

1. OPERATIONS (O)

Before each flight:

(1) Make sure that the aeroplane is not powered on and that engines and APU are OFF.

a. Connect electrical power to the aeroplane as follows:

Note: Do not use a Jet Airstart Cart or High Pressure Ground Cart.

i. Connect external AC power, OR

ii. Start the APU as follows:

1. On the ELECTRICAL control panel, set the BATT MASTER switch to ON.
2. On the BLEED/AIR COND control panel, make sure that the APU BLEED switch is set to OFF.
3. On the APU control panel, turn the APU switch to START.

b. When external AC power is on or APU is running, wait a minimum of 6 minutes.

c. After 6 minutes, make sure that the EICAS primary display shows as follows:

i. If the Advisory TRIM AIR FAULT shows, DISPATCH IS PERMITTED.

Note: If the Advisory TRIM AIR FAULT shows, it confirms it is not heat related and therefore cannot be a potential leak in the presence of an affected part.

ii. If the Advisory TRIM AIR FAULT does not show, DISPATCH IS NOT PERMITTED.

Note: If the Advisory TRIM AIR FAULT does not show, it confirms that it is heat related and therefore could be a potential leak in the presence of an affected part.

d. If required, remove external AC power from the aeroplane.

e. If required, set APU BLEED to AUTO.

2. OPERATIONS (O)

Before each flight and after engine start:

(1) On the AIR CONDITIONING synoptic page, make sure that the duct temperature indications are operative for all three ducts.

(2) Make sure that either HASOV that shows incorrect indication on the AIR CONDITIONING synoptic page is verified CLOSED as follows:

a. On the BLEED/AIR COND control panel, alternate the TRIM AIR switch from ON to OFF to ON.

b. At the same time, on the AIR CONDITIONING synoptic page, identify the HASOV that shows incorrect indication.

c. In the flight compartment, on the EMS CDU, open the applicable circuit breaker as follows:

SYSTEM NAME	CIRCUIT BREAKER NAME	BUS NAME
AIR COND/PRESS	L ECS HASOV	DC ESS
AIR COND/PRESS	R ECS HASOV	DC ESS

d. In the aft equipment compartment, make sure that any identified HASOV is in the CLOSED position.

(3) On the EICAS primary display, make sure that the following CAS messages are not shown:

– L PACK FAIL (Caution)
– R PACK FAIL (Caution)

BILLING CODE 4910–13–C

(j) Testing and Replacement of Affected Overheat Detection Sensing Elements

(1) For Group B and D airplanes, and Group A and C airplanes required by paragraph (h) of this AD: Within 2,000 flight hours or 120 months, whichever occurs first, from the effective date of this AD, test the overheat detection sensing elements to

determine if they are serviceable, in accordance with the Accomplishment Instructions of the applicable Bombardier service bulletin in paragraphs (j)(1)(i) through (vi) of this AD.

(i) For Model BD–700–1A11 (Global 5000) airplanes: Bombardier Service Bulletin 700–1A11–36–005, Basic Issue, dated December 23, 2022.

(ii) For Model BD–700–1A10 (Global Express and Global Express XRS) airplanes: Bombardier Service Bulletin 700–36–026, Basic Issue, dated December 23, 2022.

(iii) For Model BD–700–1A11 (Global 5000 featuring Global Vision Flight Deck) airplanes: Bombardier Service Bulletin 700–36–5002, Basic Issue, dated December 23, 2022.

(iv) For Model BD–700–1A11 (Global 5500) airplanes: Bombardier Service Bulletin 700–36–5501, Basic Issue, dated December 23, 2022.

(v) For Model BD–700–1A10 (Global 6000) airplanes: Bombardier Service Bulletin 700–36–6002, Basic Issue, dated December 23, 2022.

(vi) For Model BD–700–1A10 (Global 6500) airplanes: Bombardier Service Bulletin 700–36–6501, Basic Issue, dated December 23, 2022.

(2) For each sensing element that is serviceable, as determined by paragraph (j)(1) of this AD, before further flight, mark the sensing element with a witness mark in accordance with the Accomplishment Instructions in the applicable Bombardier service bulletin in paragraphs (j)(1)(i) through (vi) of this AD.

(3) For each sensing element that is not serviceable, as determined by paragraph (j)(1) of this AD, before further flight, replace the sensing element with a serviceable part in accordance with the Accomplishment Instructions in the applicable Bombardier Service Bulletin in paragraphs (j)(1)(i) through (vi) of this AD.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, any affected part unless it is a serviceable part.

(l) No Reporting Requirement

Although Bombardier service bulletins in figure 1 to paragraph (g)(2)(ii) and paragraphs (j)(1)(i) through (vi) of this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

(m) 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 ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (n)(2) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email. 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.

(n) Additional Information

(1) Refer to Transport Canada AD CF–2023–17, dated March 8, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–2000.

(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.*

(o) 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) Bombardier Service Bulletin 700–1A11–36–005, Basic Issue, dated December 23, 2022.

(ii) Bombardier Service Bulletin 700–36–026, Basic Issue, dated December 23, 2022.

(iii) Bombardier Service Bulletin 700–36–5002, Basic Issue, dated December 23, 2022.

(iv) Bombardier Service Bulletin 700–36–5501, Basic Issue, dated December 23, 2022.

(v) Bombardier Service Bulletin 700–36–6002, Basic Issue, dated December 23, 2022.

(vi) Bombardier Service Bulletin 700–36–6501, Basic Issue, dated December 23, 2022.

(vii) Liebherr Service Bulletin CFD–F1958–26–01, dated May 6, 2022.

(3) For Bombardier 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) For Liebherr-Aerospace Toulouse SAS service information identified in this AD, contact Liebherr-Aerospace Toulouse SAS, 408, Avenue des Etats-Unis—B.P.52010, 31016 Toulouse Cedex, France; telephone +33 (0)5.61.35.28.28; fax +33 (0)5.61.35.29.29; email *techpub.toulouse@liebherr.com;* website *liebherr.aero.*

(5) 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.

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

Issued on February 8, 2024.

Victor Wicklund,

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

[FR Doc. 2024–06626 Filed 3–28–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1005

[Docket No. FR–5593–C–03]

RIN 2577–AD01

Strengthening the Section 184 Indian Housing Loan Guarantee Program; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Final rule; correction.

SUMMARY: The Department of the Housing and Urban Development (HUD) is correcting a final rule entitled, ''Strengthening the Section 184 Indian Housing Loan Guarantee Program'' that published in the **Federal Register** on March 20, 2024.

DATES: Effective June 18, 2024.

FOR FURTHER INFORMATION CONTACT: With respect to this technical correction, contact Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Department of Housing and Urban Development, 451 7th Street SW, Room 10238, Washington, DC 20410; telephone number 202–708–1793 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: On March 20, 2024 (89 FR 20032) (FR Doc. 2024–05515), HUD published a final rule that amends its regulations governing the Section 184 Indian Housing Loan Guarantee Program (Section 184 Program). The rule clarifies the rules governing Tribal participation in the Section 184 Program by establishing underwriting requirements, closing and endorsement processes, and stronger and clearer servicing requirements. The rule also strengthens the Section 184

Program by clarifying rules for stakeholders, minimizing potential risk, and increasing program participation by financial institutions.

In reviewing the March 20, 2024, final rule, HUD identified inadvertent errors in §§ 1005.749, 1005.759, and 1005.805. Specifically, in § 1005.749 HUD failed to designate a paragraph (c)(6). Section 1005.759 incorrectly designated two paragraphs as paragraph (b). Finally, § 1005.805 failed to designate a paragraph (b)(4)(v). This document corrects these errors.

Correction

In FR Doc. 2024–05515, published March 20, 2024, at 89 FR 20032, the following corrections are made:

§ 1005.749 [Corrected]

■ 1. On page 20082, in the second column, in § 1005.749(c), paragraphs (7) and (8) are redesignated as paragraphs (6) and (7), respectively.

§ 1005.759 [Corrected]

■ 2. On page 20086, in the third column, in § 1005.759 the second paragraph (b) is redesignated as paragraph (c) and paragraphs (c) and (d) are redesignated as paragraphs (d) and (e), respectively.

§ 1005.805 [Corrected]

■ 3. On page 20088, in the third column, in § 1005.805(b)(4), paragraphs (vi) and (vii) are redesignated as paragraphs (v) and (vi).

Aaron Santa Anna,

Associate General Counsel, Office of Legislation and Regulations.

[FR Doc. 2024–06676 Filed 3–28–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 2 and 90

[Docket No. PTO–C–2024–0011]

RIN 0651–AD78

Electronic Submission of Notices of Appeal to the United States Court of Appeals for the Federal Circuit, Notices of Election, and Requests for Extension of Time for Seeking Judicial Review

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (USPTO) issues this final rule to incorporate changes to the patent and trademark rules regarding judicial review of agency decisions, in particular how a notice of appeal to the United States Court of Appeals for the Federal Circuit, a notice of election to proceed by civil action in district court, and a request for extension of time for filing a notice of appeal or commencing a civil action must be filed. This final rule states that a notice of appeal, notice of election, and a request for extension of time for filing a notice of appeal or commencing a civil action must be filed with the Director of the USPTO by email, and in the event a request cannot be filed by email, it may be filed by Priority Mail Express®.

DATES: This rule is effective on March 29, 2024.

FOR FURTHER INFORMATION CONTACT: Mai-Trang Dang or Monica Lateef, Office of the Solicitor, at 571–272–9035, or at *mai-trang.dang@uspto.gov* or *monica.lateef@uspto.gov.*

SUPPLEMENTARY INFORMATION: The USPTO is revising 37 CFR 90.2, 90.3 and 2.145 to incorporate changes as to how a notice of appeal, a notice of election to proceed by civil action in district court, and a request for extension of time to file a notice of appeal or commence a civil action are to be filed with the Director of the USPTO. Prior to this final rule, appellants were required to file by mail or by delivery by hand to the address provided at 37 CFR 104.2. Under this final rule, the USPTO revises the regulations to allow for filings by email and by priority mail delivery to a new address. Specifically, this rule states that notices of appeal, notices of election, and requests for extension of time to file a notice of appeal or commence a civil action must be filed by email at the email address indicated on the USPTO's web page for the Office of the General Counsel for filing such notices and requests. If there is some circumstance in which email cannot be used, the rule provides that said notices and requests may be sent by Priority Mail Express®. This change will ensure that the USPTO receives said notices and requests reliably and promptly. The USPTO is also making a technical amendment to § 90.3(c)(1) to remove the pronoun ''his'' in reference to the Director and replace it with ''the Director.''

Discussion of Regulatory Changes

The USPTO is revising §§ 2.145(a)(2)(i), (b)(2)(i) and (e)(2), 90.2(a)(1) and (b)(1), and 90.3(c)(2) to require notices of appeal, notices of election, and requests for extension of time to file a notice of appeal or commence a civil action, under those provisions, to be filed by email, or by Priority Mail Express®. The USPTO is revising § 90.3(c)(1) to incorporate a technical amendment.

Rulemaking Requirements

A. Administrative Procedure Act: The changes proposed by this rulemaking involve rules of agency practice and procedure, and/or interpretive rules, and do not require notice-and-comment rulemaking. *See Perez* v. *Mortg. Bankers Ass'n,* 575 U.S. 92, 97, 101 (2015) (explaining that interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'' and do not require notice and comment when issued or amended); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice''); and *JEM Broadcasting Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (explaining that rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits'').

In addition, the Office finds good cause pursuant to the authority at 5 U.S.C. 553(b)(B) and (d)(3) to dispense with prior notice and opportunity for public comment and a 30-day delay in effectiveness because such procedures are unnecessary in this instance. The changes in this rulemaking merely revise the regulations to provide expanded methods for submitting a notice of appeal, a notice of election, and a request for extension of time to file a notice of appeal to the Director of the USPTO. These changes ensure that the USPTO receives said notices and requests reliably and promptly. These revisions are largely procedural in nature and do not impose any additional requirements or fees on applicants. Thus, the USPTO implements this final rule without prior notice and opportunity for comment, or a 30-day delay in effectiveness.

B. Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is required. See 5 U.S.C. 603.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993), as

amended by Executive Order 14094 (April 6, 2023).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (January 18, 2011). Specifically, and as discussed above, the USPTO has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking pertains strictly to federal agency procedures and does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes, (2) impose substantial direct compliance costs on Indian tribal governments, or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (November 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (February 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (April 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (March 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), the USPTO will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: This final rule does not involve information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 90

Administrative practice and procedure, Inventions and patents, Lawyers.

For the reasons stated in the preamble, the USPTO amends 37 CFR parts 2 and 90 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

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

Authority: 15 U.S.C. 1113, 1123; 35 U.S.C. 2; sec. 10, Pub. L. 112–29, 125 Stat. 284; Pub. L. 116–260, 134 Stat. 1182, unless otherwise noted. Sec. 2.99 also issued under secs. 16, 17, 60 Stat. 434; 15 U.S.C. 1066, 1067.

■ 2. Section 2.145 is amended by revising paragraphs (a)(2)(i), (b)(2)(i) and (e)(2) to read as follows:

§ 2.145 Appeal to court and civil action.

(a) * * *

(2) * * *

(i) File the notice of appeal with the Director by electronic mail sent to the email address indicated on the United States Patent and Trademark Office's web page for the Office of the General Counsel. This electronically submitted notice will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. If there

is some circumstance in which electronic mail cannot be used, submission may be by Priority Mail Express® or by means at least as fast and reliable as Priority Mail Express® to the Office of the Solicitor, United States Patent and Trademark Office, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313–1450;

* * * * *

(b) * * *

(2) * * *

(i) File a notice of election with the Director by electronic mail sent to the email address indicated on the United States Patent and Trademark Office's web page for the Office of the General Counsel. This electronically submitted notice will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. If there is some circumstance in which electronic mail cannot be used, submission may be by Priority Mail Express® or by means at least as fast and reliable as Priority Mail Express® to the Office of the Solicitor, United States Patent and Trademark Office, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313–1450;

* * * * *

(e) * * *

(2)(i) The request must be filed with the Director by electronic mail sent to the email address indicated on the United States Patent and Trademark Office's web page for the Office of the General Counsel. This electronically submitted notice will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. If there is some circumstance in which electronic mail cannot be used, submission may be by Priority Mail Express® or by means at least as fast and reliable as Priority Mail Express® to the Office of the Solicitor, United States Patent and Trademark Office, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313–1450.

(ii) A copy of the request should also be filed with the Trademark Trial and Appeal Board via ESTTA.

PART 90—JUDICIAL REVIEW OF PATENT TRIAL AND APPEAL BOARD DECISIONS

■ 3. The authority citation for part 90 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 4. Section 90.2 is amended by revising paragraphs (a)(1) and (b)(1) to read as follows:

§ 90.2 Notice; service.

(a) * * *

(1)(i) In all appeals, the notice of appeal required by 35 U.S.C. 142 must be filed with the Director by electronic mail to the email address indicated on the United States Patent and Trademark Office's web page for the Office of the General Counsel. This electronically submitted notice will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. If there is some circumstance in which electronic mail cannot be used, submission may be by Priority Mail Express® to the Office of the Solicitor, United States Patent and Trademark Office, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313–1450.

(ii) A copy of the notice of appeal must also be filed with the Patent Trial and Appeal Board in the appropriate manner provided in §§ 41.10(a), 41.10(b), or 42.6(b) of this chapter.

* * * * *

(b) * * *

(1) Pursuant to 35 U.S.C. 141(d), if an adverse party elects to have all further review proceedings conducted under 35 U.S.C. 146 instead of under 35 U.S.C. 141, that party must file a notice of election with the Director by electronic mail to the email address indicated on the United States Patent and Trademark Office's web page for the Office of the General Counsel. This electronically submitted notice will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. If there is some circumstance in which electronic mail cannot be used, submission may be by Priority Mail Express® to the Office of the Solicitor, United States Patent and Trademark Office, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313–1450.

* * * * *

■ 5. Section 90.3 is amended by revising the paragraphs (c)(1) introductory text and (c)(2) to read as follows:

§ 90.3 Time for appeal or civil action.

* * * * *

(c) * * *

(1) The Director, or the Director's designee, may extend the time for filing an appeal, or commencing a civil action, upon written request if:

* * * * *

(2) The request must be filed with the Director by electronic mail to the email address indicated on the United States Patent and Trademark Office's web page for the Office of the General Counsel. This electronically submitted request will be accorded a receipt date, which is the date in Eastern Time when the correspondence is received in the Office, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. If there is some circumstance in which electronic mail cannot be used, submission may be by Priority Mail Express® to the Office of the Solicitor, United States Patent and Trademark Office, Mail Stop 8, P.O. Box 1450, Alexandria, Virginia 22313–1450.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2024–06659 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2023–0515; EPA–R05–OAR–2023–0516; EPA–R05–OAR–2023–0517; FRL–11718–01–R5]

Adequacy Status of the Allegan, Berrien, and Muskegon Counties, Michigan Submitted Reasonable Further Progress Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of adequacy.

SUMMARY: In this document, the Environmental Protection Agency (EPA) is notifying the public that we have found that the volatile organic compounds (VOC) and nitrogen oxides (NO_X) motor vehicle emissions budgets (budgets) in the submitted 2015 Ozone moderate Reasonable Further Progress (RFP) plan for Allegan, Berrien, and Muskegon Counties are adequate for conformity purposes. As a result of our finding, these areas must use the budgets from the submitted RFP plan for future conformity determinations.

DATES: This finding is effective April 15, 2024.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Control Strategies Section, Air Programs Branch (AR 18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680; *leslie.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice is simply an announcement of a finding that we have already made. EPA Region 5 sent a letter to the Michigan Department of Environment, Great Lakes, and Energy on January 17, 2024, stating that the VOC and NO_X budgets for Allegan, Berrien, and Muskegon Counties submitted in the 2015 RFP plan for the 2023 milestone year are adequate. The finding is available at EPA's conformity website: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

The budgets are as follows:

2023 VOC AND NO_X RFP BUDGETS FOR THE ALLEGAN, BERRIEN, AND MUSKEGON COUNTIES OZONE AREAS

[Listed in tons per day (tpd)]

Area	NO_X (tpd)	VOC (tpd)
Allegan County	1.15	0.70
Berrien County	2.98	1.85
Muskegon County	1.73	1.74

Transportation conformity is required by Clean Air Act section 176(c). EPA's conformity rule requires that transportation plans, transportation improvement programs, and projects conform to air quality state implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). We've described our process for determining the adequacy of submitted SIP budgets in our July 1, 2004, preamble starting at 69 FR 40038 and we used the information in these resources in making our adequacy determination. Please note that an adequacy review is separate from EPA's completeness review and should not be used to prejudge EPA's ultimate approval action for the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

The finding is available at EPA's conformity website: *https://www.epa.gov/otaq/stateresources/transconf/adequacy.htm.*

Authority: 42 U.S.C. 7401–7671q.

Dated: February 22, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–06372 Filed 3–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R04–OAR–2023–0535; FRL–11589–02–R4]

Outer Continental Shelf Air Regulations; Consistency Update for North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which North Carolina is the designated COA. North Carolina's requirements discussed in this document will be incorporated by reference into the Code of Federal Regulations (CFR) and listed in the appendix to the Federal OCS air regulations.

DATES: This final rule is effective on April 29, 2024. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 29, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R04–OAR–2023–0535. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information may not be publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or in hard copy at the Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4 Regional, 61 Forsyth St. SW, Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathleen Weil, Air Permits Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9170. Ms. Weil can also be reached via electronic mail at *weil.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the CAA. The regulations at 40 CFR part 55 apply to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the CAA requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

On December 12, 2023 (88 FR 86094), EPA published a notice of proposed rulemaking (NPRM) proposing to incorporate various North Carolina air pollution control requirements into 40 CFR part 55. Pursuant to 40 CFR 55.12, consistency reviews will occur: (1) At least annually where an OCS activity is occurring within 25 miles of a State seaward boundary; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a State or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. EPA's NPRM was initiated in

[1] The reader may refer to the notice of proposed rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792), for further background and information on the OCS regulations.

response to the submittal of an NOI for a potential upcoming OCS project.

EPA reviewed the North Carolina Department of Environmental Quality (NCDEQ) rules for inclusion in 40 CFR part 55 in this action to ensure that they are rationally related to the attainment or maintenance of Federal or State ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. *See* 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. *See* 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules [2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State ambient air quality standards.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's State implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of State or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. Public Comments and EPA Responses

EPA did not receive any comments on the December 12, 2023, NPRM.

III. Final Action

EPA is taking final action to incorporate applicable provisions of the North Carolina Administrative Code (NCAC) into EPA's OCS regulations at 40 CFR part 55. The North Carolina rules that EPA is taking final action to incorporate are applicable provisions of 15A NCAC Subchapter 02D—Air Pollution Control Requirements and Subchapter 02Q—Air Quality Permits Procedures, as amended through November 8, 2023. The rules that EPA is incorporating are set out more fully below.

IV. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, and as discussed in Sections I and III of this preamble, EPA is finalizing the incorporation by reference of ''State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources,'' dated November 8, 2023, which provides the text of the NCDEQ air rules in effect as of November 8, 2023, that would apply to OCS sources. EPA has made, and will continue to make, these materials available through *www.regulations.gov* and at the EPA Region 4 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. See 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this action:

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

Additionally, Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or Indigenous peoples) and low-income populations.

EPA believes that this specific action does not concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially disproportionate and adverse effects on people of color, low-income populations and/or Indigenous peoples. This action simply fulfills EPA's statutory mandate to ensure regulatory consistency between the COA and inner OCS consistent with the Stated objectives of CAA section 328(a)(1). Specifically, section 328(a)(1) requires EPA to establish requirements to control air pollution from OCS sources ''to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of [title I of the CAA]'' and, for inner OCS sources (located within 25 miles of the seaward boundary of such States), to establish requirements that are ''the same as would be applicable if the source were located in the COA.'' This section of the Act also States that ''the Administrator shall update such requirements as necessary to maintain consistency with onshore regulations and this chapter.'' As noted in the preamble, compliance with this requirement limits EPA's discretion in

[2] Each COA which has been delegated the authority to implement and enforce part 55 will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce 40 CFR part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. See 40 CFR 55.14(c)(4).

deciding what will be incorporated into 40 CFR part 55.

The State regulations relevant to the OCS that are incorporated into the CFR went through North Carolina's public rulemaking process, including public notice and comment. This action incorporates into the CFR those State regulations, which are already effective onshore, to ensure regulatory consistency with the COA as mandated by CAA section 328(a)(1). This is a routine and ministerial consistency update that does not directly affect any human health or environmental conditions. In addition, EPA provided meaningful public involvement on this rule through the notice and comment process.

This rule to incorporate by reference sections of the NCAC into the CFR does not apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule incorporating by reference sections of the NCAC does not have Tribal implications and will not impose substantial direct costs on Tribal governments or preempt Tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).).

This action does not impose any new information collection burden under the Paperwork Reduction Act (PRA). See 44 U.S.C. 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060–0249.[3] This action does not impose a new information burden under PRA because this action only updates the State rules that are incorporated by reference into 40 CFR part 55, Appendix A.

List of Subjects in 40 CFR Part 55

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

Dated: March 25, 2024.

Jeaneanne Gettle,

Acting Regional Administrator, Region 4.

Part 55 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(17)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(17) * * *

(i) * * *

(A) State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources, November 8, 2023.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''North Carolina'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

North Carolina

(a) * * *

(1) The following State of North Carolina rules are applicable to OCS sources, as contained in *State of North Carolina Air Pollution Control Requirements Applicable to OCS Sources,* dated November 8, 2023:

The following sections of subchapter 02D and 02Q:

15A NCAC Subchapter 02D—Air Pollution Control Requirements

Section .0100—Definitions and References

02D. 0101 Definitions (Effective 01/01/2018)
02D .0103 Copies of Referenced Federal Regulations (Effective 09/01/2023)
02D. 0104 Incorporation by reference (Effective 01/01/2018)
02D .0105 Mailing List (Effective 01/01/2018)

Section .0200—Air Pollution Sources

02D. 0201 Classification of air pollution sources (Effective 01/01/2018)
02D. 0202 Registration of air pollution sources (Effective 01/01/2018)

Section .0300—Air Pollution Emergencies

02D. 0301 Purpose (Effective 01/01/2018)
02D. 0302 Episode criteria (Effective 01/01/2018)
02D. 0303 Emission reduction plans (Effective 01/01/2018)
02D. 0304 Preplanned abatement program (Effective 01/01/2018)
02D. 0305 Emission reduction plan: Alert Level (Effective 01/01/2018)
02D. 0306 Emission reduction plan: Warning Level (Effective 01/01/2018)
02D. 0307 Emission reduction plan: Emergency Level (Effective 01/01/2018)

Section .0400—Ambient Air Quality Standards

02D. 0401 Purpose (Effective 01/01/2018)
02D. 0402 Sulfur oxides (Effective 01/01/2018)
02D. 0403 Total suspended particulates (Effective 11/01/2020)
02D. 0404 Carbon monoxide (Effective 01/01/2018)
02D. 0405 Ozone (Effective 01/01/2018)
02D. 0407 Nitrogen dioxide (Effective 01/01/2018)
02D. 0408 Lead (Effective 01/01/2018)
02D. 0409 PM10 particulate matter (Effective 01/01/2018)
02D. 0410 PM2.5 particulate matter (Effective 01/01/2018)

Section .0500—Emission Control Standards

02D. 0501 Compliance with emission control standards (Effective 09/01/2023)
02D. 0502 Purpose (Effective 11/01/2020)
02D. 0503 Particulates from fuel burning indirect heat exchangers (Effective 11/01/2023)
02D. 0504 Particulates from wood burning indirect heat exchangers (Effective 11/01/2020)
02D. 0506 Particulates from hot mix asphalt plants (Effective 11/01/2023)
02D. 0507 Particulates from chemical fertilizer manufacturing plants (Effective 11/01/2020)
02D. 0508 Particulates from pulp and paper mills (Effective 11/01/2020)
02D. 0509 Particulates from Mica or Feldspar processing plants (Effective 11/01/2020)
02D. 0510 Particulates from sand, gravel, or crushed stone operations (Effective 11/01/2020)

[3] OMB's approval of the information collection requirement (ICR) can be viewed at *www.reginfo.gov.*

02D. 0511 Particulates from lightweight aggregate processes (Effective 11/01/2020)
02D. 0512 Particulates from wood products finishing plants (Effective 11/01/2020)
02D. 0513 Particulates from portland cement plants (Effective 11/01/2020)
02D. 0514 Particulates from ferrous jobbing foundries (Effective 11/01/2020)
02D. 0515 Particulates from miscellaneous industrial processes (Effective 11/01/2020)
02D. 0516 Sulfur dioxide emissions from combustion sources (Effective 6/1/2023)
02D. 0517 Emissions from plants producing sulfuric acid (Effective 11/01/2020)
02D. 0519 Control of nitrogen dioxide and nitrogen oxides emissions (Effective 11/01/2020)
02D. 0521 Control of visible emissions (Effective 11/01/2020)
02D. 0524 New Source Performance Standards (Effective 11/01/2020)
02D. 0527 Emissions from spodumene ore roasting (Effective 11/01/2020)
02D. 0528 Total reduced sulfur from kraft pulp mills (Effective 11/01/2020)
02D. 0529 Fluoride emissions from primary aluminum reduction plants (Effective 11/01/2020)
02D. 0530 Prevention of significant deterioration (Effective 10/01/2020)
02D. 0531 Sources in nonattainment areas (Effective 11/01/2020)
02D. 0532 Sources contributing to an ambient violation (Effective (11/01/2023)
02D. 0533 Stack height (Effective 11/01/2020)
02D. 0534 Fluoride emissions from phosphate fertilizer industry (Effective 11/01/2020)
02D. 0535 Excess emissions reporting and malfunctions (Effective 11/01/2020)
02D. 0537 Control of mercury emissions (Effective 11/01/2020)
02D. 0538 Control of ethylene oxide emissions (Effective 11/01/2020)
02D. 0539 Odor control of feed ingredient manufacturing plants (Effective 11/01/2020)
02D. 0540 Particulates from fugitive dust emission sources (Effective 09/01/2019)
02D. 0541 Control of emissions from abrasive blasting (Effective 11/01/2020)
02D. 0542 Control of particulate emissions from cotton ginning operations (Effective 11/01/2020)
02D. 0543 Best Available Retrofit Technology (Effective 11/01/2020)
02D. 0544 Prevention of Significant Deterioration Requirements for Greenhouse Gases (Effective 11/01/2020)
02D. 0546 Control of Emissions from Log Fumigation Operations (Effective 09/01/2023)

Section .0600—Monitoring: Recordkeeping: Reporting

02D. 0601 Purpose and scope (Effective 11/01/2019)
02D. 0602 Definitions (Effective 11/01/2019)
02D. 0604 Exceptions to monitoring and reporting requirements (Effective 11/01/2019)
02D. 0605 General recordkeeping and reporting requirements (Effective 09/01/2023)
02D. 0606 Sources covered by appendix P of 40 CFR part 51 (Effective 11/01/2019)
02D. 0607 Large wood and wood-fossil fuel combination units (Effective 11/01/2019)
02D. 0608 Other large coal or residual oil burners (Effective 10/01/2022)
02D. 0610 Federal monitoring requirements (Effective 11/01/2019)
02D. 0611 Monitoring emissions from other sources (Effective 11/01/2019)
02D. 0612 Alternative monitoring and reporting procedures (Effective 11/01/2019)
02D. 0613 Quality assurance program (Effective 11/01/2019)
02D. 0614 Compliance assurance monitoring (Effective 11/01/2023)

Section .0900—Volatile Organic Compounds

02D. 0901 Definitions (Effective 11/01/2020)
02D. 0902 Applicability (Effective 11/01/2020)
02D. 0903 Recordkeeping: reporting: monitoring (Effective 11/01/2020)
02D. 0906 Circumvention (Effective 11/01/2020)
02D. 0909 Compliance schedules for sources in ozone nonattainment and maintenance areas (Effective 11/01/2020)
02D. 0912 General provisions on test methods and procedures (Effective 11/01/2020)
02D. 0918 Can coating (Effective 11/01/2023)
02D. 0919 Coil coating (Effective 11/01/2020)
02D. 0922 Metal furniture coatings (Effective 11/01/2020)
02D. 0923 Surface coating of large appliances (Effective 11/01/2020)
02D. 0924 Magnet wire coating (Effective 11/01/2020)
02D. 0925 Petroleum liquid storage in fixed roof tanks (Effective 11/01/2020)
02D. 0926 Bulk gasoline plants (Effective 11/01/2023)
02D. 0927 Bulk gasoline terminals (Effective 11/01/2023)
02D. 0928 Gasoline service stations stage I (Effective 11/01/2023)
02D. 0930 Solvent metal cleaning (Effective 11/01/2020)
02D. 0931 Cutback asphalt (Effective 11/01/2020)
02D. 0932 Gasoline cargo tanks and vapor collection systems (Effective 11/01/2023)
02D. 0933 Petroleum liquid storage in external floating roof tanks (Effective 11/01/2020)
02D. 0935 Factory surface coating of flat wood paneling (Effective 11/01/2020)
02D. 0937 Manufacture of pneumatic rubber tires (Effective 11/01/2020)
02D. 0943 Synthetic organic chemical and polymer manufacturing (Effective 10/01/2022)
02D. 0944 Manufacture of polyethylene: polypropylene and polystyrene (Effective 10/01/2020)
02D. 0945 Petroleum dry cleaning (Effective 10/01/2020)
02D. 0947 Manufacture of synthesized pharmaceutical products (Effective 11/01/2020)
02D. 0948 VOC emissions from transfer operations (Effective 11/01/2020)
02D. 0949 Storage of miscellaneous volatile organic compounds (Effective 10/1/2022)
02D. 0951 RACT for sources of volatile organic compounds (Effective 11/01/2020)
02D. 0952 Petition for alternative controls for RACT (Effective 11/01/2020)
02D. 0955 Thread bonding manufacturing (Effective 11/01/2020)
02D. 0956 Glass Christmas ornament manufacturing (Effective 11/01/2020)
02D. 0957 Commercial bakeries (Effective 11/01/2020)
02D. 0958 Work practices for sources of volatile organic compounds (Effective 11/01/2020)
02D. 0959 Petition for superior alternative controls (Effective 11/01/2020)
02D. 0960 Cargo Tank Leak Tester Report (Effective 11/01/2023)
02D. 0961 Offset Lithographic Printing and Letterpress Printing (Effective 11/01/2023)
02D. 0962 Industrial Cleaning Solvents (Effective 11/01/2020)
02D. 0963 Fiberglass Boat Manufacturing Materials (Effective 11/01/2020)
02D. 0964 Miscellaneous Industrial Adhesives (Effective 11/01/2023)
02D. 0965 Flexible Package Printing (Effective 11/01/2020)
02D. 0966 Paper, Film and Foil Coatings (Effective 11/01/2020)
02D. 0967 Miscellaneous Metal and Plastic Parts Coatings (Effective 11/01/2020)
02D. 0968 Automobile and Light Duty Truck Assembly Coatings (Effective 11/01/2020)

Section .1000—Motor Vehicle Emission Control Standard

02D. 1001 Purpose (Effective 07/01/2018)
02D. 1002 Applicability (Effective 07/01/2018)
02D. 1003 Definitions (Effective 07/01/2018)
02D. 1005 On-Board Diagnostic Standards (Effective 07/01/2018)
02D. 1006 Sale and Service of Analyzers (Effective 07/01/2018)
02D. 1008 Heavy Duty Diesel Engine Requirements (Effective 07/01/2018)

Section .1100—Control of Toxic Air Pollutants

02D. 1101 Purpose (Effective 07/01/2018)
02D. 1102 Applicability (Effective 07/01/2018)
02D. 1103 Definition (Effective 07/01/2018)
02D. 1104 Toxic air pollutant guidelines (Effective 07/01/2018)
02D. 1105 Facility reporting, recordkeeping (Effective 07/01/2018)
02D. 1106 Determination of ambient air concentration (Effective 07/01/2018)
02D. 1107 Multiple facilities (Effective 07/01/2018)
02D. 1108 Multiple pollutants (Effective 07/01/2018)
02D. 1109 112(j) case-by-case maximum achievable control technology (Effective 07/01/2018)
02D. 1110 National Emission Standards for Hazardous Air Pollutants (Effective 07/01/2018)
02D. 1111 Maximum Achievable Control Technology (Effective 07/01/2018)

02D. 1112 112(g) case by case maximum achievable control technology (Effective 07/01/2018)

Section .1200—Control of Emissions From Incinerators

02D. 1201 Purpose and scope (Effective 07/01/2018)
02D. 1202 Definitions (Effective 07/01/2018)
02D. 1204 Sewage sludge and sludge incinerators (Effective 12/01/2021)
02D. 1206 Hospital, medical, and infectious waste incinerators (Effective 07/01/2018)
02D. 1208 Other incinerators (Effective 07/01/2018)
02D. 1210 Commercial and industrial solid waste incineration units (Effective 07/01/2018)

Section .1400—Nitrogen Oxides

02D. 1401 Definitions (Effective 05/01/2022)
02D. 1402 Applicability (Effective 05/01/2022)
02D. 1403 Compliance schedules (Effective 11/01/2023)
02D. 1404 Recordkeeping: Reporting: Monitoring: (Effective 10/01/2020)
02D. 1405 Circumvention (Effective 10/01/2020)
02D. 1407 Boilers and indirect-fired process heaters (Effective 10/01/2020)
02D. 1408 Stationary combustion turbines (Effective 10/01/2020)
02D. 1409 Stationary internal combustion engines (Effective 10/01/2020)
02D. 1410 Emissions averaging (Effective 10/01/2020)
02D. 1411 Seasonal fuel switching (Effective 10/01/2020)
02D. 1412 Petition for alternative limitations (Effective 10/01/2020)
02D. 1413 Sources not otherwise listed in this section (Effective 10/01/2020)
02D. 1414 Tune-up requirements (Effective 10/01/2020)
02D. 1415 Test methods and procedures (Effective 10/01/2020)
02D. 1418 New electric generating units, large boilers, and large I/C engines (Effective 10/01/2022)
02D. 1423 Large Internal Combustion Engines (Effective 10/01/2020)
02D. 1424 Large Non-Electric Generating Units (Effective 05/01/2022)
02D. 1425 NO_X SIP Call Budget (Effective 05/01/2022)

Section .1900—Open Burning

02D. 1901 Open burning: Purpose: Scope (Effective 09/01/2019)
02D. 1902 Definitions (Effective 09/01/2019)
02D. 1903 Open burning without an air quality permit (Effective 09/01/2023)
02D. 1904 Air curtain incinerators (Effective 09/01/2023)
02D. 1905 Regional office locations (Effective 9/01/2023)
02D. 1906 Delegation to county governments (Effective 09/01/2019)
02D. 1907 Multiple violations arising from a single episode (Effective 09/01/2019)

Section .2000—Transportation Conformity

02D. 2001 Purpose, scope, and applicability (Effective 01/01/2018)
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[FR Doc. 2024–06607 Filed 3–28–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 240227–0061; RTID 0648–XD691]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 50 Feet Length Overall Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 50 feet (15.2 meters (m)) length overall using hook-and-line (HAL) gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2024 total allowable catch (TAC) apportioned to catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), March 26, 2024, through 1200 hours, A.l.t., June 10, 2024.

FOR FURTHER INFORMATION CONTACT: Abby Jahn, 907–586–7416.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2024 Pacific cod TAC apportioned to catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA is 1,410

metric tons (mt) as established by the final 2024 and 2025 harvest specifications for groundfish in the GOA (89 FR 15484, March 4, 2024).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2024 Pacific cod TAC apportioned to catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,260 mt and is setting aside the remaining 150 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA.

While this closure is effective the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels less than 50 feet (15.2 m) length overall using HAL gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 25, 2024.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

Dated: March 26, 2024.

Everett Wayne Baxter,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–06738 Filed 3–26–24; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 62
Friday, March 29, 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 AGRICULTURE

Rural Housing Service

7 CFR Parts 1910, 1955, and 3560

[Docket No. RHS–24–MFH–0003]

RIN 0575–AD30

Multifamily Housing Program Update to the Credit Report Process

AGENCY: Rural Housing Service, U.S. Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: The Rural Housing Service (RHS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is proposing to update its regulations on how credit reports are obtained for the purposes of determining eligibility and feasibility for Multifamily Housing (MFH) Programs.

DATES: Comments on the proposed rule must be received by May 28, 2024.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for dockets and documents on agency actions,'' enter the following docket number: ''RHS–24–MFH–0003'' or Regulation Identifier Number (RIN): ''0575–AD30,'' then click search. To submit or view public comments, select the following document title: ''Updates to Credit Report Process'' from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

Other Information: Additional information about RD and its programs is available on the internet at *https://www.rd.usda.gov.*

All comments will be available for public inspection online at the Federal eRulemaking Portal (*http://www.regulations.gov*).

In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found by going to *http://www.regulations.gov* and in the ''Search for dockets and documents on agency actions'' box, enter the following docket number: RHS–24–MFH–0003.

FOR FURTHER INFORMATION CONTACT: Abby Boggs, Branch Chief, Program Support Branch, Production and Preservation Division, Multifamily Housing, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, telephone: (615) 490–1371 or email: *Abby.Boggs@usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The RHS, an agency of the USDA, 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, and housing for farm laborers. RHS also provides technical assistance loans and grants in partnership with nonprofit organizations, Indian Tribes, State and Federal Government agencies, and local communities.

Title V of the Housing Act of 1949 (Act) authorized the USDA to make housing loans to farmers to enable them to provide habitable dwellings for themselves or their tenants, lessees, sharecroppers, and laborers. The USDA then expanded opportunities in rural areas, making housing loans and grants to rural residents through the Single-Family Housing (SFH) and Multifamily Housing (MFH) Programs.

The RHS operates the Direct MFH Loan and Grant Programs. The direct loan program provides loans to eligible borrowers unable to get financing through traditional lenders. Multifamily direct loans feature terms and conditions that support the development or preservation of affordable rural rental housing for low-income, elderly, or disabled people. Loan funds can be used for all construction hard costs and land-related costs, including land acquisition and development.

II. Discussion of Proposed Rule

RHS regulation 7 CFR 3560.56(d)(5) provides that for initial loan applications, eligibility and feasibility of a housing proposal will be determined based on, amongst other requirements, an analysis of current credit reports. Currently, the agency collects a credit report fee from applicants during the application process and agency staff obtain the required credit report through a contract with a credit reporting agency. RHS has relied on various internal guidance documents to staff to provide information on this credit report process. By not having the credit report process clearly codified, the Agency makes the process unnecessarily complicated for the applicant and Agency staff. When the Multifamily Housing Program realigned all staff members to the National Office level, applicants were required to submit the credit report fee electronically to the Agency's Business Center Servicing Office using a payment link. The process for creating the payment link is cumbersome. Agency staff must determine and notify the applicant of the credit report fee applicable for the applicant's particular request. Agency staff will request the Servicing Office to create a staged payment link for the fee through a SharePoint portal. Once the payment link is created, the Servicing Office notifies the requesting Agency staff and provides the payment link. Agency staff, in turn, notifies the applicant of the payment link and the applicant must process the payment before the link expires in 30 days. After the applicant's payment processes successfully, the Agency orders the credit report from a contracted bureau.

The agency is proposing to change the process by which credit reports are obtained to determine credit worthiness, eligibility, and feasibility for applicants and borrowers for MFH funding, transfers, and servicing actions. In lieu of the applicant submitting the fee, the Agency will require the applicant to provide the credit report(s).

It is the Agency's expectation that this regulation update for obtaining

borrower credit reports will align the Agency with current industry practices and create an efficiency for applicants and borrowers by streamlining the application process.

Request for Comment

Stakeholder input is vital to ensure the proposed changes in the proposed rule would support the Agency's mission, while ensuring that new regulations and policies are reasonable and do not overly burden the Agency's lenders and their customers. Comments must be submitted by May 28, 2024 and may be submitted electronically by going to the Federal eRulemaking Portal: *https://www.regulations.gov.* Details on how to submit comments to the Federal eRulemaking Portal are in the **ADDRESSES** section of this proposed rule.

III. Summary of Changes

The Agency proposes to revise 7 CFR part 3560 by:

(1) Adding the definition of *Current Comprehensive Credit Report* to § 3560.11;

(2) Updating § 3560.56(d)(5) to include the requirements of a valid credit report which must address both the entity and the actual individual principals, partners, members, etc., within the applicant entity, including any subentities who are responsible for controlling the ownership and operations of the entity;

(3) Updating § 3560.405 to include the requirement for a credit report in cases of change to the borrower's organization structure or entity's controlling interest;

(4) Updating § 3560.406 to include the requirement for a credit report for approval of transfers and sales; and

(5) Establishing a new subpart R to provide detailed requirements of the credit reporting process.

In addition, this proposed rule intends to include conforming changes to rescind 7 CFR part 1910 subparts B and C; and update 7 CFR 1955.118 which is outdated.

IV. Regulatory Information

Statutory Authority

The Direct Multifamily Housing Loan and Grant program is authorized under sections 514, 515, and 516 of title V of the Housing Act of 1949, as amended, 42 U.S.C. 1471 *et seq.,* and implemented under 7 CFR part 3560. Section 510(k) of Title V of the Housing Act of 1949 (42 U.S.C. 1480(k)), as amended, authorizes the Secretary of Agriculture to promulgate rules and regulations as deemed necessary to carry out the purpose of that title.

Executive Order 12372, Intergovernmental Review of Federal Programs

These loans and grants are subject to the provisions of Executive Order 12372, which requires 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 Multifamily 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 its website *https://www.whitehouse.gov/omb/management/office-federal-financial-management.* For those States that have a home page for their designated SPCO, 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 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 proposed rule has been determined to be nonsignificant and, therefore, was not reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988. In accordance with this rulemaking: (1) Unless otherwise specifically provided, all State and local laws that conflict with this rulemaking will be preempted; (2) no retroactive effect will be given to this rulemaking 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 suing in court that challenges action taken under this rulemaking.

Executive Order 13132, Federalism

The policies contained in this proposed rule do not have any substantial direct effect on 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 proposed rule does not impose substantial direct compliance costs on State and local Governments; therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on RHS in the development of regulatory policies that have tribal implications or preempt tribal laws. RHS has determined that the proposed rule does not have a substantial direct effect on one or more Indian Tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian Tribes. Thus, this proposed rule is not subject to the requirements of Executive Order 13175. If tribal leaders are interested in consulting with RHS on this rule, they are encouraged to contact USDA's Office of Tribal Relations or RD's Tribal Coordinator at: *AIAN@usda.gov* to request such a consultation.

National Environmental Policy Act

This document has been reviewed in accordance with 7 CFR part 1970, subpart A, ''Environmental Policies.'' RHS determined that this action does not constitute a major Federal action significantly affecting the quality of the environment. In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement (EIS) is not required.

Regulatory Flexibility Act

This proposed 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 proposed rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of

a small business than required of a large entity.

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, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This proposed 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 proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

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 proposed 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.

Civil Rights Impact Analysis

RD has reviewed this proposed rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the proposed rule might have on program participants on the basis of age, race, color, national origin, sex, or disability. After review and analysis of the proposed rule and available data, it has been determined that implementation of the rulemaking will not adversely or disproportionately impact very low, low- and moderate-income populations, minority populations, women, Indian Tribes, or persons with disability by virtue of their race, color, national origin, sex, age, disability, or marital or familial status. No major civil rights impact is likely to result from this proposed rule.

Assistance Listing

The programs 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.

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.

Program information may be made available 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 711 Federal Relay Service.

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

7 CFR Part 1910

Agriculture, Credit, Grant programs—agriculture, Grant programs—housing and community development, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1955

Agriculture, Drug traffic control, Government property, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Rural areas.

7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Conflicts 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 proposes to amend 7 CFR parts 1910, 1955, and 3560 as follows:

PART 1910—GENERAL

■ 1. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart B—[Removed and Reserved]

■ 2. Remove and reserve subpart B, consisting of §§ 1910.51 through 1910.100.

Subpart C—[Removed and Reserved]

■ 3. Remove and reserve subpart C, consisting of §§ 1910.101 through 1910.150.

PART 1955—PROPERTY MANAGEMENT

■ 4. The authority citations for part 1955 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart C—Disposal of Inventory Property

■ 5. Amend § 1955.118 by revising paragraphs (b)(2), (b)(6), (b)(8)(iii), and (b)(11) to read as follows:

§ 1955.118 Processing cash sales or MFH credit sales on nonprogram terms.

* * * * *

(b) * * *

(2) *Processing.* Purchasers requesting credit on NP terms will be required to submit documentation to establish financial stability, repayment ability, and creditworthiness. Standard forms used to process program applications may be utilized or comparable documentation may be accepted from the purchaser with the servicing official having the discretion to determine what information is required to support loan approval for the type of property involved. Individual credit reports will be ordered for each individual applicant and each principal within an applicant entity in accordance with subpart R of part 3560. Commercial credit reports will be ordered for profit corporations and partnerships, and organizations with a substantial interest in the applicant entity in accordance with subpart R of part 3560.

* * * * *

(6) *Term of note.* The note amount will be amortized over a period not to exceed 10 years. If the Leadership Designee determines more favorable terms are necessary to facilitate the sale, the note amount may be amortized using a 30-year factor with payment in full (balloon payment) due not later than 10 years from the date of closing. In no case will the term be longer than the period for which the property will serve as adequate security.

* * * * *

(8) * * *

(iii) The Agency will provide the closing agent with the necessary information for closing the sale. The assistance of OGC will be requested to provide closing instructions for all MFH sales.

* * * * *

(11) *Form RD 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts.''* The Agency must review Form RD 1910–11, ''Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts,'' with the applicant, and the form must be signed by the applicant.

* * * * *

PART 3560—DIRECT MULTIFAMILY HOUSING LOANS AND GRANTS

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

Authority: 42 U.S.C. 1480.

Subpart A—General Provisions and Definitions

■ 7. Amend § 3560.11 by adding the definition of *Comprehensive Credit Report* in alphabetical order.

§ 3560.11 Definitions.

* * * * *

Current Comprehensive Credit Report. A credit report no older than 6 months from the date of issuance, that contains details of both current open credit accounts and closed accounts, and that is provided by one of the three accredited major credit bureaus (Experian, Equifax, or TransUnion).

* * * * *

Subpart B—Direct Loan and Grant Origination

■ 8. Amend § 3560.56 by revising paragraph (d)(5) to read as follows:

§ 3560.56 Processing section 515 housing proposals.

* * * * *

(d) * * *

(5) An analysis of current credit reports in accordance with subpart R of this part.

* * * * *

Subpart I—Servicing

■ 9. Amend § 3560.405 by adding paragraph (b)(4) to read as follows:

§ 3560.405 Borrower organizational structure or ownership interest changes.

* * * * *

(b) * * *

(4) Borrowers must submit a credit report in accordance with subpart R of this part.

* * * * *

■ 10. Amend § 3560.406 by adding paragraph (c)(6) to read as follows:

§ 3560.406 MFH ownership transfers or sales.

* * * * *

(c) * * *

(6) A credit report in accordance with subpart R of this part.

* * * * *

Subpart Q—[Reserved]

■ 11. Add and reserve subpart Q, consisting of §§ 3560.801 through 3560.850.

■ 12. Add subpart R to read as follows:

Subpart R—Credit Report Requirements

Sec.
3560.851 General.
3560.852 Requirements.

§ 3560.851 General.

This subpart contains the Agency's credit reporting requirements for all Multifamily (MFH) programs.

§ 3560.852 Requirements.

When required to submit a credit report under any provision of this part, such submission must include a current comprehensive credit report for both the entity and the individual principals, partners, members, and the individual sub-entities or natural persons who are responsible for controlling the ownership and operations of the applicant entity, including but not limited to principals, partners, or members. The Agency will also accept combination comprehensive credit reports which provide a comprehensive view of the applicant's credit profile by combining data from all three major credit bureaus (Experian, Equifax, and TransUnion).

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–06596 Filed 3–28–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM22–17–000]

Petition for Rulemaking To Update Commission Regulations Regarding Allocation of Interstate Pipeline Capacity

AGENCY: Federal Energy Regulatory Commission.

ACTION: Petition for rulemaking.

SUMMARY: In this Petition for rulemaking, the Federal Energy Regulatory Commission (Commission) seeks additional information concerning the practices of interstate natural gas pipelines related to the packaging of non-contiguous and/or operationally unrelated segments of capacity in a

single auction or open season and the aggregation of bids across those segments to determine the highest value bid for the purpose of allocating capacity, as well as comment on whether the Commission should continue to allow such practices.

DATES: Comments are due June 27, 2024, and reply comments are due July 29, 2024.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

The Comment Procedures Section of this document contains more detailed filing procedures.

FOR FURTHER INFORMATION CONTACT:

Catherine Liow (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 202–502–6459

David Faerberg (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, 202–502–8275

SUPPLEMENTARY INFORMATION:

1. In this Petition for rulemaking, the Commission seeks information concerning the practices of interstate natural gas pipelines related to the packaging of non-contiguous and/or operationally unrelated segments of capacity in a single auction or open season and the aggregation of bids across those segments to determine the highest value bid for the purpose of awarding capacity, as well as comment on whether the Commission should continue to allow such practices. Specifically, the Commission seeks comment on: (1) additional information and data on interstate natural gas pipeline posting practices related to the packaging of non-contiguous and/or operationally unrelated segments of capacity in a single auction or open season; (2) relevant information that bears on whether the Commission should reconsider its policy; and (3) what regulatory, economic, or policy goals would or would not be achieved by modifying the current policy.

I. Background

2. Pursuant to the Commission's regulations, a pipeline must post available firm capacity on its website as it becomes available.[1] The pipeline may sell that capacity in several non-discriminatory ways, such as through a first-come, first-served or auction method. Prior to pipelines proposing tariff provisions detailing how they would evaluate bids for capacity, most pipelines simply allocated capacity on a first-come, first-served basis. Pursuant to this approach, ''[t]he first shipper to submit a request received the available capacity, even if the shipper requested service for only a few days or weeks while others sought transportation for longer periods.'' [2]

3. While some pipelines still use a first-come, first-served method, it is now more common for pipelines to use an auction method to award available capacity. Under this approach, and consistent with the terms of their tariffs, pipelines can conduct an open season announcing available capacity and stating criteria for an acceptable bid, the method for determining the best bid, and the bid closing date.[3] Pipelines evaluate capacity bids submitted during the open season timeframe on a net present value (NPV) basis, which is the discounted cash flow of incremental revenues that the pipeline receives that are based upon such factors as the price, term, and quantity of transportation service.

4. The Commission allows pipelines to include multiple segments (including non-contiguous and/or operationally unrelated segments) of capacity together in an open season for the purposes of accepting and aggregating bids to determine NPV and award the capacity to the highest bidder.[4] Bid values for each capacity segment cannot be greater than the maximum recourse rate for that segment. Moreover, shippers are not required to bid on all segments posted in the open season. However, a competing shipper willing to bid on multiple or all segments of the posting may generate a higher NPV and therefore become the winning bidder. For example, a shipper choosing to bid the maximum recourse rate on a single segment of desired capacity would generate an NPV based on the incremental revenues from the maximum recourse rate on the term of that segment, but a competing shipper willing to bid on multiple or all segments posted by the pipeline may generate a higher NPV.[5] The Commission has allowed the inclusion of non-contiguous and/or operationally unrelated segments in capacity postings because the practice allows the pipeline to sell more capacity than it otherwise would, potentially benefiting shippers in the long run. Specifically, the Commission has found that maximum revenues and increased use of pipeline capacity will increase billing determinants and thereby lower unit fixed costs in a pipeline's next rate case.[6]

5. The Commission, and subsequently the D.C. Circuit, have addressed issues concerning the competitive effects of the NPV evaluation in a narrower context and have maintained that capacity should be awarded to the bid with the highest valuation. This arose with respect to the length of the contract term in a proposal submitted by Tennessee Gas Pipeline Company (Tennessee). The court upheld the Commission's decision to accept Tennessee's proposed NPV evaluation method for awarding pipeline capacity, which included no cap on the term of the contract in the NPV evaluation. The pipeline argued that, under this approach, it would be able to ''award firm capacity to those shippers who value the capacity most—that is, since rates are capped, to those shippers offering the longest contracts.'' [7] The court stated, ''. . . as [the Commission] argues, the fact that shippers may at times bid up contract length likely reflects not an exercise of Tennessee's market power, but rather

[1] 18 CFR 284.13(d)(1).

[2] *Process Gas Consumers Grp.* v. *FERC,* 292 F.3d 831, 833 (D.C. Cir. 2002) (*Process Gas Consumers*).

[3] The Commission does not require pipelines to sell capacity solely through open seasons. So long as the pipeline posts all available firm capacity, it may sell that capacity on a first-come, first-served basis depending on the pipeline's tariff. *Tenn. Gas Pipeline Co.,* 119 FERC ¶ 61,126, at P 20 (2007) (citing *N. Nat. Gas Co.,* 110 FERC ¶ 61,361, at P 10 (2005)). The Commission has provided pipelines with some degree of flexibility in how they market their capacity to accomplish the goal of enabling those who value capacity the most to obtain it, because the Commission assumes that the pipeline will generally seek the highest possible rate from those to whom it sells capacity, since that is in the pipeline's economic interest. *See, e.g., ANR Pipeline Co.,* 116 FERC ¶ 61,201, at P 9 (2006).

[4] *N. Border Pipeline,* 164 FERC ¶ 61,150 (2018) (*Northern Border*); *Transcon. Gas Pipe Line Co., LLC,* 172 FERC ¶ 61,258 (2020) (*Transco*).

[5] *Northern Border,* 164 FERC ¶ 61,150 at P 23, *Transco,* 172 FERC ¶ 61,258 at P 15.

[6] *Northern Border,* 164 FERC ¶ 61,150 at P 24.

[7] *Process Gas Consumers,* 292 F.3d at 833.

competition for scarce capacity.'' [8] The court supported the Commission's conclusion that ''an uncapped bidding process maximizes market efficiency by identifying which shipper is willing to pay the most—in terms of contract length—to obtain such capacity.'' [9]

II. Petition

6. On June 22, 2022, in Docket No. RM22–17–000, American Gas Association (AGA), American Public Gas Association (APGA), Process Gas Consumers Group (PGC), and Natural Gas Supply Association (NGSA) (collectively, Petitioners) filed a petition requesting that the Commission initiate a rulemaking to consider precluding interstate natural gas pipelines from aggregating bids on non-contiguous and/or operationally unrelated capacity segments to determine the highest value bid for the purpose of allocating capacity (Petition).

7. Petitioners assert that the interstate natural gas pipeline practice of packaging high market value capacity with non-contiguous and/or operationally unrelated parcels of capacity that Petitioners consider to be unwanted capacity with little or no market value is becoming increasingly commonplace in the market. Petitioners submit that this practice results in unjust and unreasonable rates, distorts market pricing, removes the incentive for pipelines to build more capacity where needed, and constitutes illegal tying. Petitioners further contend that this practice effectively denies many shippers access to needed capacity and, as a practical matter, results in undue discrimination against industrial gas consumers, municipal gas systems, and local distribution utilities. They also allege that this practice results in higher prices for the ultimate gas consumers. Petitioners state that the Commission has only previously considered this issue within the narrow context of tariff filings by individual pipelines and not on a generic basis. Petitioners request that the Commission initiate a rulemaking to consider new regulations that would prevent interstate natural gas pipelines from continuing the practice of: (1) packaging non-contiguous and/or operationally unrelated segments of capacity in auctions; and (2) awarding capacity based on an NPV basis that includes the aggregate bids.

8. Notice of the Petition was issued on June 15, 2022. Interventions, protests, and comments were due on or before July 18, 2022. The notice did not provide for reply comments. Supporting comments were filed by seven entities.[10] Comments in opposition or protests were filed by five entities.[11]

III. Commission Staff Informal Survey

9. In 2019, in response to outreach from stakeholders concerned about bid aggregation for non-contiguous capacity postings,[12] Commission staff (Staff) surveyed short-term capacity postings publicly available on 50 pipelines' Electronic Bulletin Boards (EBB).[13] Staff identified a total of 98 firm capacity auction postings.[14] Staff performed a similar informal survey in August 2023, reviewing publicly available capacity postings from most of the same pipelines but with some substitutions. Staff identified a total of 85 firm capacity auction postings.[15] In its review, Staff focused on determining the frequency with which the pipelines offered non-contiguous paths available for bidding because such postings could reflect the practices opposed by the Petitioners. For the surveyed periods in 2019 and 2023, Staff identified 11 examples and 7 examples, respectively, of postings for non-contiguous paths for which the rules of the pipeline's NPV analysis stated that parties could increase the NPV of bids by bidding on additional segments of capacity. However, Staff could not determine whether any of these examples reflect the packaging of high-value capacity with low-value capacity criticized by the Petitioners because Staff did not analyze the market value of any paths.

IV. Request for Comments

10. As part of ensuring that the Commission continues to meet its statutory obligations, the Commission, on occasion, engages in public inquiry to gauge whether there is a need to add to, modify, or eliminate certain policies or regulatory requirements. Following our review of the Petition and of Staff's 2019 and 2023 surveys, we are issuing this NOI to examine the practices of interstate natural gas pipelines related to the packaging of non-contiguous and/or operationally unrelated segments of capacity in a single auction or open season and the aggregation of bids across those segments to determine the highest value bid for the purpose of awarding capacity, as well as whether the Commission should continue to allow such practices. We invite comments from interested persons on what, if any, policy changes the Commission should implement, as well as the potential impacts of any such policy changes.

11. We invite interested persons to submit comments and reply comments on any or all of the questions listed below. Commenters need not respond to all of the questions.

A. Frequency of the Inclusion of Aggregated Non-Contiguous Segments in Capacity Postings

A1. In the Docket No. RM22–17–000 Petition for Rulemaking, Petitioners provided 15 examples of what they describe as ''junk and jewel'' postings from 2018 through 2022. If available, please provide the Commission with any more recent examples of postings pairing desirable, high-value capacity with unwanted, low-value capacity. Explain, with supporting data if possible, whether there has been a change in frequency of such postings since the filing of the Petition. Is the publicly available information on pipelines' EBBs sufficient to identify the frequency with which pipelines offer non-contiguous and/or operationally unrelated paths for aggregated bidding?

A2. Please comment on the frequency with which shippers who were allowed to bid on multiple segments of capacity

[8] *Id.* at 837 (noting that, even under an NPV allocation method, the Commission regulates the rates pipelines may charge and requires them to sell available capacity at those rates, such that there is neither the legal ability to withhold existing capacity nor an incentive to refuse to build new capacity).

[9] *Id.* at 838.

[10] 1.5C, LLC, bp Energy Company, Interstate Power and Light Company, Continental Resources, Inc., and the Indicated Shippers (Ascent Resources-Utica, LLC, Chesapeake Energy Marketing, L.L.C., ConocoPhillips Company, Continental Resources, Inc., and XTO Energy Inc.). Sabine Pass Liquefaction, LLC and the National Association of Regulatory Utility Commissioners also filed late comments in support of the Petition.

[11] Interstate Natural Gas Association of America (INGAA), Transcontinental Gas Pipe Line Company, LLC (Transco), Northern Natural Gas Company (Northern Natural), Kinder Morgan, Inc. (Kinder Morgan), and ANR Pipeline Company and Northern Border Pipeline Company (jointly) (ANR and Northern Border).

[12] According to comments filed by Indicated Shippers in the RM22–17–000 Petition for Rulemaking, high market value capacity can be considered ''jewel'' and capacity with little or no market or operational value can be considered ''junk.'' As argued in the Petition, Indicated Shippers assert that interstate natural gas pipelines can use ''jewel'' capacity to extract additional revenues for the ''junk'' capacity from those placing bids on the combined packages of ''junk'' and ''jewel'' capacity, distorting the value of the packages and resulting in higher prices for natural gas consumers. Indicated Shippers Comments at 2–3. We use the phrase ''junk and jewel'' to refer to this scenario throughout the document.

[13] We note that pipelines are only required to publicly provide informational postings on their EBBs for 90 days. 18 CFR 284.13(b). After the 90 days, pipelines are required to archive this information for a period of three years. 18 CFR 284.12(a)(3)(v).

[14] In conducting its survey, Staff did not examine postings related to new expansions, right-of-first-refusal, receipt point shifts, and reserving capacity.

[15] As noted above, in conducting its survey, Staff did not examine postings related to new expansions, right-of-first-refusal, receipt point shifts, and reserving capacity.

were awarded capacity in the auction despite bidding on only a portion of the posted capacity.

A3. It appears that the examples of ''junk and jewel'' scenarios provided by the Petition only include short-term (less than one year) capacity auctions. Please provide information that might explain why these scenarios are mostly occurring with short-term capacity auctions. If available, please provide specific examples of postings for long-term (equal to or greater than one year) capacity that use bid aggregation with non-contiguous and/or operationally unrelated segments of capacity.

A4. Please provide information on how and why non-contiguous and/or operationally unrelated segments are chosen to package together in the same open season. Comment as to what extent capacity that Petitioners label as ''junk'' is still required to serve certain markets.

A5. Please explain if there are any seasonal trends for available capacity postings, particularly for any non-contiguous paths that appear together in postings. What are the times of year at which these situations occur for short-term, seasonal, and long-term capacity? What, if any, market conditions (time of year, pipeline-specific business practices, market scenarios, etc.) elevate the potential for pipelines to post capacity with bid aggregation for non-contiguous and/or operationally unrelated capacity postings?

B. Impacts of Bid Aggregation on Pipeline Rates

B1. Please explain whether and how shippers do or do not receive the benefit of a rate reduction related to capacity awards of short-term capacity in rate cases (*i.e.,* including billing determinants and revenues in the test period, along with selection of the test period itself). Provide examples from specific rate cases if possible. Include information about distance-based allocation and zoned billing determinants.

B2. Petitioners claim that current Commission policy allows for pipelines to collect revenue from shippers above the Commission-approved maximum tariff rates by packaging high-value segments with non-contiguous and/or operationally unrelated low-value segments. Please explain in more detail. If this practice is effectively allowing pipelines to collect over the maximum tariff rate, then please provide other methods for awarding capacity desired by multiple customers.

C. Customers and Operational Need

C1. Petitioners argue that LDCs, municipal gas systems, and industrial customers have an operational need for segments of capacity to serve LDC load or a power plant or manufacturing facility but, due to various constraints, cannot justify bidding on other segments of the ''effectively tied'' capacity that they do not need for their customers. Given the short-term nature of the example contracts cited by Petitioners, please describe how these short-term contracts would help meet long-term load growth and please explain alternative solutions employed by these entities to meet their load growth and/or long-term supply needs.

C2. Please explain or provide specific examples of how certain shippers such as LDCs and municipal gas systems might not have the creditworthiness to bid on multiple unrelated paths to increase their chance of winning valuable capacity or how they might be subject to a prudence review from state regulators for bidding on non-contiguous and/or operationally unrelated capacity packages.

C3. Please explain to what extent industrial customers are prohibited from bidding on non-contiguous and/or operationally unrelated capacity packages.

D. Potential Policy Changes

D1. Please comment on whether the Commission should change its current policy, which allows bid aggregation on non-contiguous segments so long as shippers are not required to bid on undesired segments of capacity. Explain any issues that the Commission should consider when determining whether to make this policy change. What policy and/or regulation changes should the Commission implement if it determines that it should no longer allow interstate natural gas pipelines to package non-contiguous and/or operationally unrelated segments of capacity in an open season? Explain any additional issues that the Commission should consider if it were to make this policy change (*e.g.,* how should the Commission determine whether segments of capacity are non-contiguous and/or operationally unrelated, etc.). Additionally, please provide any potential alternative policy change and explain how it would be implemented.

D2. Explain how a policy change might affect short-term capacity auctions and how it would affect shippers (*e.g.,* LDCs, marketers, producers, etc.) and interstate natural gas pipelines. Explain any interactions between this policy and the Commission's negotiated rate policy.[16]

[16] *Nat. Gas Pipelines Negotiated Rate Policies & Pracs.; Modification of Negotiated Rate Pol'y,* 104 FERC ¶ 61,134 (2003), *order on reh'g and clarification,* 114 FERC ¶ 61,042, *reh'g dismissed and clarification denied,* 114 FERC ¶ 61,304 (2006).

V. Comment Procedures

12. The Commission invites interested persons to submit comments and reply comments on the matters and issues addressed in this document, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due June 27, 2024 and reply comments are due July 29, 2024. Comments must refer to Docket No RM22–17–000 and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

13. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word-processing formats. Documents created electronically using word-processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

14. Commenters that are not able to file comments electronically may file an original of their comment by USPS mail or by courier or other delivery services. For submissions sent via USPS only, filings should be mailed to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE, Washington, DC 20426. Submission of filings other than by USPS should be delivered to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

VI. Document Availability

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

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

17. User assistance is available for eLibrary and the Commission's website during normal business hours. For assistance, please contact the Commission's Online Support at 202–

502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659 or email at *public.referenceroom@ferc.gov.*

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

By direction of the Commission.

Issued: March 21, 2024.

Debbie-Anne Reese,

Acting Secretary.

[FR Doc. 2024–06562 Filed 3–28–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–123376–22]

RIN 1545–BQ74

Disclosures of Return Information Reflected on Returns to Officers and Employees of the Department of Commerce, Including the Bureau of the Census, for Certain Statistical Purposes and Related Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the disclosure of specified return information to the Bureau of the Census (Bureau). The proposed amendments would ensure the efficient and appropriate transfer of return information to the Bureau and would permit the disclosure of additional return information pursuant to a request from the Secretary of Commerce. These proposed regulations would require no action by taxpayers and would have no effect on their tax liabilities.

DATES: Electronic or written comments and request for a public hearing must be received by April 29, 2024.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–123376–22) 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 for public availability any comments submitted electronically or on paper to the IRS's public docket. Send paper submissions to CC:PA:01:PR (REG–123376–22), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Elizabeth Erickson of the Office of the Associate Chief Counsel (Procedure and Administration), at (202) 317–6834; concerning submissions of comments and requests for a public 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 amendments to the Procedure and Administration Regulations, 26 CFR part 301, relating to section 6103(j)(1)(A) of the Internal Revenue Code (Code). Section 6103(j)(1)(A) of the Code authorizes the Secretary of the Treasury or her delegate (Secretary) to furnish, upon written request by the Secretary of Commerce, such returns or return information as the Secretary may prescribe by regulation to officers and employees of the Bureau for the purpose of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

There is a long history of providing return information to the Bureau under section 6103(j)(1)(A), and the regulations promulgated under this section have been amended periodically to increase the amount of return information provided to facilitate the statistical activities of the Bureau. *See e.g.,* TD 9037, 68 FR 2693, January 21, 2003; TD 9188, 70 FR 12141, March 11, 2005; TD 9267, 71 FR 38263, July 6, 2006; TD 9372, 72 FR 73262, December 27, 2007; TD 9439, 73 FR 79361, December 29, 2008; TD 9500, 75 FR 52459, August 26, 2010; TD 9631, 78 FR 52857, August 27, 2013; TD 9754, 81 FR 9767, February 26, 2016; TD 9856, 84 FR 14011, April 9, 2019.

The existing regulations under section 6103(j)(1)(A) are set forth in 26 CFR 301.6103(j)(1)–1 (existing § 301.6103(j)(1)–1). They authorize the Bureau to receive return information that supports many different Bureau projects and programs, including the Economic Census, the Longitudinal Employer-Household Dynamics program, and the Small Area Income and Poverty Estimates program, among others.

Pursuant to section 6103(p)(4), the IRS sets stringent privacy and security requirements for agencies receiving return information, including the Bureau. These requirements are currently detailed in IRS Publication 1075, *Tax Information Security Guidelines For Federal, State and Local Agencies. See also,* § 301.6103(p)(4)–1.

Explanation of Provisions

By letter dated February 29, 2024, the Secretary of Commerce requested amendments to existing § 301.6103(j)(1)–1 to allow disclosure of additional items of return information to the Bureau to enable the Bureau to perform mission critical statistical functions. The Secretary of Commerce further stated that the additional items would allow the Bureau to conduct its economic, demographic, decennial, and research statistics programs, censuses, and related program evaluations. The amendments to the existing regulations would permit the Bureau to publish statistical information, enhance the use of administrative records, improve the quality of program estimates, and support the reduction of burden. The Secretary of Commerce's letter lists the additional items of return information requested based on the Bureau's specific need for each item of information.

The Secretary of Commerce asserted that good cause exists to amend existing § 301.6103(j)(1)–1 to add the requested items to the list of items of return information that may be disclosed to the Bureau. The Treasury Department and the IRS agree that amending existing § 301.6103(j)(1)–1 to permit disclosure of these items to the Bureau is appropriate to meet the needs of the Bureau.

Accordingly, the proposed regulations would amend the existing regulations to authorize disclosure of additional return information and reorganize the list of items that may be disclosed to the Bureau to allow the IRS more administrative flexibility when providing the authorized return information.

The proposed regulations would also permit the disclosure of return information if an item of return information currently listed in the regulations is subsequently reported in a substantially similar format or on a substantially similar document. Complications can occur when a data element in the regulations is described as located on a particular document and that document is later updated or superseded. For example, the regulations under section 6103(j) allow

the Bureau to have access to data pertaining to pensions and annuities for individual taxpayers, but not individual retirement arrangements (IRAs). *See* existing § 301.6103(j)(1)–1(b)(1)(ix)(F). In 2018, the Form 1040, *U.S. Individual Tax Return,* combined the pension and annuity income line item with the IRA income line item. Because the IRS was only authorized to provide the Bureau with data pertaining to pensions and annuities, and not IRAs, the IRS could not provide the Bureau with the return information from the combined pension-annuities-IRA line item to the Bureau. Thus, for 2018, the Bureau was unable to receive return information pertaining to annuities and pensions. These proposed regulations would seek to address this type of discrepancy and other similar situations. The IRS seeks comments on how to address these types of situations to balance the need to properly disclose return information with the need to ensure only return information authorized by the regulations is transmitted to the Bureau.

The proposed regulations would further include amendments to existing § 301.6103(j)(1)–1(d) (proposed § 301.6103(j)(1)–1(d)) to require that all projects that use return information disclosed under these regulations be approved by the IRS Director of Statistics of Income, the Director's successor, or the Director's delegate. This includes both projects authorized under title 13, U.S.C., chapter 5 and projects under title 13, U.S.C., chapter 3. These amendments would formalize existing practice.

Finally, proposed § 301.6103(j)(1)–1(d) would include language related to the IRS's and the Bureau's disclosure review obligations. First, proposed § 301.6103(j)(1)–1(d)would permit the IRS to authorize the use of the Bureau's disclosure review processes prior to any public disclosure by the Bureau of a project using return information disclosed pursuant to these regulations so long as the Bureau's processes ensure that all releases meet or exceed all requirements set by the IRS for protecting the confidentiality of returns and return information. Second, proposed § 301.6103(j)(1)–1(d)would permit review by the IRS Statistics of Income Disclosure Review Board of any Bureau project that used return information disclosed under these regulations prior to disclosure of that information to the public. The IRS seeks comments on each of these proposed additions. These proposed amendments would also formalize existing practice.

Proposed Applicability Date

The amendments to existing § 301.6103(j)(1)–1 are proposed to apply to disclosures of return information under section 6103(j)(1)(A) made on or after [date of publication of final regulations in the **Federal Register**].

Special Analyses

I. Regulatory Planning and Review

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

II. Regulatory Flexibility Act

Because these proposed regulations would not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for 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 in 1995 dollars, updated annually for inflation. In 2023, that threshold was approximately $200 million. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

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

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations including, but not limited to: (1) the scope of permitted disclosures and taxpayer privacy concerns, if any; (2) the addition of ''substantially similar'' information or document language; (3) the approval requirements by the IRS Director of Statistics of Income; and (4) the use of the Bureau's review processes and review by the IRS Statistics of Income Disclosure Review Board prior to public disclosure of a Bureau project using information released under these proposed regulations.

Any electronic and paper comments submitted will be available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person that timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

Drafting Information

The principal author of these regulations is Elizabeth Erickson of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS also participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 301 as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

■ **Par 2.** Section 301.6103(j)(1)–1 is amended by adding a sentence to the end of paragraph (a) and revising paragraphs (b), (d), and (e) to read as follows:

§ 301.6103(j)(1)–1 Disclosures of return information reflected on returns to officers and employees of the Department of Commerce for certain statistical purposes and related activities.

(a) * * * To the extent a particular form, schedule, or other document filed with the Internal Revenue Service is referenced in this section, such information shall continue to be disclosable pursuant to this section even if subsequently reported in a substantially similar format or on a substantially similar document filed with the Internal Revenue Service.

(b) *Disclosure of return information reflected on returns to officers and employees of the Bureau of the Census.* (1) Officers or employees of the Internal Revenue Service will disclose the following return information reflected on returns to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, the structuring of censuses and national economic accounts and conducting related statistical activities authorized by law.

(i) With respect to returns filed by individual taxpayers:

(A) Taxpayer identity information (as defined in section 6103(b)(6) of the Internal Revenue Code (Code)), validity code with respect to the taxpayer identifying number (as described in section 6109 of the Code), and taxpayer identity information of spouse and dependents, if reported.

(B) Filing status.

(C) Number and classification of reported exemptions.

(D) Wage and salary income.

(E) Dividend income.

(F) Interest income.

(G) Gross rent and royalty income.

(H) Total of—

(*1*) Wages, salaries, tips, etc.;

(*2*) Interest income;

(*3*) Dividend income;

(*4*) Alimony received;

(*5*) Business income;

(*6*) Pensions and annuities;

(*7*) Income from rents, royalties, partnerships, estates, trusts, etc.;

(*8*) Farm income;

(*9*) Unemployment compensation; and

(*10*) Total Social Security benefits.

(I) Adjusted gross income.

(J) Type of tax return filed.

(K) Entity code.

(L) Code indicators for Form 1040, Form 1040 (Schedules A, C, D, E, F, and SE), and Form 8814.

(M) Posting cycle date relative to filing.

(N) Social Security benefits.

(O) Earned income (as defined in section 32(c)(2) of the Code).

(P) Number of Earned Income Tax Credit-eligible qualifying children.

(Q) Electronic filing system indicator.

(R) Return processing indicator.

(S) Paid preparer code.

(T) Dependent Social Security numbers.

(U) Total income.

(V) Ordinary dividends.

(W) Taxable refunds, credits, or offsets of State and local income taxes.

(X) Business income or (loss).

(Y) Capital gain or (loss).

(Z) Other gains or (losses).

(AA) Individual Retirement Arrangement (IRA) distributions.

(BB) Taxable amount of IRA distributions.

(CC) Pensions and annuities.

(DD) Taxable amount of pensions and annuities.

(EE) Rental real estate, royalties, partnerships, S corporations, trusts, etc.

(FF) Farm income or (loss).

(GG) Earned income credit.

(HH) Taxable amount of Social Security benefits.

(II) Other income.

(JJ) Itemized deductions.

(KK) Taxable income.

(LL) Tax.

(MM) Credit for child and dependent care expenses.

(NN) Education credits.

(OO) Retirement savings contributions credit.

(PP) Child tax credit.

(QQ) Nontaxable combat pay election.

(RR) Additional Child Tax Credit.

(SS) American Opportunity Tax Credit.

(TT) Medical and dental expenses.

(UU) State and local income taxes.

(VV) State and local general sales taxes.

(WW) State and local personal property taxes.

(XX) State and local real estate taxes.

(YY) Other taxes (amount).

(ZZ) Home mortgage interest and points.

(AAA) Mortgage interest not on a Form 1098.

(BBB) Points not on a Form 1098.

(CCC) Investment interest.

(DDD) Total gifts to charity, including carryover from prior year.

(EEE) Casualty and theft losses.

(FFF) Total itemized deductions.

(GGG) Ordinary dividends.

(HHH) Qualified dividends.

(III) Tax-exempt interest.

(JJJ) Unemployment compensation.

(KKK) From Form 1098—

(*1*) Borrower taxpayer identification number;

(*2*) Mortgage interest;

(*3*) Outstanding mortgage principal;

(*4*) Refund of overpaid interest;

(*5*) Mortgage insurance premiums;

(*6*) Points paid on purchase of principal residence;

(*7*) Payee/payer/employee taxpayer identification number;

(*8*) Payee/payer/employee name (first, middle, last, suffix);

(*9*) Street address;

(*10*) City;

(*11*) State;

(*12*) Zip code (9 digit);

(*13*) Posting cycle week;

(*14*) Posting cycle year; and

(*15*) Document code.

(LLL) From Form 1098–E, Student loan interest.

(MMM) From Form 1098–T—

(*1*) Payments received for qualified tuition and related expenses;

(*2*) Scholarships or grants;

(*3*) Check box indicating that the amount in box 1 or 2 includes amounts for an academic period beginning in the following year;

(*4*) Check box indicating that student is at least a half-time student; and

(*5*) Check box indicating that student is a graduate student.

(NNN) From Form 5498—

(*1*) IRA contributions (other than amounts in certain boxes);

(*2*) Rollover contributions;

(*3*) Roth IRA conversion amount;

(*4*) Fair market value of account;

(*5*) Checkboxes: IRA, Simplified Employee Pension (SEP), Savings Incentive Match Plan for Employees of Small Employers (SIMPLE), Roth IRA;

(*6*) SEP contributions; and

(*7*) SIMPLE contributions.

(OOO) From Form SSA–1099/RRB–1099—

(*1*) Net benefits;

(*2*) Address; and

(*3*) Trust fund description.

(PPP) From Form 1099–G, Unemployment compensation.

(QQQ) From Form 1099–K—

(*1*) Filer name;

(*2*) Filer address;

(*3*) Filer taxpayer identification number;

(*4*) Payee taxpayer identification number;

(*5*) Payee name;

(*6*) Payee address;

(*7*) Gross payments;

(*8*) Card not present transactions;
(*9*) Merchant category code;
(*10*) Number of payment transactions; and
(*11*) Payments by month.
(RRR) From Form 1099–MISC, Nonemployee compensation.
(SSS) From Form 1099–NEC, Nonemployee compensation.
(TTT) From Form 1099–Q—
(*1*) Gross distribution; and
(*2*) Plan type checkboxes.
(UUU) From Form 1099–R/RRB–1099–R—
(*1*) Gross distribution;
(*2*) Distribution code(s); and
(*3*) Plan type checkboxes.
(VVV) From Form W–2—
(*1*) Employee's Social Security number;
(*2*) Employer identification number;
(*3*) Employer's name, address, and Zip code;
(*4*) Employee's name and address;
(*5*) Social Security tips;
(*6*) Medicare wages and tips;
(*7*) Box 12 codes and values; and
(*8*) Statutory employee, retirement plan, and third-party sick pay checkboxes.
(WWW) From Form 1040, Schedule D—
(*1*) Net short-term capital gain/loss; and
(*2*) Net long-term capital gain/loss.
(XXX) From Form 1040, Schedule E—
(*1*) Total rental real estate and royalty income or (loss); and
(*2*) Total estate and trust income or (loss).
(YYY) From Form 1040, Schedule F—
(*1*) Gross income;
(*2*) Total expenses;
(*3*) Net farm profit (or loss); and
(*4*) Gross income (accrual).
(ii) With respect to taxpayers filing a return on behalf of a trade or business—
(A) The taxpayer name directory and entity records consisting of taxpayer identity information with respect to taxpayers engaged in a trade or business.
(B) The principal industrial activity code.
(C) The filing requirement code.
(D) The employment code.
(E) The physical location.
(F) Monthly corrections of, and additions to, the information described in paragraphs (b)(1)(ii)(A) through (E) of this section.
(G) From Form SS–4, all information reflected on such form.
(H) From an employment tax return—
(*1*) Taxpayer identifying number of the employer;
(*2*) Total compensation reported;
(*3*) Master file tax account code (MFT);
(*4*) Taxable period covered by such return;
(*5*) Employer code;
(*6*) Document locator number;
(*7*) Record code;
(*8*) Total number of individuals employed in the taxable period covered by the return;
(*9*) Total taxable wages paid for purposes of chapter 21 of the Code;
(*10*) Total taxable tip income reported for purposes of chapter 21 of the Code;
(*11*) If a business has closed or stopped paying wages;
(*12*) Final date a business paid wages; and
(*13*) If a business is a seasonal employer and does not have to file a return for every quarter of the year.
(I) From Form 1040, Schedule C—
(*1*) Purchases less cost of items withdrawn for personal use;
(*2*) Materials and supplies;
(*3*) Gross income;
(*4*) Total expenses; and
(*5*) Net profit or loss.
(J) From Form 1040 (Schedule SE)—
(*1*) Taxpayer identifying number of self-employed individual;
(*2*) Business activities subject to the tax imposed by chapter 21 of the Code;
(*3*) Net earnings from farming;
(*4*) Net earnings from nonfarming activities;
(*5*) Total net earnings from self-employment;
(*6*) Taxable self-employment income for purposes of chapter 2 of the Code;
(*7*) Net profit and loss; and
(*8*) Church employee income.
(K) Total Social Security taxable earnings.
(L) Quarters of Social Security coverage.
(M) From Form 940—
(*1*) State of state unemployment tax; and
(*2*) Total payments to all employees.
(N) From Form 941—
(*1*) Number of employees who received wages, tips, or other compensation for the pay period including: March 12 (Quarter 1), June 12 (Quarter 2), September 12 (Quarter 3), or December 12 (Quarter 4); and
(*2*) Wages, tips, and other compensation.
(O) From Form 943—
(*1*) Agricultural employees; and
(*2*) Total wages subject to Social Security tax.
(P) Taxpayer identity information including parent corporation, shareholder, partner, and employer identity information.
(Q) Gross income, profits, or receipts.
(R) Returns and allowances.
(S) Cost of labor, salaries, and wages.
(T) Total expenses or deductions, including totals of the following components thereof:
(*1*) Repairs (and maintenance) expense;
(*2*) Rents (or lease) expense;
(*3*) Taxes and licenses expense;
(*4*) Interest expense, including mortgage or other interest;
(*5*) Depreciation expense;
(*6*) Depletion expense;
(*7*) Advertising expense;
(*8*) Pension and profit-sharing plans (retirement plans) expense;
(*9*) Employee benefit programs expense;
(*10*) Utilities expense;
(*11*) Supplies expense;
(*12*) Contract labor expense; and
(*13*) Management (and investment advisory) fees.
(U) Total assets.
(V) Beginning- and end-of-year inventory.
(W) Royalty income.
(X) Interest income, including portfolio interest.
(Y) Rental income, including gross rents.
(Z) Tax-exempt interest income.
(AA) Net gain from sales of business property.
(BB) Other income.
(CC) Total income.
(DD) Percentage of stock owned by each shareholder.
(EE) Percentage of capital ownership of each partner.
(FF) Principal industrial activity code, including the business description.
(GG) Consolidated return indicator.
(HH) Wages, tips, and other compensation.
(II) Social Security wages.
(JJ) Deferred wages.
(KK) Social Security tip income.
(LL) Total Social Security taxable earnings.
(MM) Gross distributions from employer-sponsored and individual retirement plans from Form 1099–R.
(NN) From Form 3921—
(*1*) Date option granted;
(*2*) Date option exercised;
(*3*) Exercise price paid per share;
(*4*) Fair market value per share on exercise date; and
(*5*) Number of shares transferred.
(OO) From Form 6765 (when filed with corporation income tax returns)—
(*1*) Indicator that total qualified research expenses is greater than zero, but less than $1 million; greater than or equal to $1 million, but less than $3 million; or, greater than or equal to $3 million;
(*2*) Cycle posted; and
(*3*) Research tax credit amount to be carried over to a business return, schedule, or form.
(PP) Total number of documents reported on Form 1096 transmitting Forms 1099–MISC.

(QQ) Total amount reported on Form 1096 transmitting Forms 1099–MISC.

(RR) From Form 1125–A, purchases.

(SS) From Form 1041—

(*1*) Interest income;

(*2*) Total ordinary dividends;

(*3*) Total income;

(*4*) Charitable deduction; and

(*5*) Taxable income.

(TT) From Form 1041, Schedule K–1—

(*1*) Beneficiary identifying number;

(*2*) Beneficiary name;

(*3*) Interest income;

(*4*) Total ordinary dividends;

(*5*) Net short-term capital gain;

(*6*) Net long-term capital gain;

(*7*) Other portfolio and non-business income;

(*8*) Ordinary business income;

(*9*) Net rental and real estate income; and

(*10*) Other rental income.

(UU) From Form 1120—

(*1*) Cost of goods sold;

(*2*) Compensation of officers; and

(*3*) Salaries and wages (less employment credits).

(VV) From Form 1120–REIT—

(*1*) Compensation of officers;

(*2*) Salaries and wages (less employment credits);

(*3*) Total assets;

(*4*) Principal Business Activity (PBA) code; and

(*5*) Type of real estate investment trust (REIT).

(WW) From Form 1120–S—

(*1*) Cost of goods sold; and

(*2*) Salaries and wages (less employment credits).

(XX) From Form 1120–S, Schedule K–1—

(*1*) Ordinary business income (loss);

(*2*) Net rental real estate income;

(*3*) Other net rental income;

(*4*) Interest income;

(*5*) Total ordinary dividends;

(*6*) Royalties;

(*7*) Net short-term capital gain;

(*8*) Net long-term capital gain;

(*9*) Other income (loss); and

(*10*) Current year allocation percentage.

(YY) From Form 1065—

(*1*) Gross receipts or sales less returns and allowances;

(*2*) Cost of goods sold; and

(*3*) Ordinary dividends.

(ZZ) From Form 1065, Schedule K–1—

(*1*) Publicly-traded partnership indicator;

(*2*) Partner's share of nonrecourse, qualified nonrecourse, and recourse liabilities;

(*3*) Ordinary business income;

(*4*) Net rental real estate income;

(*5*) Other net rental income;

(*6*) Total guaranteed payments;

(*7*) Interest income;

(*8*) Total ordinary dividends;

(*9*) Dividend equivalents;

(*10*) Royalties;

(*11*) Net short-term capital gain;

(*12*) Net long-term capital gain; and

(*13*) Other income.

(AAA) From Form 3800 Part II (Current Year General Business Credit from Form 6765).

(BBB) From Form 3800, Part III, Increasing research activities (Form 6765).

(CCC) Dividends, including ordinary or qualified.

(iii) With respect to returns filed on behalf of a tax-exempt organization—

(A) Taxpayer identity information.

(B) Activity codes.

(C) Filing requirement code.

(D) Monthly corrections of, and additions to, the information described in paragraphs (b)(1)(iii)(A) through (C) of this section.

(E) From Form 990, Salaries, other compensation, employee benefits.

(F) From Form 990–PF—

(*1*) Compensation of officers, directors, trustees, etc.; and

(*2*) Pension plans, employee benefits.

(G) From Form 990–EZ, Salaries, other compensation, employee benefits.

(iv) With respect to taxpayers filing information returns relating to health insurance:

(A) From Form 1095–A—

(*1*) Marketplace information;

(*2*) Policy issuer's name;

(*3*) Recipient's name;

(*4*) Recipient's Social Security number;

(*5*) Recipient's spouse's name;

(*6*) Recipient's spouse's Social Security number;

(*7*) Policy start date;

(*8*) Policy termination date;

(9) Covered individual Social Security number;

(*10*) Coverage start date;

(*11*) Coverage termination date;

(*12*) Monthly enrollment premium;

(*13*) Monthly second lowest cost silver plan premium;

(*14*) Monthly advance payment of premium tax credit;

(*15*) Annual premium;

(*16*) Annual second lowest cost silver plan premium; and

(*17*) Annual advance payment of premium tax credit.

(B) From Form 1095–B—

(*1*) Name;

(*2*) Social Security number;

(*3*) Date of birth;

(*4*) Origin of health coverage;

(*5*) Employer name;

(*6*) Employer identification number of issuer or other coverage provider;

(*7*) Employer address;

(*8*) Employer identification number;

(*9*) Name control validation;

(*10*) Social Security number of covered individuals;

(*11*) Date of birth of covered individuals; and

(*12*) Coverage by month of covered individuals.

(C) From Form 1095–C—

(*1*) Name of employee;

(*2*) Social Security number or other taxpayer identification number of employee;

(*3*) Address of employee;

(*4*) Name of employer;

(*5*) Employer identification number;

(*6*) Employer address;

(*7*) Offer of coverage code;

(*8*) Checkbox for employer provided self-insured coverage;

(*9*) Employee required contribution, all 12 months;

(*10*) Name control validation;

(*11*) Social Security number or other taxpayer identification number of covered individuals; and

(*12*) Coverage by month of covered individuals.

(v) With respect to taxpayers filing information returns related to health savings accounts, from Form 5498–SA—

(A) Taxpayer identification number;

(B) Total contributions;

(C) Fair market value of accounts; and

(D) Account type checkboxes.

(2) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom the following return information reflected on returns has been disclosed as provided by section 6103(l)(1)(A) or (l)(5) may disclose such information to officers and employees of the Bureau of the Census for necessary purposes described in paragraph (b)(1) of this section:

(i) From Form SS–4, all information reflected on such form.

(ii) From Form 1040 (Schedule SE)—

(A) Taxpayer identifying number of self-employed individual;

(B) Business activities subject to the tax imposed by chapter 21 of the Code;

(C) Net earnings from farming;

(D) Net earnings from nonfarming activities;

(E) Total net earnings from self-employment; and

(F) Taxable self-employment income for purposes of chapter 2 of the Code.

(iii) From Form W–2, and related forms and schedules—

(A) Social Security number;

(B) Employer identification number;

(C) Wages, tips, and other compensation;

(D) Social Security wages; and

(E) Deferred wages.

(iv) Total Social Security taxable earnings.

(v) Quarters of Social Security coverage.

(3)(i) Officers or employees of the Internal Revenue Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on returns of corporations with respect to the tax imposed by chapter 1 of the Code to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report:

(A) From the business master files of the Internal Revenue Service—

(*1*) Taxpayer identity information, including parent corporation identity information;

(*2*) Document code;

(*3*) Consolidated return and final return indicators;

(*4*) Principal industrial activity code;

(*5*) Partial year indicator;

(*6*) Annual accounting period;

(*7*) Gross receipts less returns and allowances; and

(*8*) Total assets.

(B) From Form SS–4—

(*1*) Month and year in which such form was executed;

(*2*) Taxpayer identity information; and

(*3*) Principal industrial activity, geographic, firm size, and reason for application codes.

(C) From Form 1120–REIT—

(*1*) Type of REIT; and

(*2*) Gross rents from real property.

(D) From Form 1120F, corporation's method of accounting.

(E) From Form 1096, total amount reported.

(ii) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom return information reflected on returns of corporations described in paragraph (b)(3)(i)(B) of this section has been disclosed as provided by section 6103(l)(1)(A) or (l)(5) may disclose such information to officers and employees of the Bureau of the Census for a purpose described in paragraph (b)(3)(i) of this section.

(iii) Return information reflected on employment tax returns disclosed pursuant to paragraph (b)(1)(ii)(I)(*1*), (*2*), (*4*), (*9*), or (*10*) of this section may be used by officers and employees of the Bureau of the Census for the purpose described in and subject to the limitations of paragraph (b)(3)(i) of this section.

* * * * *

(d) *Procedures and restrictions.* (1) Disclosure of return information reflected on returns by officers or employees of the Internal Revenue Service or the Social Security Administration as provided by paragraphs (b) and (c) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Secretary of Commerce describing—

(i) The particular return information reflected on returns to be disclosed;

(ii) The taxable period or date to which such return information reflected on returns relates; and

(iii) The particular purpose for which the return information reflected on returns is to be used, and designating by name and title the officers and employees of the Bureau of the Census or the Bureau of Economic Analysis to whom such disclosure is authorized.

(2) No officer or employee of the Bureau of the Census or the Bureau of Economic Analysis to whom return information reflected on returns is disclosed pursuant to the provisions of paragraph (b) or (c) of this section may disclose such information to any person, other than, pursuant to section 6103(e)(1), the taxpayer to whom such return information reflected on returns relates or other officers or employees of such bureau whose duties or responsibilities require such disclosure for a purpose described in paragraph (b) or (c) of this section, except in a form that cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the Internal Revenue Service determines that the Bureau of the Census or the Bureau of Economic Analysis, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Code or regulations in this part or published procedures (*see* § 601.601(d)(2) of this chapter), the Internal Revenue Service may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension of disclosures of return information reflected on returns otherwise authorized by section 6103(j)(1) and paragraph (b) or (c) of this section, until the Internal Revenue Service determines that such requirements have been or will be satisfied.

(3) All projects using returns or return information disclosed to the Bureau of Census under this section must be approved by the Internal Revenue Service Director of Statistics of Income, the Director's successor, or the Director's delegate, prior to the release of such information.

(4) In its sole discretion, the Internal Revenue Service may authorize the use of the Bureau of Census's disclosure review processes prior to any public disclosure by the Bureau of Census of a project using information provided pursuant to this section. Any Bureau of Census disclosure review process authorized under this paragraph (d)(4) must ensure that all releases meet or exceed all requirements set by the Internal Revenue Service for protecting the confidentiality of returns and return information. Additionally, in its sole discretion, the Internal Revenue Service Statistics of Income Disclosure Review Board may review a Bureau of Census project using information provided pursuant to this section prior to disclosure of that project to the public to ensure that any proposed releases meet or exceed all requirements set by the Internal Revenue Service for protecting the confidentiality of returns and return information. This review requirement may be imposed at any stage of the project.

(e) *Applicability date.* This section applies to disclosures of return information made on or after [date of publication of final regulations in the **Federal Register**].

Heather C. Maloy,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 2024–06756 Filed 3–28–24; 11:15 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PSHSB: PS Docket Nos. 21–346 and 15–80; ET Docket No. 04–35; FCC 24–5 FR ID 210795]

Amendments to Resilient Networks Disruptions to Communications; New Considerations Concerning Disruptions to Communications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communication Commission (FCC) proposes further examination of whether television broadcasters, radio broadcasters, and satellite providers should be subject to mandatory reporting in the FCC's Disaster Information Reporting System (DIRS). Additionally, this document proposes requirements for the First Responder Network (FirstNet) to report in the Commission's Network Outage

Reporting System (NORS) and in DIRS. This document also proposes to require mobile and fixed Broadband internet access service (BIAS) providers to submit reports of outages to the FCC's NORS and DIRS. The document also proposes requiring current and future service providers to supply the Commission with information concerning the location of their mobile recovery assets, including the location of their Cells on Wheels (COWs) and Cells on Light Trucks (COLTs). This document also proposes requiring providers that report in DIRS to provide ''after action'' reports at the Commission's direction. These requirements would further protect the nation's communications systems from cybersecurity threats. With this Second Further Notice of Proposed Rulemaking (SFNPRM), the Commission seeks comment on the proposed rules and any suitable alternatives.

DATES: Comments are due on or before April 29, 2024 and reply comments are due on or before May 28, 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 28, 2024.

ADDRESSES: You may submit comments, identified by PS Docket No. 21–346; PS Docket No. 15–80; ET Docket No. 04–35; and FCC 24–5, 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 Logan Bennett, Attorney Advisor, Cybersecurity and Communications Reliability Division, Public Safety and Homeland Security Bureau, (202) 418–7790, or by email to *Logan.Bennett@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 Second Further Notice of Proposed Rulemaking (*SFNPRM*), FCC 24–5, adopted January 25, 2024, and released January 26, 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-24-5A1.pdf*

Synopsis

1. In establishing a mandatory DIRS reporting obligation for subject providers in the *Second Report and Order,* released simultaneously with the *Second Further Notice,* we remain cognizant that a complete picture of the available means of communication and dissemination of critical emergency information necessitates that we evaluate whether additional reporting segments are appropriate. While we previously sought comment on the inclusion of mandatory DIRS reporting obligations for television broadcasters, radio broadcasters, and satellite providers, the ensuing record convinces us that these potential reporting entities are sufficiently different in kind and resources from subject providers in the *Second Report and Order* that additional information is needed. In addition, we note the growing presence of the First Responder Network (FirstNet) as a provider of critical public safety communications services in a variety of disaster contexts and seek comment on whether information on FirstNet's status should be permitted or required in DIRS, and whether NORS reporting should also be extended to encompass its services. While the Commission previously sought comment on the inclusion of BIAS providers in our reporting regimes, in light of the Commission's recently released *Open Internet Notice* in which the Commission proposes re-classifying BIAS providers as a telecommunications service under Title II of the Communications Act of 1934, as amended (Communications Act), we find it prudent to revisit this issue, and refresh the record on this topic. See FCC, *Safeguarding and Securing the Open Internet,* Notice of Proposed Rulemaking (SFNPRM) (88 FR 76048, November 3, 2023), WC Docket No. 23–320, released Sept. 28, 2023, *https://docs.fcc.gov/public/attachments/DOC-397309A1.pdf* (*Open Internet NPRM*).

2. Through this *Second Further Notice,* we propose additional enhancements to DIRS in order to further improve communications and network resilience during emergencies specific to these segments of the communications network ecosystem and in response to the considerations raised by parties in the previous comment period. In addition, we seek comment on targeted expansions of the NORS system to advance similar goals for network reliability in non-disaster contexts and to address technological platforms providing essential components of an evolving and highly integrated network ecosystem supporting public safety and other critical services. For example, since the Commission issued its initial NPRM in this matter in 2021 (86 FR 61103, November 5, 2021), outage reporting and notification requirements were also adopted for covered 988 service providers. Should we extend mandatory DIRS reporting to this class of providers?

Second Notice of Proposed Rulemaking

A. Outage Reporting by Broadcast Entities

3. As broadcast providers, as well as satellite and broadband providers, have varying needs and differing responsibilities from the subject providers addressed in the Order, we find it vital to explore the elements and current workings of both the NORS and

DIRS systems in accordance with these specific providers. Particularly, we examine reporting requirements for NORS and DIRS, consider and compare the varying infrastructures of different providers, and determine whether there should be unique or modified reporting standards. We propose requiring TV and radio broadcasters report in both NORS and DIRS based on the type and modality of certain broadcast infrastructures and seek comment on this proposal. We seek comment on the classes of broadcasters that should be included as mandatory filers, whether a simplified reporting process would be appropriate, and what reporting elements should be included for such a purpose in NORS and/or DIRS.

4. Unlike the providers that are the otherwise discussed herein, broadcasters do not currently report in NORS. They may, however, voluntarily file reports in DIRS if they so choose. Broadcasters, however, play a crucial role in keeping the public updated on the status of public infrastructure and emergency response efforts as within the EAS distribution chain and provide for critical information including, for example, evacuation orders, real-time guidance from public safety organizations, and the availability of other public services. Broadcasters play a particularly important role in ensuring that non-English-speaking and rural communities have access to up-to-date emergency information during times of exigency, both on a localized basis and during widespread disasters.

6. In staff's experience, broadcasters voluntarily provide information in DIRS for between 20% and 35% of the stations in most activations. This, however, leaves gaps in the ability to adequately gauge the available communications pathways to disseminate information during emergencies. These statistics are based on DIRS data collected for Hurricane Lee, Hurricane Idalia, and Hurricane Ida. Beyond the disaster context, the Commission generally lacks timely insight into the resiliency of segments of the broadcast ecosystem. For example, the Commission's rules only require TV broadcast stations to notify the Commission within 10 days of discontinuing operations. The Commission, therefore, as well as other emergency response officials, may be unaware that a broadcast station that might otherwise be transmitting emergency, weather, or other timely government notices, is off air, and that its listeners are not receiving relevant information. As such, the Commission has limited ability to know or understand on a timely basis when broadcast stations' facilities are impacted by infrastructure, equipment, or power failures, cybersecurity incursions or other issues that impact their ability to disseminate a signal. We believe this to be a particular deficiency in light of the broadcast community's critical role in the EAS and the need for emergency officials and the Commission to be able to have information on, and insight into, the operational readiness of this system at a moment's notice. We seek comment on this analysis.

7. We believe mandatory DIRS reporting for broadcasters could ensure a standardized and coordinated approach among entities potentially impacted by disasters, allowing authorities to make informed decisions about emergency response activities and avenues to communicate with the public during emergency situations. We seek comment on this belief. We believe this could be of particular significance given broadcasters' role in the EAS, as well as the continued reliance on broadcast communications by underserved and non-English-speaking communities for the dissemination of emergency and weather-related information. Objections to mandatory DIRS reporting for the broadcast community may overlook the fact that disasters often come with uncertainty and unpredictability. In such situations, as the Commission has experienced, a voluntary system does not guarantee comprehensive and accurate information for response officials, potentially leading to gaps in emergency response. While we understand REC Networks' concerns about the potential burden of mandatory reporting for smaller broadcasters, it is important to recognize that emergencies demand a coordinated effort to disseminate information quickly and effectively, or to provide follow up information to constituents over the course of a disasters as conditions change. We seek comment on whether, by participating in mandatory DIRS reporting, even smaller broadcasters can contribute to a broader emergency response network, ultimately benefiting the communities they serve, and if the benefits of requiring such reporting outweigh any burden on such broadcasters. In light of concerns expressed for smaller providers, however, we seek comment on whether we should consider adopting different reporting requirements for small and large broadcasters and, if so, how should those lines be drawn? What specific challenges do small broadcasters experience, and how can the Commission require DIRS reporting while addressing these challenges? We also seek comment on whether low power broadcast stations should be excluded from this proposed mandate. We note that low power television and low power FM radio do not serve as Primary Entry Point (PEP) stations or Local Primary (LP) stations within the EAS daisy chain. Would this exemption disproportionately impact underserved or non-English speaking communities? Does the potential overlap in broadcast stations' coverage areas mitigate concerns regarding any exclusion low power broadcast stations? Conversely, should booster or translator stations, which we do not propose to subject to our reporting requirement, be included?

8. DIRS serves as a foundational tool for ensuring that the right information reaches the right people at the right time. Additionally, we believe that concerns about mandatory DIRS participation straining limited resources during disasters should be considered against the backdrop of Federal, State, local, Tribal, and territorial emergency response needs and invite comment on this balance. We believe a unified mandatory reporting system could minimize duplication of efforts and enable authorities to allocate resources efficiently as the Commission could instead collect data on behalf of all such entities and share it with these government entities in real-time (or as close to real-time as possible given the particular disaster or emergency situation) rather than multiple governments collecting the same information. Maintaining DIRS as a voluntary system for some segments of the communications ecosystem could lead to incomplete data during critical times, hindering the effectiveness of disaster response. Finally, we believe that NAB's advocacy for voluntary DIRS participation, based on the 2007 assessment of Hurricane Katrina, overlooks the advancements in technology across communications platforms, the growth in DIRS as an informational resource since that time, changes to the alerting environment to include the advent of WEA and IPAWS, as well as the changing landscape of emergency response as the frequency and severity of disasters increase. While the voluntary state of DIRS may have been suitable back in 2007, the state of DIRS has not been reevaluated in almost two decades and the state of emergencies and disasters has significantly changed in the interim, as have advances in technology and resiliency solutions. As an alternative, NAB proposes a government-funded automated system that identifies which

broadcast stations are operating during a disaster using ''specialized spectrum observation equipment to determine the radio spectrum and identify disaster-related communications outages . . . [and] studying the radio frequency spectrum 'Pre-disaster' and 'Post-disaster' and comparing those results to each other and to licensee databases to determine which critical infrastructure systems are down.'' While this approach could be useful, this more complex solution is beyond the scope of this proceeding as we are focused, and believe that, the shift from voluntary to mandated reporting could provide the Commission, other agencies, and the providers themselves with a larger scope of infrastructure status during and after disasters without the need for funding and creating specific systems beyond DIRS. Instead, the rules we propose here would merely require those to report who have not in the past but have the capacity to do so and would mandate reporting for a system that already has existed for years and will improve from including more participants for a wider view. We seek comment on this analysis.

9. While we acknowledge the position that some broadcasters may have unique limitations on their number of employees and the technical and legal expertise of those employees in addressing regulatory matters compared to the subject providers addressed in the *Second Report and Order* who report in NORS and DIRS, we believe that there is a significant public interest in ensuring that broadcasters' facilities are operational and that the Commission has an accounting of when these facilities are offline, as broadcasters are often a principal way in which some communities, including certain rural, minority and non-English speaking, and elderly communities, receive critical emergency information. Without information on the operational status of broadcasters' facilities, the Commission and its partners only have an incomplete picture of available resources which could stunt the Commission's public safety initiatives and its ability to direct resources to certain communities or share emergency information, especially as there is no NORS requirement for broadcasters. We seek comment on these views. We also seek comment on the specific limitations and challenges of small broadcasters and the way in which the Commission can assist or encourage cooperation with larger broadcasters who have more resources and funding and/or easier ways that small broadcasters can file. For small broadcasters that lack the ability to coordinate with larger broadcasters, what limitations or challenges do they face? Should the Commission consider relief to reduce the burden of reporting on these small broadcasters? How should we define small broadcasters?

10. Beyond the disaster context, the Commission generally lacks timely insight into the resiliency of segments of the broadcast ecosystem. For example, the Commission's rules only require TV broadcast stations to notify the Commission within 10 days of discontinuing operations. The Commission, therefore, as well as other emergency response officials, may be unaware that a broadcast station that might otherwise be retransmitting emergency, weather, or other timely government notices, is off air, and that its listeners are not receiving relevant information. As such, the Commission has limited ability to know or understand on a timely basis when broadcast stations' facilities are impacted by infrastructure, equipment, or power failures, cybersecurity incursions or other issues that impact their ability to disseminate a signal. We believe this to be a particular deficiency in light of the broadcast community's critical role in the EAS and the need for emergency officials and the Commission to be able to have information on, and insight into, the operational readiness of this system at a moment's notice regardless of whether there is a declared disaster that would otherwise trigger DIRS.

11. As such, we propose requiring TV and radio broadcasters report in both NORS and DIRS subject to a simplified reporting process based on the type and modality of certain broadcast infrastructures. Both NORS and DIRS provide distinct information serve distinct purposes and requiring reporting for both systems would help the Commission see outages across a geographic area via NORS, including so-called ''sunny day'' outages, while DIRS reports are submitted for the affected area during a specific activation. We seek comment on this proposal. We also seek comment on the scope of such simplified reporting, the ability of broadcasters to provide it during events where DIRS is activated, and the burdens of doing so. Alternatively, would a simplified reporting requirement be preferable if the Commission could craft the requirement so that it would not hinder restoration efforts? If so, what could such a requirement entail? For instance, should simplified reporting in DIRS merely require a broadcaster to identify whether it is ''on-air'' or ''off-air,'' (*i.e.,* unable to operate or broadcast regularly) or provide details on any necessary restoration? Should we also require broadcasters to notify us within 24 hours of going silent when DIRS has been activated and within 24 hours of resuming service after DIRS activation has been lifted? What alternative NORS or DIRS reporting intervals would be appropriate? Should NORS or DIRS filings specify if alerting capabilities are impacted, including whether the broadcaster's access to FEMA's IPAWS is operational? Should we require notice when a broadcaster's ability to access IPAWS is disrupted regardless of the operational status of the transmitter? Should the DIRS filing requirement apply to translators and boosters that merely pass along programming from other stations without generating their own? We propose that reporting in NORS or DIRS would not supplant the ongoing requirement to notify the Commission about going silent in the Licensing and Management System (LMS); does this create duplication in effort? Further, a broadcast station can go silent for numerous reasons and reasons unrelated to disasters and emergencies at times. NORS puts these broadcast stations in a specific outage light and a direct path to a public safety specific view of what broadcast stations are experiencing outages and which are not. A silent station is not necessarily synonymous with a station experiencing an outage and should be reported distinctly from each other. We seek comment on ways that this information can be shared with the Commission.

12. What estimated costs would be part of the new reporting requirements? How would such reporting improve mortality or other measures of welfare? How does broadcasting differ in both cost and benefit from the subject providers mandated in the *Second Report and Order* based on technology and/or how the technology is used? As some broadcasters may receive an automated alert when their facilities are ''down,'' to what extent could broadcasters use automated alerting to provide operational status directly to DIRS/NORS?

13. We estimate that the proposed filing rules would incur no more than $33.7 million total per year to broadcasters, including $33.5 million for NORS filing and $212,000 for DIRS reporting. Among the 21,392 broadcast stations (which does not include 12,055 FM translators & boosters, UHF translators, and VHF translators), we estimate that approximately an average of 2,755 stations will have to file reports in NORS per year under the proposed rules. Per NORS data, each provider

files an average of 2,175 reports in a 12-month period. Assuming that each report takes 10 minutes to file, we estimate that the total cost is approximately $33.5 million per year for broadcasters to comply with the NORS reporting obligation. For DIRS reporting, we assume broadcast stations are evenly distributed across counties, and there would be about 7 broadcast stations per county. Given that an average of 339 counties were affected by DIRS activations for an average of 14 days per year, we estimate that the total cost of complying with DIRS reporting rules is approximately $212,000 per year for broadcasters. We treat the cost estimate as an upper bound because it does not account for the cost savings from the waiver of NORS reporting obligation during DIRS activations, the potentially simplified reporting processes for broadcasters, or voluntary DIRS filings already being submitted by stations. We seek comment on our cost estimates for broadcasters to comply with the NORS and DIRS filing rules. The estimate may also be overstated because we rely on the average number of reports from all types of providers, including wireless providers which tend to file more reports than other types of providers. We note, in particular, that the record indicates that the average number of outages, or 2,175, which we use for our NORS reporting cost estimates, may be too high, resulting in a corresponding overestimate of costs. We seek comment on the average number of annual outages that broadcast stations experience.

14. With respect to NORS reporting, should we require that NORS filings provide more detail than that proposed for DIRS, particularly with respect to final reports filed within 30 days? What would the appropriate thresholds be to trigger broadcast reporting obligations? Is a simple duration standard sufficient? Satellite providers are required to file a notification in NORS within 120 minutes of an outage's discovery—is the same standard appropriate here? Why or why not? Should initial reports at 72 hours and final reports in 30 days also follow? How should an outage be defined for broadcast services? We seek comment on the costs and benefits of these options.

B. Outage Reporting by Satellite Providers

15. We seek comment on whether to require DBS providers, SDARS providers, Fixed Satellite Service (FSS) providers, and Mobile Satellite Service (MSS) providers report in DIRS, and if so, what fields should be included in mandatory DIRS reporting as to these providers. We further seek comment on whether these or other categories of satellite providers should be required to file in NORS or DIRS, and how the existing NORS reporting thresholds for satellite providers should be modified to reflect technological changes to these networks that have occurred since the initial adoption of the rules.

16. While it is a small measure of burden to require an additional type of reporting, we believe that the public safety benefits outweigh the cost burden to satellite providers by providing the Commission and therefore consumers with potentially life-saving information. We seek comment on this belief. All satellite providers are currently required to report in NORS and are able to voluntarily report in DIRS. Yet the Commission has observed that satellite providers supply only a very small number of NORS reports, and we currently lack comprehensive insight as to why satellite providers file so few mandatory NORS reports. Satellite providers similarly provide very few voluntary DIRS reports. The Commission's original 2004 NORS outage reporting thresholds for satellite providers remain in place today, despite changes that have occurred to the status of satellite provider network operations since that time. Specifically, outage reporting in NORS for satellite providers is triggered for outages meeting the 30 minute duration threshold and manifesting as ''a failure of any of the following key system elements: One or more satellite transponders, satellite beams, inter-satellite links, or entire satellites.'' For MSS satellite operators, reporting is triggered where the outage ''manifests itself as a failure of any gateway earth station, except in the case where other earth stations at the gateway location are used to continue gateway operations within 30 minutes of the onset of the failure.'' Certain satellite infrastructure used for internal networks and one-way distribution of audio or video are also excluded from reporting obligations in NORS. As discussed with subject providers in the *Second Report and Order,* a voluntary state for reporting makes it difficult for the Commission to know whether entities are electing not to report because reporting is voluntary or whether they do not physically have the capacity to report because of infrastructure damages or the disaster event itself.

17. In response to the proposal regarding the requirement for satellite providers to report in DIRS, we received several industry comments. DirecTV does not opine on whether service providers should report on infrastructure status through DIRS post-emergencies, but suggests that if such a requirement is imposed on DBS systems like theirs, reporting should be confined to key infrastructure under the provider's control. They advocate for reporting limited to transmitting earth stations supporting the DBS system. Iridium, an MSS provider, asserts that satellite services like theirs, which do not rely on ground infrastructure for user links, remain largely unaffected by terrestrial disasters and should not be required to submit DIRS reports at all. In alignment with DirecTV's viewpoint, SDARS provider SiriusXM agrees that any DIRS reporting requirement for satellite networks should be limited to ''key infrastructure under the provider's control,'' citing the difficulty of determining subscriber receiver functionality during disasters and the lack of location information for SDARS receivers in vehicles or mobile devices.

18. Based on the responses to the proposal regarding the requirement for satellite providers to report in DIRS, we received several industry comments that raise issues we believe merit additional inquiry. DirecTV and Iridium express concerns that any mandatory DIRS reporting for satellite providers should only include information on key infrastructure equipment within a satellite provider's control (*e.g.,* excluding equipment installed at customers' homes) that, if compromised, could affect the ability of the satellite provider to offer service. However, Iridium itself says that ''[s]atellite services provide essential connectivity in disaster response and recovery, including voice and data services, satellite imagery, and satellite for cellular backhaul. Iridium [says they] play[ ] an important role in enabling critical communications before, during, and after disasters. [The] demand for and use of Iridium's MSS devices spikes and government agencies and consumers use Iridium devices more extensively.'' In cases where a terrestrial component is involved, reporting in DIRS could help authorities gauge the extent of disruption and fill-in informational gaps daily filing updates for an entire affected area, which NORS does not do. Finally, we acknowledge that SiriusXM, Iridium, and DirecTV share the view that they do not have all the location information that current DIRS forms request as some of their equipment is located in customers' vehicles or in other mobile facilities. We seek comment on these concerns. Are there satellite providers that do not have any terrestrial components that could be affected by natural disasters, or should

we limit reporting to include only specific types of terrestrial network components? We note, however, that a better understanding of network operations of various satellite technologies would give the Commission insight into the reliability of connectivity for customers located in remote or rural areas, who may disproportionately rely on satellite-based communications for broadband connectivity or where rural communications companies may more heavily rely on satellite capabilities for backhaul. We believe that knowledge of impacts to satellite communications capabilities, particularly in disaster contexts, could also provide situational awareness for emergency response personnel in some of the most potentially dire circumstances where impacts to solely terrestrial based infrastructure may be more severe. We seek comment on these views.

19. We also seek comment on whether and how the NORS reporting thresholds for satellite providers should be modified to reflect technological changes to these networks since the Commission's original 2004 reporting rules were effectuated. Do the definitions currently used in part 4 remain the most salient way to capture impactful outages? If not, what alternative thresholds should be utilized? Is 120 minutes the appropriate time threshold for outage notifications for all satellite providers? Are there additional data elements specific to some or all satellite reporting entities that should be added to or eliminated from the existing notification, initial report or final report templates? Should the scope of reporting satellite providers be amended, or exclusions re-examined? Are there estimates of how the reporting would improve public safety or other measures of welfare? What are the estimated costs of the proposed reporting requirements? How do satellites differ in cost and benefits from the subject providers mandated in the *Second Report and Order* based on their difference in technology and use?

20. Although these satellite providers were not addressed in the *Second Report and Order* we seek comment on whether the Commission should require satellite BIAS providers and satellite broadcast providers to report in DIRS as the subject providers in the *Second Report and Order* have been mandated. If adopted, we seek comment on potential modification of the types of information requested in DIRS forms pertaining to satellite providers and seek comment on how to best capture information relevant to satellite network status and availability in potential disaster scenarios. We seek comment on the types of satellite equipment that are relevant to ensuring operation during exigencies and on whether DIRS forms need to be revised to include or exclude certain pieces of infrastructure equipment. Should our rules, as some commenters suggest, differentiate more completely between types of infrastructure within the satellite providers network and how it may be impacted? What are the costs and benefits of the proposed reporting?

21. According to an analysis of operational licensee and ownership data, there are a total of 18 satellite service providers, including six FSS providers, six MSS providers, two DBS providers and one SDARS provider. If all 18 providers are subject to the DIRS reporting mandate, we estimate that the total cost would not exceed $545,000 per year. We seek comment on our cost estimate.

C. Outage Reporting by FirstNet

22. We seek comment on whether FirstNet should be subject to reporting requirements in NORS, DIRS, or in both systems. FirstNet is not currently subject to NORS or DIRS outage reporting obligations and has never participated in NORS or DIRS on a voluntary basis. However, the Commission believes that the information collected through these reports will provide us with a more complete picture of the overall health and resiliency of the nation's communications infrastructure, particularly during disasters during which FirstNet is specifically designed to provide more robust public safety communications. Thus, the Commission is now considering whether outage reporting of FirstNet operations is necessary and appropriate given its importance to the public safety community and the unique customer base it serves.

23. The First Responder Network Authority (FirstNet) is an independent authority within the National Telecommunications and Information Administration (NTIA). FirstNet serves as a high-speed, nationwide wireless broadband network for first responders. FirstNet was established as an independent authority within the Department of Commerce with the responsibility of standing up and managing the network. After a competitive Request for Proposal process, AT&T won a 25-year contract to deploy, operate, and maintain the network and use the company's telecommunications network assets (in addition to the 20 MHz of FirstNet spectrum) to connect FirstNet users. While FirstNet is required to provide an annual report to Congress and holds monthly public meetings informing its Board of FirstNet's operations, these reports do not supply near real-time information on FirstNet outages and infrastructure status. Moreover, while FirstNet's operations partner, AT&T, is subject to the Commission's reporting rules (and so some information on FirstNet may be inferred as to network health and operation through AT&T's filings) information on FirstNet specific infrastructure and services is not available to the Commission, or to the public safety personnel the network serves. In 2013, the Commission last sought comment on whether to institute reporting obligations on FirstNet. FirstNet opposed this proposal on grounds that FirstNet already had Congressionally created obligations to consult with stakeholders and report to Congress on its network. The Commission did not draw conclusions on FirstNet's arguments or make final determinations on the merits of a reporting requirement, deferring any action for future consideration. Since that time, however, parties have expressed concern regarding the lack of information with FirstNet's operations and the performance of its network during times of crisis. For example, parties to the proceeding addressing FirstNet's recent license renewal process and participating in the Commission's hearing following Hurricane Ida each expressed frustration in this regard.

24. To ensure that we have a fuller picture of the health of all public safety networks and that our first responders have the information they need, we seek comment on whether FirstNet, or AT&T, should file outage reports with the Commission in NORS with respect to FirstNet infrastructure and services. As the related *Second Report and Order* adopts a mandatory obligation for subject providers to file in DIRS, we seek comment in this Second *Further Notice* on whether this obligation should be extended with regard to FirstNet. Given the importance of the clients served by FirstNet, we seek comment on this position. Alternatively, we seek comment on whether one or both of these obligations should be voluntary. Consistent with the purpose of NORS and DIRS reporting in other contexts, timely situational awareness on the part of the Commission and its Federal, State, Tribal, and territorial information sharing partners could allow more nimble decision making when public safety may need alternative

communications paths or operational support.

25. In considering this issue, we remain cognizant of FirstNet's unique status as a Congressionally-created entity with statutory reporting requirements. Due to its preexisting reporting requirements, we seek comment on providing the Commission with this type of reporting in addition to the FirstNet reporting already required by statute and on the Commission's authority to request that of FirstNet as a Commission licensee. Do the Commission's general Title III authorities, coupled with section 6003(a) of the Public Safety Spectrum Act, support our ability to seek information beyond FirstNet's statutorily mandated reports? What other provisions might support such reporting? What quantitative estimates of potential costs and benefits of this integration are available? What would be additional improvements to public safety and other measures of welfare due to specifically reporting about the FirstNet network? How would the magnitude of these benefits compare to the benefits estimated in the *Second Report and Order*?

D. Reporting by Broadband Internet Access Service Providers

26. In the *2021 Resilient Networks Notice,* 36 FCC Rcd 14802 (2021), the Commission sought comment on the inclusion of broadband providers within the mandatory reporting rules for NORS. Currently, while BIAS providers may voluntarily report their status in DIRS when activated, they are not required to report their status in NORS. The Commission sought input on the public interest benefits and the costs of reporting of broadband service outages, as well as whether the inclusion of broadband reporting in NORS reporting would improve emergency managers' situational awareness during disasters, help identify broadband outage trends, and/or support first response and network reliability efforts. Since issuing that *Notice,* the FCC released *the Open Internet Notice* in 2023, which seeks comment on reestablishing the framework the Commission adopted in 2015 to classify BIAS as a telecommunications service and to classify mobile BIAS as a commercial mobile service. The *Open Internet Notice,* WC Docket No. 23–320, posits that restoration of Title II authority will allow the Commission to prevent BIAS providers from engaging in harmful consumer practices, strengthen the Commission's ability to secure communications networks and critical infrastructure against national security threats, and better enable the Commission to protect public safety during disasters and other emergencies including by preventing blocking and discrimination of internet traffic.

27. In response to the *2021 Resilient Networks Notice* (86 FR 61103, November 5, 2021), proponents of a NORS/DIRS filing requirement for BIAS providers agree with the Commission's premise that ''improving the information in these important systems will be helpful for situational awareness and ongoing efforts to improve network resiliency,'' although APCO also notes that even more specific information is typically required by emergency personnel. The National Association of State Utility Consumer Advocates (NASUCA) similarly supports outage filings by BIAS providers, noting that BIAS is used to provide emergency information to the public about emergency situations. For DIRS in particular, NCC notes that ''[r]equiring providers to include broadband data can fill information gaps for areas that lack DIRS reporting'' which ''may be due to nonparticipation by providers or a lack of broadband connection.'' Public Knowledge states, ''[o]ne of the most significant problems when discussing network reliability and resiliency is that there is no meaningful way to measure it other than 'is the network operating today?' This is why Public Knowledge called on the Commission for years to evaluate end-user technologies based on objective metrics, which are consistent with the FCC's latest proposals for reform, including: network capacity under stress; call quality; device interoperability; service and support for users with disabilities; system availability; service to 911 entities and PSAPs; cybersecurity; call persistence; call functionality; and wireline coverage.''

28. Commenters against broadband reporting argue that it is duplicative or otherwise unnecessary. T-Mobile, for example, asserts that wireless providers should not be required to separately report BIAS outages as such reporting requirement ''would be duplicative of other outage reporting requirements that CMRS providers are already subject to.'' T-Mobile further states that ''[e]very commenter in the prior proceeding that addressed whether distinct outage reporting rules should apply to BIAS offered by CMRS providers opposed such a requirement'' and shares that ''CMRS providers long have been subject to the Commission's network outage reporting rules and that subjecting the CMRS industry to BIAS outage reporting will increase costs, cause confusion, and produce little if any benefits.'' Verizon argues that some of the Commission's reporting proposals ''would constitute reporting for its own sake without consumer benefit'' and that ''[w]ith respect to broadband services . . . existing outage reporting requirements already capture most significant broadband outages since broadband and voice services increasingly use the same IP-enabled networks, so additional rules would be duplicative.'' SIA suggests that the Commission should ''issue a supplemental public notice in this proceeding that provides a clear definition of a 'broadband outage' and include potential thresholds that would require providers to file a report in NORS.'' NCTA ''urges the Commission not to significantly alter [DIRS] and [NORS] . . . [as] DIRS can be valuable in providing emergency managers with facts on the ground during major disasters, and NORS can play a valuable role in identifying trends in network reliability, provided that appropriate protections are in place for sensitive network information with serious competitive and national security implications. As the Commission considers potential expansion of these programs, it should be sensitive to the burdens that reporting places on providers during disaster situations and take care not to duplicate other information sharing that is already occurring at the state and local level or to impose burdensome reporting requirements that divert resources away from maintaining and restoring service to customers.''

29. Consistent with an objective of the *Second Report and Order* to provide a more complete and comprehensive snapshot of the status of critical communications networks, we believe that reported data to NORS and DIRS should also encompass disruptions to BIAS, including mobile and fixed wireless BIAS service. In light of the Commission's pending consideration of the regulatory classification of BIAS as a telecommunications service under the Communications Act and the increasing importance of BIAS to a host of uses by consumers, public safety officials, and others, particularly during times of disaster, we renew our inquiry into whether BIAS providers should be required to submit outage reports in NORS. We also seek comment on whether participation in DIRS when activated should also be mandatory.

30. The *Open Internet Item* seeks comment on whether Title II classification would enhance the Commission's authority to impose reporting requirements on BIAS providers for BIAS outages should the

Commission classify BIAS as a Title II service. We seek comment on the impact of Title II classification on our authority to require BIAS providers to file NORS and/or DIRS reports. We also renew our assertion that the statutory provisions cited in the 2016 document considering outage reporting for BIAS provide the Commission with authority to require such reporting and seek comment on additional authority that may be relevant. Among other considerations, we seek comment on how outage reporting might support the Commission's obligations under, and implementation of, the digital discrimination provisions of the 2021 Infrastructure Investment and Jobs Act.

31. We estimate that the proposed filing rules would incur no more than $3.9 million total cost per year to BIAS providers, including $3.5 million for NORS filing and $394,000 for DIRS reporting. Among the 2,234 BIAS providers, we estimate that approximately an average of 288 BIAS providers will have to file reports in NORS per year under the proposed rules. Per NORS data, each provider filed an average of 2,175 reports in a 12-month period. Assuming that each report takes 10 minutes to file, we estimate that the total cost is approximately $3.5 million per year for BIAS providers to comply with the NORS reporting obligation. For DIRS reporting, we estimate that on average there are 13 BIAS providers in each county. Given that an average of 339 counties were affected by DIRS activations for an average of 14 days per year, we estimate that the total cost of complying with DIRS reporting rules is approximately $394,000 per year for BIAS providers. We treat the cost estimate as an upper bound because it does not subtract the cost savings from the waiver of NORS reporting obligation during DIRS activations and the potentially simplified reporting processes for BIAS providers. We seek comment on our cost estimates for broadband service providers to comply with the NORS and DIRS filing rules.

32. With respect to reporting obligations of BIAS providers, we seek comment on how to define an ''outage'' within the context of BIAS provision. Is the current threshold of 900,000 user minutes appropriate in this context? What other ways should the Commission measure ''impact'' for BIAS outage reporting purposes? Is the current 30-minute threshold otherwise utilized in part 4 appropriate, coupled with a scope metric? Should the duration metric be higher or lower? Should reporting be required based on significant degradation in throughput and, if so, how should that be measured? Should the definition consider redundant or alternate pathways for data already being reported to the Commission pursuant to some other requirement? We seek comment on how an appropriate threshold would support the ability of the Commission to discern when outages or significant network degradation stemming from issues such as cybersecurity breaches, wire cuts, infrastructure damages from natural disasters, and/or operator errors or misconfigurations in support of its public safety obligations, and what those thresholds should be.

33. In considering the record to date, parties objecting to the inclusion of BIAS in reporting obligations argued that such reporting would be redundant, as many providers in this space already report outages under different provisions of part 4. We do not believe, however, that requiring the Commission or other emergency response personnel to infer when a BIAS outage occurs from an outage report made by a communications provider as to a related service is a tenable way to mitigate the impact of a network outages, or promptly and clearly provide emergency managers with an understanding of how they can communicate with the public and how the public can communicate with them. We seek comment on this view, and more generally on the costs and benefits of our proposal. We also seek comment on any other service categories that might be included in order to gain a relevant picture of network outage impact on the call/data transmission chain; for example, should SS7 providers or other transport providers be required to report in DIRS? Are there other classes of broadband providers that should be reporting in NORS and/or DIRS? We also seek comments on ways to mitigate any perceived burden for filers that would otherwise be obligated, in whole or in part, to report outages on services already subject to the Commission's part 4 rules.

E. Reporting Mobile Recovery Assets in DIRS

34. We seek comment on whether current or future providers who are subject to DIRS reporting requirements should be required to supply the Commission with information concerning the location of their mobile recovery assets, and specifically whether providers should be required to supply the Commission with information on the location of their Cells on Wheels (COWs) and Cells on Light Truck (COLTs) or comparable assets, either as a component of their daily DIRS reporting or through alternate means. Additionally, we seek comment on whether subject providers should be required to quantify the traffic load provided by those assets. For example, could providers report on select metrics such as the number of texts, voice minutes, broadband data provided by a recovery asset over the last 24 hours as well as the total data provided since that recovery asset was incorporated into that location, or other metrics? We note, for example, that these types of metrics may help with understanding the use of such assets on a long-term basis, gauging the speed of transition of traffic back to permanent network assets, and the utility of placement emergency uses such as 911 calling and distribution of emergency information. We seek comment on this position.

35. The Commission does not currently systematically collect information regarding the location of mobile recovery assets, although staff experience in providing disaster response support indicates to the Commission that public safety organizations and first responders critically need this information in the aftermath of disaster events to improve situational awareness and assist in coordinating on the ground recovery efforts. Currently, the Bureau's OEM Division will contact providers for this information on an event-by-event basis, with varying degrees of responsiveness to OEM's (non-compulsory) request.

36. We tentatively conclude that if information regarding the location of mobile recovery assets were required to be supplied in DIRS, the Commission would obtain this information more efficiently and uniformly across providers than is currently the case, likely leading to better public safety outcomes. We seek comment on this conclusion. Should we require such reporting? If so, which subject providers should be required to provide such information?

37. If reporting is adopted, we seek comment on what types of mobile assets should be reported (including COWs and COLTs) based on provider type, the level of granularity for which location information should be reported (*e.g.,* on a zip code or street address basis) and on whether this information should be reported directly in existing DIRS forms or through other means. Should information on the time of deployment, coverage, or available power for such assets be reported as well? We further seek comment on whether the reporting should indicate whether the mobile recovery assets support WEAs, as we

note in particular the ability to disseminate WEAs in disaster environments may be of critical importance for evacuation, safety of life, or other disaster mitigation and response efforts.

38. We also seek comment on the logistics and parameters of these submissions. How frequently should this information be reported? We note that in some instances mobile assets are repositioned at the request of state or local emergency managers; should such repositioning be reported? Should this information be available to those entities that have access to DIRS under the Commission's information sharing framework? Should this information be treated as presumptively confidential? We further seek comment on the costs and benefits of adopting a reporting requirement for mobile recovery assets. What would be additional improvements to public safety and other measures of welfare due to improved information to the Commission about mobile recovery assets? How would the magnitude of these benefits compare to the benefits estimated in the *Second Report and Order*?

F. After Action Reporting

39. In the *Second Report and Order,* we establish a mandate for subject providers to furnish the Commission with a conclusive status report within 24 hours following the deactivation of DIRS. This report will serve as a crucial source of information concerning the restoration of communication infrastructure that may still be offline in the aftermath of a disaster. However, it is important to note that this report alone will not offer a comprehensive overview of how networks performed throughout the disaster. For that reason, we seek comment as to whether providers subject to DIRS reporting requirements should be required to supply the Commission with ''after action'' reports detailing more specifically how their networks fared after the event or exigency and the nature, timing, duration, and effectiveness of their pre-disaster response plans after the Commission's deactivation of DIRS and within 60 days of when the Bureau, under delegated authority, issues a Public Notice announcing such reports must be filed. We seek comment as to whether providers would prefer an after action report template to complete or if the flexibility of a free-text document would be better suited to an entity's individual needs for reporting.

40. The Commission does not currently collect qualitative information on how a provider's efforts and preparation may have impacted the resiliency of its networks over the duration of a DIRS event. The MDRI is activated by the Commission in response to real-world exigencies and requires that providers take steps to further network resiliency. The Commission recently adopted a related rule, however, that requires facilities-based mobile wireless providers to submit a report detailing the timing, duration, and effectiveness of their implementation of the Commission's MDRI provisions within 60 days of when the Bureau, under delegated authority, issues a Public Notice announcing such reports must be filed.

41. We believe that the collection of this ''after action'' information could better inform the Commission's analysis and any subsequent assessment or action that the Commission may take in the aftermath of disaster events. Further, we believe that this approach could complement the MDRI reports required of facilities-based mobile wireless providers by detailing additional aspects of a provider's network resiliency plans and actions. We seek comment on this belief, and on whether these reports should be required of all DIRS filers, or just a subset, and seek comment on how to address potential overlap between reports filed pursuant to the MDRI and under the proposal herein. Are there ways to minimize such overlap, or to incorporate MDRI related filings such that burden is minimized for this class of filers? Should subject providers be held to these after action reports? Should such reports be confidential, or should they be shared, for example, with the Federal, State, local, Tribal and territorial public response agencies that managed a particular disaster pursuant to which such reports are filed? We have proposed that these after action reports be filed 60 days the Bureau issues a PN announcing such a requirement; should the trigger be tied to the event? Is 60-days too much or too little of a timeframe?

42. We also seek estimates on the benefits and costs of this proposal for mandatory after-action reports. How much would public safety and other measures of welfare improve due to additional information to the Commission caused by this proposal? How would the magnitude of these benefits compare to the benefits estimated in the *Second Report and Order*?

Procedural Matters

43. *Paperwork Reduction Act.* This document contains proposed new and 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.

44. *Ex Parte Rules—Permit-But-Disclose.* The proceeding initiated by the *Second Further Notice* 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 rule 1.1206(b). In proceedings governed by rule 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.

45. *Comment Period and Filing Requirements.* 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).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS. *https://www.fcc.gov/ecfs.*
- *Paper Filers:* Parties that 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, 35 FCC Rcd 2788, 2788–89 (OS 2020), *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

46. *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 and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

47. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning potential rule and policy changes contained in this *Second Report and Order* on small entities. The FRFA is set forth in Exhibit B of the FCC's Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 24–5, adopted January 26, 2024, at this link: *https://docs.fcc.gov/public/attachments/FCC-24-5A1.pdf.*''

48. We have also prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy change proposals contained in the *Second Further Notice.* Written public comments are requested on the IRFA. Comments must be filed by the deadline for comments on the Second Further Notice indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

49. The Second Further Notice may contain proposed new or modified information collection requirements related to providers' reporting of their roaming measures to the Commission. 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 any such 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.

50. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule. Accordingly, the Commission will publish the required summary of this *Second Further Notice* on *https://www.fcc.gov/proposed-rulemakings.*

Legal Basis

51. The proposed action is authorized pursuant to sections 1, 4(i), 4(j), 4(n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309316, 332, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j) & (n), 201, 214, 218, 251(e)(3), 301, 303(b), 303(g), 303(j), 303(r), 307, 309(a), 309(j), 316, 332, 403; sections 2, 3(b), and 6–7 of the Wireless Communications and Public Safety Act of 1999, 47 U.S.C. 615 note, 615, 615a–1, and 615b.

Initial Regulatory Flexibility Analysis

52. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *Second Further Notice of Proposed Rulemaking (Second Further Notice).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second Further Notice.* The Commission will send a copy of the *Second Further Notice,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). The IRFA Analysis for the rules proposed in this Second Further Notice can be found as Exhibit C of the FCC's Second Report and Order and Second Further Notice of Proposed Rulemaking, FCC 24–5, adopted January 26, 2024, at this link: *https://docs.fcc.gov/public/attachments/FCC-24-5A1.pdf.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2024–06664 Filed 3–28–24; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 89, No. 62
Friday, March 29, 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 AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by April 29, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Interagency Generic Clearance for Federal Land Management Agencies Collaborative Visitor Feedback Surveys on Recreation and Transportation Related Programs and Systems.

OMB Control Number: 0596–0236.

Summary of Collection: Section 1119 of Public Law 112–141, the Moving Ahead for Progress in the 21st Century Act (MAP–21) requires the Secretary of Transportation to implement transportation planning procedures for Federal lands and tribal transportation facilities that are consistent with the planning processes required under sections 134 and 135 of title 23[6]. The section also specifies the collection and reporting of data necessary to implement the Federal lands transportation program, the Federal lands access program, and the tribal transportation program in accordance with the Indian Self-Determination and Education Assistance Act. The Federal Land Management Agencies (FLMAs) include, but are not limited to: Forest Service, the Bureau of Land Management, U.S. Fish and Wildlife Service, National Park Service, U.S. Army Corps of Engineers, Presidio Trust, U.S. Geological Survey, Bureau of Reclamation and the Department of Transportation. FLMAs will collect information to help them improve transportation conditions, site-or area-specific services, programs, services, and recreation and resource management of FLMA lands.

Need and Use of the Information: A combination of surveys, focus groups and interviews, are designed to collect information about visitors' perceptions, experiences and expectations, with respect to road and/or travel transportation conditions, services, and recreation opportunities at various FLMA locations and across areas that could include multiple locations managed by different FLMAs. This information is vital to establish and/or revise goals and objectives that will help improve transportation systems and recreation and resource management plans and to facilitate interagency coordination at area, state, regional, and/or national scales which will better meet the needs of the public and the resources under FLMA management.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; Federal Government; State, Local or Tribal Government.

Estimated Number of Respondents: 140,400.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22,5557 hours.

Rachelle Ragland-Greene,

Acting Departmental Information Collection Clearance Officer.

[FR Doc. 2024–06747 Filed 3–28–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by January 8, 2024 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information

displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Qualitative Research on Food Safety Behaviors Among Parents and Caregivers who prepare meals for minors or older adults. In Depth Interview Research.

OMB Number: 0583–NEW.

Type of Request: Request for a new information collection.

Abstract: FSIS is announcing its intention to collect information from interviews on consumer food safety knowledge, attitudes, and behaviors. FSIS will also collect consumer responses to food safety messages related to home cooking to gather feedback on message content and format.

FSIS' Office of Public Affairs and Consumer Education makes sure members of the American public are equipped with the tools they need to reduce their risk of foodborne illness by teaching the public how to safely handle, prepare, and store food. Consumer education campaigns developed by OPACE's staff are created to promote safe food handling procedures and reduce the likelihood of foodborne illness.

To extend its commitment to educating the public about food safety, FSIS is seeking to focus on the parents and caregivers or those who are providing care and preparing meals to at least one child or one older adult, as a priority audience for this new food safety campaign.

Need and Use of the Information: Preliminary research is necessary to learn more about how to best tailor campaign messages to suit the needs of the audiences of focus. The goal of the proposed research study is to learn more about African American/Black and Hispanic/Latino parent and caregiver knowledge, attitudes, and current behaviors regarding food safety. The information collected from this research will be used to develop and tailor messages to suit audience needs. Further, audience feedback about draft messaging strategies and approaches is necessary to ensure that campaign messages will appeal to audiences.

Information will be used to develop and disseminate effective messaging to help reduce foodborne illness among parents and caregivers. The lack of information in this area would impede the Agency's ability to provide more useful information to consumers to help reduce foodborne illness in the United States. The final goal will be to gather feedback on proposed FSIS food safety messages and understand their possible influence on future food safety behaviors among consumers.

Description of Respondents: Individuals/Households (Parents and Caregivers).

Number of Respondents: 3,050.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 547.

Rachelle Ragland-Greene,

Acting Departmental Information Collection Clearance Officer.

[FR Doc. 2024–06721 Filed 3–28–24; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket #: RUS–24–Electric–0003]

Consumer Oriented Operating Loans

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Utilities Service (RUS or Agency), a Rural Development agency of the United States Department of Agriculture, is issuing this notice to announce it will be utilizing its long-standing statutory authority to consider operating loans under an initiative known as Consumer Oriented Operating Loans (COOL). COOL funding may be approved at the discretion of the RUS Administrator to finance operations for current system borrowers to meet financing needs where the borrower faces hardship circumstances involving unique, transitory, or exigent conditions. To qualify for COOL financing borrowers will commit to create environmental benefits to end users/consumers and invest in additional new carbon pollution-free electricity and/or energy efficiency measures. RUS estimates $50 million will be available for this program in fiscal year 2024.

DATES: This notice is applicable March 29, 2024 and will continue until further notice.

FOR FURTHER INFORMATION CONTACT: Christopher McLean, Assistant Administrator, Electric Program, Rural Utilities Service, Rural Development, United States Department of Agriculture, 1400 Independence Avenue SW, STOP 1568, Washington, DC 20250–1560; telephone: 202–690–4492. Email to: *christopher.mclean@usda.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 4 (7 U.S.C. 904) of title I of the Rural Electrification Act of 1936, as amended, gives RUS the authority to make loans ''for the purpose of financing the construction and operation'' of electric infrastructure furnishing and improving electric service to persons in rural areas.

Definitions: For the purposes of this notice:

Carbon pollution-free electricity means electrical energy produced from resources that generate no carbon emissions, including marine energy, solar, wind, hydrokinetic (including tidal, wave, current, and thermal), geothermal, hydroelectric, nuclear, renewably sourced hydrogen, and electrical energy generation from fossil resources to the extent there is active capture and storage of carbon dioxide emissions that meets EPA requirements; *https://www.federalregister.gov/documents/2021/12/13/2021-27114/catalyzing-clean-energy-industries-and-jobs-through-federal-sustainability.*

Energy Efficiency Measure means any capital investment that reduces energy costs in an amount sufficient to recover the total cost of purchasing and installing such measure over an appropriate period of time and maintains or reduces non-renewable energy consumption.

Clean Energy Enabling Measures shall mean measures (such as adopting new technologies and/or making investments) that enable carbon pollution-free electricity as defined in this notice.

Purpose: To provide funding, at the discretion of the RUS Administrator, to current system borrowers to meet financing needs in hardship circumstances involving unique, transitory, or exigent conditions, such as, but not limited to, power or material cost spikes; liquidity needs due to weather events, supply chain interruptions, man-made or natural disasters or circumstances where end users/consumers could experience excessive rate impacts. Additionally, these loans will require borrowers to create environmental benefits through investments in additional new carbon pollution-free electricity, energy efficiency measures, and/or clean energy enabling measures.

Terms: COOL financing recipients will be required to commit that the loan funds will be used to benefit the end users/consumers. In addition, the recipients will also be required to make an investment in carbon pollution-free electricity, energy efficiency measures, and clean energy enabling measures acceptable to the Administrator. Such

investment must be after the date of the loan commitment letter and prior to two (2) years from the date of the first COOL advance, or other contract covenant deadline approved by the RUS Administrator given the unique circumstances of the Borrower. The investment must be in an amount equal to at least 10 percent of the COOL financing, be additional new carbon pollution-free electricity and/or energy efficiency measures and result in quantifiable, greenhouse gas emissions reductions as evidenced in documentation submitted to the Agency in form and substance acceptable to the RUS Administrator. In all other respects, COOL financing will be subject to the same eligibility, underwriting, loan security and repayment criteria as the core RUS electric infrastructure loan program.

COOL financing will only be made available if the Administrator determines that the loan is feasible and sufficient collateral exists to provide the RUS with adequate security pursuant to a first-priority lien or shared first-priority lien on system assets to ensure full repayment of RUS debt. COOL loans will generally follow the RUS regulations, bulletins and standard policies and procedures for the type of funding (*i.e.,* direct or guaranteed) approved for the COOL loan and will be at terms not to exceed 20 years.

The Electric Program will update existing regulations and bulletins and promulgate new regulations as necessary to implement this new COOL loan policy.

Background: Historically the RUS has prioritized infrastructure construction and sparingly utilized its authority to finance operations and has only approved loans funding operations where a borrower faced a unique hardship affecting the borrower's liquidity or consumer rates. The COVID pandemic and severe weather events are recent examples of such events.

The RUS, on a trial basis, approved COOL financing to several generation and transmission system borrowers and distribution system borrowers who sought operating loans to address hardship circumstances. Under the previously approved COOL financing, the Agency made operating loans whereas a condition of receiving the COOL financing, the borrowers committed that the COOL financing would benefit the end users/consumers and the borrowers also committed that an amount equal to 10 percent of the principal amount of the COOL financing would be invested in new energy efficiency measures or carbon pollution-free electricity technologies. Based on its experience with COOL financing with these trial cases and the application of the agency's rigorous underwriting standards, the agency is announcing that COOL financing is available to current RUS borrowers that encounter the hardship circumstances described in this notice.

Upon publication of this notice in the **Federal Register** and until further notice, the RUS will, in hardship situations, consider new requests for COOL financing in addition to its existing authorities and programs. Infrastructure financing will continue to be the RUS Electric Program's highest priority and COOL financing will only be made available in hardship cases when funds are available and there is no negative impact on RUS ability to meet the infrastructure financing needs in the core RUS Electric Program.

Michele Brooks,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2024–06719 Filed 3–28–24; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number: 240130–0030]

X–RIN 0607–XC074

Estimates of the Voting-Age Population for 2023

AGENCY: Census Bureau, Commerce.

ACTION: General notice announcing population estimates.

SUMMARY: This notice announces the voting-age population estimates as of July 1, 2023 for each state and the District of Columbia. We are providing this notice in accordance with the 1976 amendment to the Federal Election Campaign Act.

FOR FURTHER INFORMATION CONTACT: Karen Battle, Chief, Population Division, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233. Phone: 301–763–2071. Email: *Karen.Battle@census.gov.*

SUPPLEMENTARY INFORMATION: Under the requirements of the 1976 amendment to the Federal Election Campaign Act, Title 52, United States Code, Section 30116(e), I hereby give notice that the estimates of the voting-age population for July 1, 2023 for each state and the District of Columbia are as shown in the following table.

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2023

Area	Population 18 and over	Area	Population 18 and over
United States	262,083,034		
Alabama	3,977,628	Missouri	4,821,686
Alaska	557,899	Montana	897,161
Arizona	5,848,310	Nebraska	1,497,381
Arkansas	2,362,124	Nevada	2,508,220
California	30,519,524	New Hampshire	1,150,004
Colorado	4,662,926	New Jersey	7,280,551
Connecticut	2,894,190	New Mexico	1,663,024
Delaware	819,952	New York	15,611,308
District of Columbia	552,380	North Carolina	8,498,868
Florida	18,229,883	North Dakota	599,192
Georgia	8,490,546	Ohio	9,207,681
Hawaii	1,141,525	Oklahoma	3,087,217
Idaho	1,497,384	Oregon	3,401,528
Illinois	9,844,167	Pennsylvania	10,332,678
Indiana	5,274,945	Rhode Island	892,124
Iowa	2,476,882	South Carolina	4,229,354
Kansas	2,246,209	South Dakota	697,420
Kentucky	3,509,259	Tennessee	5,555,761
Louisiana	3,506,600	Texas	22,942,176

ESTIMATES OF THE POPULATION OF VOTING AGE FOR EACH STATE AND THE DISTRICT OF COLUMBIA: JULY 1, 2023—Continued

Area	Population 18 and over	Area	Population 18 and over
Maine	1,146,670	Utah	2,484,582
Maryland	4,818,337	Vermont	532,828
Massachusetts	5,659,598	Virginia	6,834,154
Michigan	7,925,350	Washington	6,164,810
Minnesota	4,436,981	West Virginia	1,417,859
Mississippi	2,259,864	Wisconsin	4,661,826
		Wyoming	454,508

Source: U.S. Census Bureau, Population Division, Vintage 2023 Population Estimates.

Gina Raimondo, Secretary, Department of Commerce, certified these estimates for the Federal Election Commission.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: March 8, 2024.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2024–06666 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Indigenous Communities Survey

AGENCY: Economic Development Administration, 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 28, 2024.

ADDRESSES: Interested persons are invited to submit written comments via email to the Networks Team, Economic Development Administration, Department of Commerce, at *networks@eda.gov* or *PRAcomments@doc.gov*). Please reference ''Indigenous Community Survey'' 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 the Bryan Borlik, Economic Development Administration, Department of Commerce, at *bborlik@eda.gov* or 202–482–3901.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be driven locally, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, workforce development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *www.eda.gov.*

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for a new information collection by an EDA grantee. This grantee will collect information about the economic development needs, planning, and priorities of Indigenous communities. Findings from the survey will inform EDA's work with Indigenous communities and will support other agencies, organizations, and communities in better planning, funding, and implementing economic development activities.

To that end, the grantee will conduct an electronic data collection survey. A subset of the recipients (20) will also be engaged in phone interviews to better understand the experiences and decision-making processes when evaluating opportunities for economic development funding. EDA is particularly interested in public comment on how the proposed data collection will support the assessment of program effectiveness, or if alternative information should be considered.

II. Method of Collection

Data will be collected electronically and via phone interviews.

III. Data

OMB Control Number: None: new information collection.

Form Number(s): None: new information collection.

Type of Review: Regular submission: new information collection.

Affected Public: This survey will specifically target EDA applicants for projects that are indigenous and indigenous serving. Entities may include (i) District Organization of an EDA-designated Economic Development District (EDD); (ii) Indian Tribe or a consortium of Indian Tribes; (iii) State,

county, city, or other political subdivision of a State, including a special purpose unit of a State or local government engaged in economic or infrastructure development activities, or a consortium of political subdivisions; (iv) institution of higher education or a consortium of institutions of higher education; or (v) public or private non-profit organization or association acting in cooperation with officials of a general purpose political subdivision of a State.

Estimated Number of Respondents: A total of 150 respondents for the electronic survey and a subset of 20 for the phone interviews.

Estimated Time per Response: Half an hour (30 minutes) for the electronic survey and 1 hour for each phone interview.

Estimated Total Annual Burden Hours: 75 hours for the electronic survey and 20 hours for the phone interviews.

Type of respondent (annual)	Number of respondents	Hours per response (hours)	Number of responses per year (annual)	Total estimated time (hours)
EDA Grant Applicants	150	.5	1	75
Subset of Grant Applicants	20	1	1	20
Total	170			95

Estimated Total Annual Cost to Public: $5,985 (cost assumes application of U.S. Bureau of Labor Statistics September 2023 mean hourly employer costs for employee compensation for professional and related occupations of $63.00).

Respondent's Obligation: Voluntary.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*).

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 of Economic Affairs, Commerce Department.

[FR Doc. 2024–06685 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–877, A–570–064, C–533–878, C–570–065]

Stainless Steel Flanges From the People's Republic of China and India: Initiation and Preliminary Results of Changed Circumstances Reviews and Intent To Revoke the Antidumping and Countervailing Duty Orders, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a request from Anchor Fluid Power (Anchor), the U.S. Department of Commerce (Commerce) is initiating and issuing preliminary results of changed circumstances reviews (CCRs) of the antidumping duty and countervailing duty orders on stainless steel flanges from the People's Republic of China (China) and India to revoke the orders, in part, with respect to certain products. Interested parties are invited to comment on these preliminary results.

DATES: Applicable March 29, 2024.

FOR FURTHER INFORMATION CONTACT: Sun Cho, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3004.

SUPPLEMENTARY INFORMATION:

Background

In 2018, Commerce published the antidumping and countervailing duty orders on stainless steel flanges from China and India.[1] On February 2, 2024, Anchor, an importer of stainless steel flanges, requested, through CCRs, that Commerce retroactively revoke the *Orders,* in part, pursuant to section 751(b)(1)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216(b) with respect to certain products.[2] Anchor stated that it qualifies as an importer of stainless steel flanges currently subject to duties and, as such, is an interested party pursuant to section 771(9)(A) of the Act and 19 CFR 351.102(b)(29)(ii).[3]

On March 1, 2024, Commerce requested that Anchor provide supplemental information related to its CCR Request. Anchor timely responded to this supplemental questionnaire on March 11, 2024.[4] Within Anchor's CCR Request and CCR Supplement, Anchor provided statements from members of the petitioning coalition or their representatives, including Core Pipe Products, Inc.; Kerkau Manufacturing; and Ameriforge LLC, indicating that they either were not interested in participating in the CCRs or were not contesting Anchor's proposal.[5]

[1] *See Stainless Steel Flanges from the People's Republic of China: Countervailing Duty Order,* 83 FR 26006 (June 5, 2018); *Stainless Steel Flanges from the People's Republic of China: Antidumping Duty Order,* 83 FR 37468 (August 1, 2018); *Stainless Steel Flanges from India: Antidumping Duty Order,* 83 FR 50639 (October 9, 2018); and *Stainless Steel Flanges from India: Countervailing Duty Order,* 83 FR 50336 (October 5, 2018) (collectively, *Orders*).

[2] *See* Anchor's Letter, ''Request for an Expedited Changed Circumstances Review to Amend the Scope of the Orders,'' dated February 2, 2024 (CCR Request).

[3] *Id.* at 2.

[4] *See* Anchor's Letter, ''Anchor Response to First Supplemental Questionnaire,'' dated March 11, 2024 (CCR Supplement).

[5] *Id.* at Attachment A.

Furthermore, Anchor demonstrates that Core Pipe Products, Inc.; Kerkau Manufacturing; and Ameriforge LLC represent substantially all of the production of the domestic like product.[6] No interested parties filed comments opposing the CCR Request. Further, Anchor requested that Commerce conduct expedited CCRs.[7]

Scope of the Orders

The scope of the *Orders* covers certain forged stainless steel flanges, whether unfinished, semi-finished, or finished (certain forged stainless steel flanges). Certain forged stainless steel flanges are generally manufactured to, but not limited to, the material specification of ASTM/ASME A/SA182 or comparable domestic or foreign specifications. Certain forged stainless steel flanges are made in various grades such as, but not limited to, 304, 304L, 316, and 316L (or combinations thereof). The term ''stainless steel'' used in this scope refers to an alloy steel containing, by actual weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. Unfinished stainless steel flanges possess the approximate shape of finished stainless steel flanges and have not yet been machined to final specification after the initial forging or like operations. These machining processes may include, but are not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing. Semi-finished stainless steel flanges are unfinished stainless steel flanges that have undergone some machining processes.

The scope includes six general types of flanges. They are: (1) weld neck, generally used in butt-weld line connection; (2) threaded, generally used for threaded line connections; (3) slip-on, generally used to slide over pipe; (4) lap joint, generally used with stub-ends/butt-weld line connections; (5) socket weld, generally used to fit pipe into a machine recession; and (6) blind, generally used to seal off a line. The sizes and descriptions of the flanges within the scope include all pressure classes of ASME B16.5 and range from one-half inch to twenty-four inches nominal pipe size. Specifically excluded from the scope of the *Orders* are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A351.

The country of origin for certain forged stainless steel flanges, whether unfinished, semi-finished, or finished is the country where the flange was forged. Subject merchandise includes stainless steel flanges as defined above that have been further processed in a third country. The processing includes, but is not limited to, boring, facing, spot facing, drilling, tapering, threading, beveling, heating, or compressing, and/or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the stainless steel flanges.

Merchandise subject to the *Orders* is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings and ASTM specifications are provided for convenience and customs purposes, the written description of the scope is dispositive.

Proposed Partial Revocation of the Orders

The products subject to the proposed partial revocation are certain stainless steel flanges produced in accordance with specification SAE J518. Anchor noted that SAE J518 has one and only one international equivalent standard, ISO 6162, and that it is not possible for flanges produced in accordance with SAE J518 to be certified under another standard other than the international equivalent standard ISO 6162.[8] Anchor also noted that SAE J518 flanges cannot be dual-certified with standards covering other stainless steel flanges covered by the scope of the *Orders* and that the flanges produced to the specification SAE J518 have unique physical characteristics that distinguish them from other stainless steel flanges subject to the *Orders* such that no ambiguity will be created by this exclusion.[9] Anchor specifically requests that the scope of the *Orders* be amended to include the following exclusion: The scope also excludes stainless steel flanges produced in accordance with specification SAE J518 (or its international equivalent, ISO 6162).

Initiation of CCRs

Pursuant to section 751(b)(1) of the Act, Commerce will conduct a CCR upon receipt of a request from an interested party that shows changed circumstances sufficient to warrant a review of the order. In accordance with 19 CFR 351.216(d), Commerce determines that the information submitted by Anchor, along with substantially all of the domestic industry's support, shows changed circumstances sufficient to warrant a review of the *Orders.*

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that Commerce may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In its administrative practice, Commerce has interpreted ''substantially all'' to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.[10]

Preliminary Results of the CCRs and Intent To Revoke the Orders, in Part

Section 351.221(c)(3)(ii) of Commerce's regulations permits Commerce to combine the notice of initiation of a CCR and the notice of preliminary results if Commerce concludes that expedited action is warranted.[11] In this instance, because the record contains information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.[12]

Pursuant to section 751(d)(1) of the Act, and 19 CFR 351.222(g), Commerce may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.,* a CCR). Section 751(b)(1) of the Act requires a CCR to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 782(h)(2) of the Act gives Commerce the authority to revoke an order if producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order. Section 351.222(g) of Commerce's regulations provides that Commerce will conduct a CCR of an antidumping or countervailing duty order under 19

[6] *Id.* at 3–4.

[7] *See* CCR Request at 6.

[8] *Id.*

[9] *Id.*

[10] *See, e.g., Certain Cased Pencils from the People's Republic of China: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review, and Intent to Revoke Order in Part,* 77 FR 42276 (July 18, 2012), unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order, in Part,* 77 FR 53176 (August 31, 2012).

[11] *See* 19 CFR 351.221(c)(3)(ii); *see also Certain Pasta from Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 80 FR 33480, 33480–41 (June 12, 2015) (*Pasta from Italy Preliminary Results*), unchanged in *Certain Pasta from Italy: Final Results of Changed Circumstances Review,* 80 FR 48807 (August 14, 2015) (*Pasta from Italy Final Results*).

[12] *See, e.g., Pasta from Italy Preliminary Results,* 80 FR at 33480–41, unchanged in *Pasta from Italy Final Results,* 80 FR at 48807.

CFR 351.216, and may revoke an order (in whole or in part), if it concludes that: (i) producers accounting for substantially all of the production of the domestic like product to which the order pertains have expressed a lack of interest in the relief provided by the order, in whole or in part; or (ii) if other changed circumstances sufficient to warrant revocation exist. Thus, both the Act and Commerce's regulations require that ''substantially all'' domestic producers express a lack of interest in the order for Commerce to revoke the order, in whole or in part.[13] In its administrative practice, Commerce has interpreted ''substantially all'' to represent producers accounting for at least 85 percent of U.S. production of the domestic like product.[14]

As explained above, domestic stainless steel flanges producers accounting for greater than 85 percent of the domestic industry, including the original petitioners and one other domestic stainless steel flanges producer, have expressed no interest in opposing Anchor's CCR Request.[15] Substantially all of the domestic industry appears to have no interest in maintaining the *Orders* with respect to the specific products which are the subject of Anchor's request.[16] The domestic industry has not commented on whether the proposed scope exclusion language should be retroactive.

In light of the domestic producers' statements of no interest in opposing the revocation of the *Orders,* in part, with respect to the stainless steel flanges as described by Anchor, and in the absence of any other interested party comments addressing the issue of domestic industry support, we preliminarily conclude that producers accounting for substantially all of the production of the domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to stainless steel flanges that are the subject of Anchor's revocation request. Thus, we preliminarily determine that changed circumstances warrant revocation of the *Orders,* in part, with respect to such stainless steel flanges as described by Anchor. Accordingly, we are notifying the public of our intent to revoke the *Orders,* in part, with respect to stainless steel flanges described in the ''Proposed Partial Revocation of the *Orders*'' section above. This revocation is limited solely to those flanges produced to specification SAE J518 (or its international equivalent, ISO 6162), and not to any other specification.

Additionally, Anchor requested that Commerce find this scope exclusion applies retroactively; however, it did not provide a date as to which it believes this scope exclusion should retroactively apply. If we make a final determination to revoke the *Orders* in part, then we intend to apply the partial revocation to unliquidated entries of merchandise subject to the CCRs that were entered or withdrawn from warehouse, for consumption, on or after the day following the last day of the period covered by the most recently completed administrative review of each of the *Orders,* and are not already subject to automatic liquidation instructions.

Public Comment

In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice.[17] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the due date for case briefs.[18]

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In these CCRs, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[19] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the Issues and Decision Memorandum that will accompany the final results in these CCRs. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[20] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the day on which it is due.

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice in the **Federal Register**.[21] Hearing requests should contain the following information: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs.[22] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and the time of the hearing two days before the scheduled date.

Final Results of Reviews

Unless extended, consistent with 19 CFR 351.216(e), Commerce intends to issue the final results of these CCRs no later than 270 days after the date on which these reviews were initiated or 45 days if all parties agree to the outcome of the reviews. If, in the final results of these reviews, Commerce continues to determine that changed circumstances warrant the revocation of the *Orders,* in part, we will instruct U.S. Customs and Border Protection (CBP) to liquidate without regard to antidumping or countervailing duties, and to refund any estimated antidumping and countervailing duties deposited on all unliquidated entries of the merchandise covered by the revocation that are not covered by the final results of an administrative review or an automatic liquidation instruction to CBP. The current requirement for cash deposits of estimated antidumping or countervailing duties on all entries of subject merchandise will continue unless they are modified pursuant to the final results of these changed CCRs.

Notification to Interested Parties

This initiation notice and preliminary results are published in accordance with section 751(b)(1) of the Act, 19 CFR 351.216(b)(1) and 19 CFR 351.222 (c)(3)(ii).

[13] *See* section 782(h) of the Act; and 19 CFR 351.222(g).

[14] *See, e.g., Honey from Argentina: Antidumping and Countervailing Duty Changed Circumstances Reviews; Preliminary Intent to Revoke Antidumping and Countervailing Duty Orders,* 77 FR 67790, 67791 (November 14, 2012), unchanged in *Honey from Argentina: Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews; Revocation of Antidumping and Countervailing Duty Orders,* 77 FR 77029 (December 31, 2012).

[15] *See* CCR Supplement at Attachment A–1, A–2, and A–3.

[16] *Id.*

[17] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[18] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Final Rule*).

[19] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[20] *See APO and Service Final Rule.*

[21] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

[22] *See* 19 CFR 351.310(c).

Dated: March 22, 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.

[FR Doc. 2024–06684 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–839]

Steel Propane Cylinders From Thailand: Amended Final Results of Antidumping Duty Administrative Review; 2021–2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the final results of the administrative review of the antidumping duty order on steel propane cylinders from Thailand to correct one ministerial error. The period of review (POR) is August 1, 2021, through July 31, 2022.

DATES: Applicable March 29, 2024.

FOR FURTHER INFORMATION CONTACT: Samuel Brummitt, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–7851.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2024, Commerce published the final results of the 2021–2022 administrative review of the antidumping duty order on steel propane cylinders from Thailand.[1] On February 29, 2024, Sahamitr Pressure Container Public Company Limited (SMPC), the sole respondent in this administrative review, timely alleged that Commerce made a ministerial error in the *Final Results*.[2] Commerce is amending its *Final Results* to correct for the ministerial error alleged by SMPC. No other party made a ministerial error allegation or provided rebuttal comments in response to SMPC's ministerial error allegation.

Legal Framework

A ''ministerial error'' is defined as including ''errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the {Commerce} considers ministerial.'' [3] Pursuant to 19 CFR 351.224(e), Commerce will analyze any comments received and, if appropriate, correct any ministerial error by amending the final results of review.

Ministerial Error

In the *Final Results,* Commerce made an inadvertent error within the meaning of section 751(h) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.224(f) with respect to the selection of sales databases used in SMPC's margin analysis. Accordingly, pursuant to 19 CFR 351.224(e), Commerce is amending the *Final Results* to correct for this ministerial error.[4] For a complete description and analysis of the specific inadvertent error, and SMPC's ministerial error allegation, *see* the accompanying Ministerial Error Allegation Memorandum.[5] The Ministerial Error Allegation Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.*

Amended Final Results of Review

As a result of correcting this ministerial error, Commerce determines that, for the POR August 1, 2021, through July 31, 2022, the following weighted-average dumping margin exists:

Exporter/producer	Weighted-average dumping margin (percent)
Sahamitr Pressure Container Plc	2.15

Disclosure

We intend to disclose the calculations performed for these amended final results to parties in this review, under administrative protective order (APO), within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these amended final results of the administrative review.

Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent did not report entered value, we calculated the entered value in order to calculate the assessment rate. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' will apply to entries of subject merchandise during the POR produced by SMPC for which it did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the amended final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective retroactively for all shipments of subject merchandise that entered, or were withdrawn from warehouse, for consumption on or after February 23,

[1] *See Steel Propane Cylinders from Thailand: Final Results of Antidumping Duty Administrative Review; 2021–2022,* 89 FR 13690 (February 23, 2024) (*Final Results*), and accompanying Issues and Decision Memorandum; *see also* Memorandum, ''Deadline for Ministerial Error Comments for the Final Results,'' dated February 22, 2024.

[2] *See* SMPC's Letter, ''Request for the Correction of a Ministerial Error Contained in the Final Results of Review,'' dated February 29, 2024.

[3] *See* section 751(h) of the Act; *see also* 19 CFR 351.224(f).

[4] *See* Memorandum, ''Antidumping Duty Administrative Review of Steel Propane Cylinders from Thailand (2021–2022): Ministerial Error Allegation,'' dated concurrently with this notice (Ministerial Error Allegation Memorandum).

[5] *Id.*

2024, the date of publication of the *Final Results* of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for SMPC will be equal to the weighted-average dumping margin established in these amended final results of review; (2) for producers or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review or another completed segment of this proceeding, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) if neither the exporter nor the producer is a firm covered in this or any previously completed segment of this proceeding, then the cash deposit rate will be the all-others rate of 10.77 percent established in the less-than-fair-value investigation.[6] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[6] *See Steel Propane Cylinders from Thailand: Final Determination of Sales at Less Than Fair Value,* 84 FR 29168, 29169 (June 21, 2019).

Notification to Interested Parties

The amended final results and notice are issued and published in accordance with sections 751(h) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: March 22, 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.

[FR Doc. 2024–06672 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–859]

Mattresses From Mexico: Postponement of Final Determination of Sales at Less Than Fair Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) is postponing the deadline for issuing the final determination in the less-than-fair-value (LTFV) investigation of mattresses from Mexico until July 15, 2024, and is extending the provisional measures from a four-month period to a period of not more than six months.

DATES: Applicable March 29, 2024.

FOR FURTHER INFORMATION CONTACT: Dakota Potts or Benjamin Blythe, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0223 or (202) 482–3457, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 2023, Commerce initiated an LTFV investigation of imports of mattresses from Mexico.[1] The period of investigation is July 1, 2022, through June 30, 2023. On March 1, 2024, Commerce published its preliminary determination in this LTFV investigation of mattresses from Mexico.[2]

[1] *See Mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan: Initiation of Less-Than-Fair-Value Investigations,* 88 FR 57433 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Mexico: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 89 FR 15152 (March 1, 2024) (*Preliminary Determination*).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by an exporter or producer who accounts for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Further, 19 CFR 351.210(e)(2) requires that such postponement requests by exporters be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months, in accordance with section 733(d) of the Act.

On March 13, 2024, Ureblock S.A. de C.V. (Ureblock), a mandatory respondent in this investigation, requested that Commerce postpone the deadline for the final determination pursuant to 19 CFR 351.210(b)(2)(ii) and (e) and extend the application of the provisional measures from a four-month period to a period of not more than six months.[3] In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination was affirmative; (2) the request for postponement was made by an exporter and producer who accounts for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination until no later than 135 days after the date of publication of the *Preliminary Determination,* and extending the provisional measures from a four-month period to a period of not more than six months. Accordingly, Commerce will issue its final determination no later than July 15, 2024.[4]

[3] *See* Ureblock's Letter, ''Ureblock's Request to Extend Final Determination in the Less-Than-Fair-Value Investigation of Mattresses from Mexico,'' dated March 13, 2024.

[4] Postponing the final determination to 135 days after the publication of the *Preliminary Determination* would place the deadline on Sunday, July 14, 2024. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. See *Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

Notification to Interested Parties

This notice is issued and published pursuant to section 735(a)(2) of the Act and 19 CFR 351.210(g).

Dated: March 22, 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.

[FR Doc. 2024–06683 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BM93

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries and Ecosystem Research

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

ACTION: Notice; receipt of application for Letter of Authorization; request for comments and information.

SUMMARY: NMFS has received a request from the NMFS Alaska Fisheries Science Center (AFSC) for authorization to take marine mammals incidental to conducting fisheries and ecosystem research in the Pacific and Arctic Oceans over the course of 5 years from the date of issuance. Pursuant to regulations implementing the Marine Mammal Protection Act (MMPA), NMFS is announcing receipt of AFSC's request for the development and implementation of regulations governing the incidental taking of marine mammals. NMFS invites the public to provide information, suggestions, and comments on the AFSC's application and request.

DATES: Comments and information must be received no later than April 29, 2024.

ADDRESSES: Comments on the applications should be addressed to Jolie Harrison, Chief, Permits and should be submitted via email to *ITP.Jacobus@noaa.gov.* An electronic copy of AFSC's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Kristy Jacobus, Office of Protected Resources, NMFS, (301) 427–8401. An electronic copy of the AFSC's application may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An incidental take authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On November 13, 2023, NMFS received an application from the AFSC requesting authorization for take of marine mammals incidental to fisheries and ecosystem research conducted by AFSC and the International Pacific Halibut Commission (IPHC) in the Pacific and Arctic Oceans. Following NMFS' review of the application, AFSC provided responses to our questions and submitted a revised application on March 19, 2024, and the application was deemed adequate and complete on March 20, 2024. The requested regulations would be valid for 5 years, from October 7, 2024 through October 6, 2029. AFSC plans to conduct fisheries research surveys in multiple geographic regions, including the Gulf of Alaska, Bering Sea, and Arctic Ocean. The IPHC operates in the Bering Sea, Gulf of Alaska, and waters off the U.S west coast. It is possible that marine mammals may interact with fishing gear (*e.g.,* trawl nets, longline, gillnets) used in AFSC's and IPHC's fisheries research projects, resulting in injury, serious injury, or mortality. In addition, Level B harassment takes due to physical disturbance of pinnipeds at haulouts due to the presence of research vessels, gear, or humans is possible. Therefore, AFSC requests authorization to incidentally take marine mammals.

AFSC has determined it appropriate to incorporate the fisheries research activities of the IPHC into their specified activity. The IPHC, established by a Convention between the government of Canada and the U.S., is an international fisheries organization mandated to conduct research on and manage the stock of Pacific halibut (*Hippoglossus stenolepis*) within the Convention waters of both nations. Although operating in U.S. waters (and, therefore, subject to the MMPA prohibition on ''take'' of marine mammals), the IPHC is not appropriately considered to be a U.S. citizen (as defined by the MMPA) and

cannot be issued an incidental take authorization. IPHC activity and requested take authorization is described in AFSC's application.

The requested regulations would be the second incidental take regulations issued to AFSC, following regulations in place from 2019–2024. Monitoring reports submitted by AFSC are available online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-afsc-fisheries-and-ecosystem-research.*

Specified Activities

The Federal Government has a responsibility to conserve and protect living marine resources in U.S. federal waters and has also entered into a number of international agreements and treaties related to the management of living marine resources in international waters outside the United States. NOAA has the primary responsibility for managing marine fin and shellfish species and their habitats, with that responsibility delegated within NOAA to NMFS.

In order to direct and coordinate the collection of scientific information needed to make informed management decisions, Congress created six Regional Fisheries Science Centers, each a distinct organizational entity and the scientific focal point within NMFS for region-based, Federal fisheries-related research. This research is aimed at monitoring fish stock recruitment, abundance, survival and biological rates, geographic distribution of species and stocks, ecosystem process changes, and marine ecological research. The AFSC is the research arm of NMFS in U.S. waters off of Alaska.

As noted above, the IPHC is an international organization dedicated to conducting research in support of increasing and maintaining knowledge of halibut biology and stock assessment.

Research is aimed at monitoring fish stock recruitment, survival and biological rates, abundance and geographic distribution of species and stocks, and providing other scientific information needed to improve our understanding of complex marine ecological processes. The AFSC and IPHC propose to administer and conduct these survey programs over the 5-year period.

Information Solicited

Interested persons may submit information, suggestions, and comments concerning AFSC's request (see **ADDRESSES**). NMFS will consider all information, suggestions, and comments related to the request during the development of proposed regulations governing the incidental taking of marine mammals by AFSC, if appropriate.

Dated: March 26, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–06755 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD839]

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day hybrid meeting with both in-person and remote participation to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, April 16, 2024 through Thursday, April 18, 2024, beginning at 10 a.m. on Tuesday, April 16th and 9 a.m. on Wednesday, April 17 and Thursday, April 18, 2024.

ADDRESSES: The meeting will take place at the Hilton Mystic, 20 Coogan Boulevard, Mystic, CT 06355; telephone: (860) 572–0731; online at *https://www.hilton.com/en/hotels/mysmhhf-hilton-mystic.* Join the webinar at *https://register.gotowebinar.com/register/4261104974602457941.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Cate O'Keefe, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, April 16, 2024

The Council will begin this meeting with brief announcements, followed by reports on recent activities from the Council's Chair and Executive Director, the GARFO Regional Administrator, the NOAA Office of General Counsel, the Northeast Fisheries Science Center (NEFSC) Director, the Mid-Atlantic Fishery Management Council liaison, and representatives from the Atlantic States Marine Fisheries Commission (ASMFC), the U.S. Coast Guard, NOAA's Office of Law Enforcement, and the U.S. Fish and Wildlife Service. The Council then will receive a presentation from the Council chair on preventing harassment in the fishery management council process. The Enforcement Committee report will be next. The committee will provide guidance on: (1) use of vessel monitoring systems (VMS) in enforcement and scallop VMS reporting rates; (2) evolving on-demand fishing gear programs; and (3) enforceability of closed area polygon boundaries.

After the lunch break, the Council will receive a brief Scallop Committee report with an overview of the 2024 scallop workplan. Then, the Council will devote the rest of the afternoon to a discussion about the Northern Edge of Georges Bank, beginning with an analysis of the concept areas for potential scallop fishery access to the habitat closure area and then a full Council discussion about action or direction on the preparation of management alternatives. Following the adjournment of official business, the Council will host a public outreach session to foster open lines of communication among Council members, staff, industry, and all meeting attendees. This event will be held at the Hilton Mystic in the restaurant/lobby area.

Wednesday, April 17, 2024

The Council will begin the second day of its meeting with the Northeast Fisheries Science Center's presentation on the peer reviewed results of the Applying State Space Models Research Track. Next, the Risk Policy Working Group will present proposed revisions to the Council's Risk Policy. The Council will engage in a discussion about the revisions and path forward. The first part of the Habitat Committee report will follow. The Council will receive: (1) input from a Scientific and Statistical Committee (SSC) subpanel on the Essential Fish Habitat (EFH) Review; and (2) Habitat Plan Development Team updates on EFH review components.

Following the lunch break, the Council will receive the second part of the Habitat Committee report. Offshore wind developers will provide updates about their respective projects regarding project status, surveys, fisheries mitigation, and other topics. The Council then will receive a report on outcomes from a recent EFH Climate

Resilience Workshop and other habitat-related updates. The Monkfish Committee report will be next. The Council will take final action on Framework Adjustment 15 to the Monkfish Fishery Management Plan (FMP). This framework is a joint action with the Mid-Atlantic Fishery Management Council to reduce monkfish and spiny dogfish large-mesh gillnet fishery interactions with Atlantic sturgeon. Next, the Council will receive a progress report on Amendment 10 to the Atlantic Herring FMP, which is an action to: (1) minimize user conflicts; (2) contribute to optimum yield; (3) support rebuilding of Atlantic herring; and (4) enhance river herring and shad avoidance and catch reduction. The full Council then will adjourn for the day. Shortly afterward, at 6 p.m., in the same meeting room, the Council will hold a public scoping meeting on Atlantic Herring Amendment 10.

Thursday, April 18, 2024

The Council will lead off the third day of its meeting with the Northeast Trawl Advisory Panel (NTAP) report, which will include overviews of: (1) NTAP's recent Bigelow Continency Plan Working Group meeting; (2) continued discussions on the Industry-Based Survey Pilot Project; and (3) other *NOAA Ship Henry B. Bigelow* continency options. Next, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. These comments will be received both in person and through the webinar. A guide for how to publicly comment through the webinar is available on the Council website at *https://s3.amazonaws.com/nefmc.org/NEFMC-meeting-remote-participation_generic.pdf*. The comment period will be followed by the Groundfish Committee report. The Council will receive an SSC subpanel report on an Atlantic cod stock structure management strategy evaluation (MSE) review. The Council then will receive an update on upcoming public workshops and the proposed phases of work related to its Atlantic Cod Management Transition Plan. The Council also will discuss options for incorporating the four biological stock units of Atlantic cod into the Northeast Multispecies (Groundfish) Fishery Management Plan. Finally, the Council will receive an update on work to review flatfish sub-annual catch limits and accountability measures. The Council then will close out the meeting with other business.

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Executive Director Cate O'Keefe (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: March 26, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024–06746 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD829]

Marine Mammals; File No. 27973

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that the Texas A&M University—Corpus Christi, Department of Life Sciences, Tidal Hall 231, Corpus Christi, TX 78412 (Responsible Party: Dara Orbach, Ph.D.), has applied in due form for a permit to conduct research on bottlenose dolphins (*Tursiops truncatus*).

DATES: Written comments must be received on or before April 29, 2024.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 27973 from the list of available applications. These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 27973 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Erin Markin, Ph.D., (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to continue to study the population biology, behavior, and health of common bottlenose dolphins in Central and South Texas waters (bays, sounds, estuaries). The research aims to: (1) establish dolphin spatiotemporal patterns; (2) maintain a photo-identification catalog of dolphins; (3) analyze dolphin behavior relative to anthropogenic disturbance; and (4) determine the health condition of dolphins. Researchers would harass up to 3,081 dolphins annually during unmanned aircraft surveys and vessel-based surveys for photo-identification, observations, and passive acoustic monitoring. A subset of 90 dolphins would also be biopsy sampled annually. The permit would be valid for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 26, 2024.

Julia M. Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–06727 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD826]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California

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

ACTION: Notice; issuance of renewal incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA), as amended, notification is hereby given that NMFS has issued a renewal incidental harassment authorization (IHA) to California Department of Transportation (Caltrans) to incidentally harass marine mammals incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California.

DATES: This renewal IHA is valid from April 1, 2024 through March 30, 2025.

FOR FURTHER INFORMATION CONTACT: Craig Cockrell, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are promulgated or, if the taking is limited to harassment, an IHA is issued.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). NMFS must also prescribe requirements pertaining to monitoring and reporting of such takings. The definition of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in the MMPA and NMFS's implementing regulations (see 16 U.S.C. 1362; 50 CFR 216.103).

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial IHA, NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical, or nearly identical, activities as described in the Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2) the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).

2. The request for renewal must include the following:

- An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).
- A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

3. Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.*

History of Request

On July 31, 2023, NMFS issued an IHA to Caltrans to take marine mammals incidental to Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California (88 FR 51778, August 4, 2023), effective from August 1, 2023 through March 30, 2024. On February 7, 2023, NMFS received an application for the renewal of that initial IHA. As described in the application for renewal, the activities for which incidental take is requested consist of activities that are covered by the initial authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at *https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael*) which confirms

that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. The notice of the proposed renewal IHA was published on March 4, 2024 (89 FR 15549).

Description of the Specified Activities and Anticipated Impacts

Under the initial IHA Caltrans proposed to conduct construction activities to restore a portion of the Richmond-San Rafael Bridge. Prior to restoration work Caltrans would install a debris containment system to ensure contaminants from construction are not deposited into San Francisco Bay. Caltrans and NMFS concluded that during the deployment and retrieval of the containment system disturbance (*i.e.,* Level B harassment) may occur to harbor seals hauled out at Castro Rocks. Castro Rocks is an important haulout location for harbor seals that is close to the portion of the Richmond-San Rafael Bridge where construction work is occurring.

Under the initial IHA Caltrans took 19 days to deploy the debris containment system and during this time protected species observers (PSOs) did not observe any disturbance of harbor seals hauled out at Castro Rocks. Caltrans will be unable to remove the debris containment system before the expiration of the initial IHA. Therefore, this renewal will allow for the removal of the debris containment system and completion of the restoration project. NMFS authorized 9,000 takes of harbor seals by Level B harassment under the initial IHA, for the installation and removal of the debris containment system. This renewal will authorize a portion of the number of takes authorized in the initial IHA based on the days remaining to complete the work.

All documents related to the initial IHA and the applicant's request for renewal are available on our website at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-california-department-transportations-richmond-san-rafael.*

Detailed Description of the Activity

A detailed description of the construction activities for which take is authorized here may be found in the Notices of the Proposed (88 FR 41920, June 28, 2023) and Final IHAs (88 FR 51778, August 4, 2023) for the initial authorization. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. This renewal IHA is effective from April 1, 2024 through March 30, 2025.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, 2023 draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined there is no new information that affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and Their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat may be found in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that there is no new information that affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

The initial IHA assumed a daily occurrence rate of 300 harbor seals per day on Castro Rocks. Caltrans expected the installation and removal of the debris containment system to take approximately 30 days. Therefore, the initial IHA authorized a total of 9,000 takes by Level B harassment to complete the installation and removal of the debris containment system. Under the initial IHA Caltrans installed the debris containment system over a 19 day period and no takes by Level B harassment of harbor seals were observed during that time. The removal of the debris containment system will not be completed before the initial IHA expires.

This IHA renewal will authorize take by Level B harassment of harbor seals during the removal of the debris containment system. It is expected to take a total of 10 days to remove the debris containment system once the construction activities are completed. NMFS assumes a similar daily occurrence rate of 300 harbor seals per day on Castro Rocks which over the 10 days of remaining work will equate to a total of 3,000 takes by Level B harassment of harbor seals under this renewal IHA. A detailed description of the methods and inputs used to estimate take for the specified activity are found in the **Federal Register** notices of the Proposed IHA (88 FR 41920, June 28, 2023) and Final IHA (88 FR 51778, August 4, 2023) for the initial authorization.

Description of Mitigation, Monitoring and Reporting Measures

The mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in the **Federal Register** notice of the Proposed IHA (88 FR 41920, June 28, 2023) remains accurate. The following mitigation measures are required for this renewal:

- Seasonal Work Restrictions: installation or removal of the debris containment system must not occur between Piers 52–57 from April 1–July 31 due to the pupping and molting period of harbor seals;
- Work must not take place outside of the containment system on the bridge between Piers 52–57 from April 1 to July 31;
- A non-disturbance buffer will be established within 400 feet (121 meters) of Castro Rocks on the south side of bridge;
- Staging of barges will not be allowed in the project area;
- Routes for watercraft to reach work locations will be predetermined in consultation with the project biologist to avoid harassment or take of marine mammals hauled out at Castro Rocks; and
- No piles may be driven or vibrated to create staging locations for any watercraft. Barges and vessels will be tethered to the existing concrete bridge piers.

The following monitoring and reporting measures are required for this renewal:

- Caltrans will monitor to collect data on marine mammal behavior, counts of the individuals observed, and the frequency of the observations. Caltrans will collect sighting data and observations on behavioral responses to construction for marine mammal

species observed in the region of activity during the period of construction. All observers will be trained in the identification of marine mammals and marine mammal behaviors;

- PSOs must be independent observers (*i.e.,* not construction personnel). All PSOs must have the ability to conduct field observations and collect data according to assigned protocols, be experienced in field identification of marine mammals and their behaviors. Caltrans must submit their resumes to NMFS for approval;
- Biological monitoring must occur 5 days prior to the Project's start date, to establish baseline observations;
- Observation periods will encompass different tide levels and hours of the day. Monitoring of marine mammals around the construction site will be conducted using binoculars as necessary; and
- The location of the PSOs will be at a monitoring platform positioned on Pier 55 of the Richmond-San Rafael Bridge, at the closest pier of the Richmond-San Rafael Bridge to Castro Rocks. Pier 55 is approximately 21 meters from the nearest rock at Castro Rocks harbor seal colony.

Caltrans shall submit a draft report to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the issuance of any subsequent IHA for this project (if required), whichever comes first. The annual report will detail the monitoring protocol, summarize the data recorded during monitoring, and estimate the number of marine mammals that may have been harassed. If no comments are received from NMFS within 30 days, the draft final report will become final. If comments are received, a final report must be submitted up to 30 days after receipt of comments. All PSO datasheets and/or raw sighting data must be submitted with the draft marine mammal report.

Reports shall contain the following information:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period including: (a) what type of restoration work is being completed, and (b) the total duration of work completed;
- PSO locations during monitoring; and
- Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

Upon observation of a marine mammal, the following information must be reported:

- Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting;
- Time of sighting;
- Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), and PSO confidence in identification;
- Distance and location of each observed marine mammal relative to the bridge restoration work;
- Estimated number of animals by species (min/max/best estimate);
- Estimated number of animals by cohort (adults, pups, and group composition, *etc.*);
- Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such flushing or head posturing); and
- Detailed information about implementation of any mitigation measures, a description of specified actions that ensured, and resulting changes in behavior of the animal(s), if any.

Comments and Responses

A notice of NMFS' proposal to issue a renewal IHA to Caltrans was published in the **Federal Register** on March 3, 2024 (89 FR 15549). That notice either described, or referenced descriptions of, the Caltrans' activity, the marine mammal species that may be affected by the activity, the anticipated effects on marine mammals and their habitat, estimated amount and manner of take, and proposed mitigation, monitoring and reporting measures. NMFS received no public comments on the proposed IHA renewal notice.

Determinations

The activities conducted under this potential renewal will be a subset of the activities authorized under the initial IHA. Specifically, this renewal will authorize take incidental to the removal of the debris containment system. Removal of the debris containment system is expected to take 10 days. Take incidental to this activity was originally authorized under the initial IHA but Caltrans could not complete the removal of the debris containment system before the initial IHA expired. In analyzing the effects of the activities for the initial IHA, NMFS determined that the Caltrans' activities will have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than one-third of the abundance of all stocks). There is no new information that affects NMFS' determinations supporting issuance initial IHA or this renewal. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Caltrans' activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

National Environmental Policy Act

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS determined that the issuance of the initial IHA qualified to be categorically excluded from further National Environmental Policy Act review. NMFS has determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

Endangered Species Act

No incidental take of Endangered Species Act (ESA)-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Renewal

NMFS has issued a renewal IHA to Caltrans for the take of marine mammals incidental to conducting Phase II of the Richmond-San Rafael Bridge Restoration Project in Richmond, California valid from April 1, 2024 through March 30, 2025.

Dated: March 26, 2024.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–06762 Filed 3–28–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* April 28, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. In accordance with 41 CFR 51–2.4(b), Government personnel within the contracting activity have identified this as a product requirement not applicable to other Federal entities and has requested the Committee consider granting a purchase or distribution preference if the product is added to the Procurement List. *See* 71 FR 69536 (Dec. 1, 2006). If the Committee grants this request, the Litter, Quad-Fold, De-contaminable will not be available through the U.S. AbilityOne Commission's Commercial Distribution Program. The Committee will consider this request along with relevant comments received from interested parties. If the Committee adds this product to the Procurement List, direct orders for this product may be authorized per 41 CFR 51–6.1 and Federal Acquisition Regulation 8.705–2 if sufficient quantities are available for direct purchase.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s):
6530–01–686–1702—Litter, Quad-Fold, Decontaminable

Authorized Source of Supply: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA

Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

Distribution: C-List

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7530–01–583–0556—Folders, File, Reinforced Tab, Manila, ⅓ Cut, Letter
7530–01–583–0557—Folders, File, Reinforced Tab, Manila, Straight Cut, Letter

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: File Maintenance

Mandatory for: U.S. Department of Treasury, Bureau of Public Debt, 200 Third Street, Parkersburg, WV

Authorized Source of Supply: SW Resources, Inc., Parkersburg, WV

Contracting Activity: BUREAU OF THE FISCAL SERVICE, PSB 3

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–06704 Filed 3–28–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date deleted from the Procurement List:* April 28, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Deletions

On 2/23/2024, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
4240–00–SAM–0024—Hearing Protection, Over-the-Head Earmuff, NRR 20db
Designated Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
4330–01–189–1007—Filter-Separator, Liquid Fuel
2540–01–377–3125—Arm, Windshield Wiper, HMMW Vehicle, 20″ L
Designated Source of Supply: Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity: DLA LAND AND MARITIME, COLUMBUS, OH

NSN(s)—Product Name(s):
7520–01–585–0980—Planner, Non-Dated, Flexible, 30/60 Day, Erasable, 48″ x 32″
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Contracting Activity: GSA/FAS FURNITURE SYSTEMS MGT DIV, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8340–01–600–4807—Individual Reversible Field Tarpaulin, 92.5″ x 82.5″, Camouflage Face with Foilage Green Back
8340–01–600–4809—Individual Reversible Field Tarpaulin, 92.5″ x 82.5″, Camouflage Face with Desert Sand Back
Designated Source of Supply: ORC Industries, Inc., La Crosse, WI
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8340–01–600–4807—Individual Reversible Field Tarpaulin, 92.5″ x 82.5″, Camouflage Face with Foilage Green Back
8340–01–600–4809—Individual Reversible Field Tarpaulin, 92.5″ x 82.5″, Camouflage Face with Desert Sand Back
Designated Source of Supply: Huntsville Rehabilitation Foundation, Inc., Huntsville, AL
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Service(s)

Service Type: Laundry Service
Mandatory for: Department of the Navy, Naval Hospital Pensacola, 6000 West Highway 98, Pensacola, FL
Designated Source of Supply: Wiregrass Rehabilitation Center, Inc., Dothan, AL
Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR JACKSONVILLE

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–06707 Filed 3–28–24; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 9:00 a.m. EDT, Friday, April 5, 2024.

PLACE: Virtual meeting.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters. In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.cftc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: Christopher Kirkpatrick, 202–418–5964.

Authority: 5 U.S.C. 552b.

Dated: March 27, 2024

Christopher Kirkpatrick,

Secretary of the Commission.

[FR Doc. 2024–06847 Filed 3–27–24; 4:15 pm]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0010]

Submission for OMB Review; Comment Request

AGENCY: Pentagon Force Protection Agency (PFPA), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by April 29, 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: Reginald Lucas, (571) 372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Computer Aided Dispatch and Record Management System (CAD/RMS); OMB Control Number: 0704–0522.

Type of Request: Extension.
Number of Respondents: 693.
Responses per Respondent: 1.
Annual Responses: 693.
Average Burden per Response: 20 minutes.
Annual Burden Hours: 231.
Needs and Uses: The information collection requirement is necessary to obtain information regarding incidents that occur at the Pentagon and other facilities under the jurisdiction of the Pentagon Force Protection Agency.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: March 20, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–06374 Filed 3–28–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0052]

Agency Information Collection Activities; Comment Request; International Resource Information System (IRIS)

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of

1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before May 28, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0052. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Sara Starke, 202–987–0391.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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: International Resource Information System (IRIS).

OMB Control Number: 1840–0759.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private sector; individuals and households.

Total Estimated Number of Annual Responses: 6,596.

Total Estimated Number of Annual Burden Hours: 35,712.

Abstract: Information Resource Information System (IRIS) is an online performance reporting system for grantees of International and Foreign Language Education (IFLE) programs. The site also allows for IFLE program officers to process overseas language requests, travel authorization requests, and grant activation requests. IRIS keeps a record of these requests and also of Foreign Language and Area Studies (FLAS) Fellowship recipients and grantee performance reports.

This is a request for an extension of IRIS, which will permit the continued collection of project and program performance data for IFLE programs: (1) American Overseas Research Centers (AORC), (2) Business and International Education (BIE), (3) Centers for International Business Education (CIBE), (4) Foreign Language and Area Studies (FLAS) Fellowships, (5) Institute for International Public Policy (IIPP), (6) International Research and Studies (IRS), (7) Language Resource Centers (LRC), (8) National Resource Centers (NRC), (9) Technological Innovation and Cooperation for Foreign Information Access (TICFIA), (10) Undergraduate International Studies and Foreign Language (UISFL), (11) Fulbright-Hays Doctoral Dissertation Research Abroad Program (DDRA), (12) Fulbright-Hays Faculty Research Abroad (FRA), (13) Fulbright-Hays Group Projects Abroad (GPA), and (14) Fulbright-Hays Seminars Abroad (SA).

Dated: March 26, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–06694 Filed 3–28–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0053]

Agency Information Collection Activities; Comment Request; Evaluation of Transition Supports for Youth With Disabilities

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 revision of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before June 28, 2024.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2024–SCC–0053. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, the Department will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. Please note that comments submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Manager of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W203, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Yumiko Sekino, 202–453–7380.

SUPPLEMENTARY INFORMATION: The Department, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection

requirements and provide the requested data in the desired format. The Department is soliciting comments on the proposed information collection request (ICR) that is described below. 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 Transition Supports for Youth with Disabilities.

OMB Control Number: 1850–0979.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 6,090.

Total Estimated Number of Annual Burden Hours: 2,924.

Abstract: This study will examine the effectiveness, implementation, and costs of two new strategies for supporting youth with disabilities and their families to prepare for a successful transition from high school to adult life. The first strategy is based on a model of self-determination instruction designed to help students develop skills such as goal setting, decision making, planning and apply those skills to plan and pursue their transition goals. The second strategy not only teaches self-determination skills but also provides individual mentoring to help students engage in and take active steps toward their post-school goals. The study will compare the intermediate and post-school outcomes for approximately 3,000 students who have an individualized education program and are approximately two years from high school graduation. Participating students in up to 100 schools and 16 districts will be randomly assigned to receive one of the study's strategies or continue with the regular transition supports they receive from their school. This revised information collection request adds instruments to measure outcomes and assess the implementation and cost-effectiveness of each strategy.

Dated: March 26, 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. 2024–06753 Filed 3–28–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Nuclear Energy Advisory Committee

AGENCY: Office of Nuclear Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a virtual public meeting of the Nuclear Energy Advisory Committee. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, April 30, 2024; 8:30 a.m.–2 p.m. ET.

ADDRESSES: This will be a virtual meeting and will be open to the public. The meeting can be accessed from the NEAC site at the following link: *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Krystal D. Milam, Designated Federal Officer; (202) 586–2240; *Krystal.Milam@nuclear.energy.gov;* or Robert Rova, Alternative Designated Federal Officer, (202) 586–4290; *Robert.Rova@nuclear.energy.gov;* U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Nuclear Energy Advisory Committee provides advice and recommendations to the Assistant Secretary for Nuclear Energy on national policy and scientific aspects of nuclear issues of concern to DOE; provides periodic reviews of the various program elements within DOE's nuclear programs and recommendations based thereon; ascertains the needs, views, and priorities of DOE's nuclear programs; advises on long-range plans, priorities, and strategies to address more effectively the technical, financial, and policy aspects of such programs; and advises on appropriate levels of resources to develop those plans, priorities, and strategies. The committee is composed of 11 individuals of diverse backgrounds selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues that pertain to nuclear energy.

Purpose of Meeting: The Nuclear Energy Advisory Committee will hold a meeting on Tuesday, April 30, 2024, to discuss committee priorities and proposed recommendations for the Assistant Secretary for Nuclear Energy.

Tentative Agenda: The meeting will start at 8:30 a.m. eastern time on Tuesday, April 30, 2024. The tentative meeting agenda includes: roll call, remarks from the Assistant Secretary for Nuclear Energy, remarks from the NEAC chair, presentations that provide the committee updates on activities for the Office of Nuclear Energy, and public comments. The meeting will conclude at approximately 2 p.m. The agenda may change to accommodate committee business. For updates and meeting materials, one is directed to the NEAC website: *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.*

Public Participation: Members of the public who wish to attend can do so virtually via the NEAC website: *https://www.energy.gov/ne/services/nuclear-energy-advisory-committee.* All attendees are requested to register by April 20, 2024, for the meeting at by emailing *Krystal.Milam@nuclear.energy.gov.* Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Krystal D. Milam at the address or telephone listed previously. Requests for an oral statement must be received at least five days prior to the meeting. Reasonable provision will be made to include requested oral statements in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by contacting Krystal D. Milam at the address or telephone number listed previously. Minutes will also be available at the following website: *https://www.energy.gov/ne/nuclear-energy-advisory-committee.*

Signing Authority: This document of the Department of Energy was signed on March 25, 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 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06706 Filed 3–28–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an online virtual combined meeting of the Consent Order Subcommittee and Risk Evaluation and Management Subcommittee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico.

DATES: Wednesday, April 24, 2024; 1 p.m. to 3 p.m. MDT.

ADDRESSES: This meeting will be held virtually via WebEx. To attend, please contact Bridget Maestas by email, *Bridget.Maestas@em.doe.gov,* no later than 5 p.m. MDT on Friday, April 19, 2024.

FOR FURTHER INFORMATION CONTACT: Bridget Maestas, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506; Phone (505) 709–7466; or Email: *Bridget.Maestas@em.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Purpose of the Consent Order Subcommittee: The subcommittee reviews the *2016 Compliance Order on Consent,* evaluate its strengths and weaknesses, and draft recommendations for the full Board's consideration as to how to improve it.

Purpose of the Risk Evaluation and Management Subcommittee: The subcommittee drafts external citizen-based recommendations for the full Board's consideration on human and ecological health risk resulting from historical, current, and future hazardous and radioactive legacy waste operations at Los Alamos National Laboratory.

Tentative Agenda

- Presentation on Groundwater Modeling as a Tool to Support Remediation Decision Making

Public Participation: The online virtual meeting is open to the public. To sign up for public comment, please contact Bridget Maestas at *Bridget.Maestas@em.doe.gov,* no later than 5 p.m. MDT on Friday, April 19, 2024. Written statements may be filed with the Committees either before or within five days after the meeting by sending them to Bridget Maestas at the aforementioned email address. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Bridget Maestas at the email address or telephone number listed above. Minutes and other Board documents are on the internet at: *https://energy.gov/em/nnmcab/meeting-materials.*

Signing Authority: This document of the Department of Energy was signed on March 25, 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 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06705 Filed 3–28–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–508]

Application for Authorization To Export Electric Energy; ENGIE Energy Marketing NA, Inc.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: ENGIE Energy Marketing NA, Inc. (the Applicant or EEMNA) has applied for 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 29, 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 February 26, 2024, the Applicant filed an application with DOE (Application or App.) to transmit electric energy from the United States to Mexico for a term of five-years. App. at 1.

According to the Application, EEMNA is a Delaware corporation with its principal place of business in Houston, Texas. App. at 1. EEMNA represents it is a wholly owned subsidiary of ENGIE Holdings Inc., which is a wholly owned indirect subsidiary of ENGIE S.A.. *Id.* EEMNA states it is ''certified as a Qualified Scheduling Entity with the Electric

Reliability Council of Texas (''ERCOT'') and a wholesale power marketer registered with the Public Utilities Commission of Texas.'' *Id.* at 2. The Applicant further states it ''engages in the business of marketing and trading electric energy and other energy related products in the United States and is 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'') under a wholesale power sales tariff currently on file with FERC.'' *Id.*

The Applicant asserts it ''does not own or control any generation, transmission, or distribution facilities, nor does [it] have a franchised service area.'' App. at 2. The Applicant represents that it ''will comply with existing industry procedures for obtaining transmission capacity, including reserving transmission service in accordance with FERC's Open Access Same-Time Information System (''OASIS'') and scheduling delivery of the export with the appropriate Regional Transmission Organization(s) (''RTOs'') or Independent System Operator(s) (''ISOs'') and/or Balancing Authority areas.'' *Id.* at 6. EEMNA notes its proposed exports would be surplus to the needs of the selling entities. *Id.* at 5. For these reasons, the Applicant asserts that ''its exports cannot have any adverse impact on the reliability, stability, or sufficiency of supply on a franchised electric supply system or the electric power supply within the U.S.'' *Id.*

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 Federal Energy Regulatory Commission's (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 EEMNA's Application should be clearly marked with GDO Docket No. EA–508. Additional copies are to be provided directly to Adam Roth, ENGIE Energy Marketing NA, Inc., 1360 Post Oak Blvd., Suite 400, Houston, TX 77056, *adam.roth@engie.com,* and Catherine McCarthy, Bracewell LLP, 2001 M Street NW, Suite 900, Washington, DC 20036–3310, *cathy.mccarthy@bracewell.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 25, 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 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06729 Filed 3–28–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[GDO Docket No. EA–260–G]

Application for Renewal of Authorization To Export Electric Energy; CP Energy Marketing (US) Inc.

AGENCY: Grid Deployment Office, Department of Energy.

ACTION: Notice of application.

SUMMARY: CP Energy Marketing (US) Inc. (Applicant or CP Energy Marketing) 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 29, 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 31, 2019, DOE issued Order No. EA–260–F to CP Energy Marketing to transmit electric energy from the United States to Canada as a power marketer for a period of five years. On March 11, 2024, CP Energy Marketing 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, CP Energy Marketing is a Delaware corporation with its principal place of business in Boston, Massachusetts, that is an indirect wholly owned subsidiary of Capital Power Corporation, a public Canadian corporation. *Id.* at 2. CP Energy Marketing represents that it is a power marketer engaged in the business of marketing and trading electric energy and other energy-related products in the United States with market-based rate authority from the Federal Energy Regulatory Commission (FERC). *Id.*

The Applicant states that it ''does not own, operate[,] or control any electric generation, transmission or distribution facilities'' and ''neither has franchised service area nor has entered into any contracts that confer ownership or control over generation capacity to CP Energy Marketing.'' App. at 2. The Applicant represents that it ''will

purchase the power it plans to export voluntarily through the electric energy markets in the United States and/or from electric utilities, wholesale generators, power marketers and other parties, and thus such power will be surplus to the needs of the selling parties or organization.'' *Id.* at 4. CP Energy Marketing also states it ''will make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to carry out any power exports.'' *Id.* CP Energy Marketing asserts its ''export of power will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operation. *Id.*

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 CP Energy Marketing's Application should be clearly marked with GDO Docket No. EA–260–G. Additional copies are to be provided directly to Colleen Smith, CP Energy Marketing (US) Inc. c/o Capital Power Corporation, 155 Federal Street, Suite 1200, Boston, MA 02110, *notices@captialpower.com,* and Peter P. Thieman and Clarence R. Hawkes III, Dentons US LLP, 1900 K Street NW, Washington, DC 20006, *peter.thieman@dentons.com, clarence.hawkes@dentons.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 25, 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 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06733 Filed 3–28–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. 13–147–LNG]

Delfin LNG LLC; Request for Supplemental Order Granting Conditional Extension of Time for Long-Term Authorization To Export Liquefied Natural Gas

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of request.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE), formerly the Office of Fossil Energy (FE), gives notice (Notice) of receipt of a request (Request), filed by Delfin LNG LLC (Delfin) on March 1, 2024. Delfin requests a supplemental order modifying its authorization to export domestically produced liquefied natural gas (LNG) to non-free trade agreement countries set forth in DOE/FE Order No. 4028, as amended, to allow Delfin to commence export operations from the proposed Delfin Deepwater Port by no later than June 1, 2029—a five-year extension from its existing commencement deadline. Delfin proposes that this extension of time should be conditional, with Delfin required to meet the proposed conditions within a period of nine months. Delfin filed the Request under the Natural Gas Act (NGA) and pursuant to DOE's Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed as detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, April 29, 2024.

ADDRESSES:

Electronic Filing by email (Strongly encouraged): fergas@hq.doe.gov.

Postal Mail, Hand Delivery, or Private Delivery Services (*e.g.,* FedEx, UPS, etc.), U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit filings electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT:

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–4749 or (202) 586–7893, *jennifer.wade@hq.doe.gov* or *peri.ulrey@hq.doe.gov*

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D–033, 1000 Independence Avenue SW, Washington, DC 20585, (240) 780–1691, *cassandra.bernstein@hq.doe.gov*

SUPPLEMENTARY INFORMATION:

Background

On June 1, 2017, in DOE/FE Order No. 4028 (as amended),[1] DOE authorized Delfin to export domestically produced LNG by vessel from the proposed Delfin

[1] *Delfin LNG LLC,* DOE/FE Order No. 4028, Docket No. 13–147–LNG (June 1, 2017), *reh'g denied,* Order No. 4028–A (Apr. 3, 2018), *amended by* Order No. 4028–B (Dec. 10, 2020) (extending export term), *further amended by* Order No. 4028–C (May 18, 2021) (correcting and amending location of floating LNG vessels). In addition, Delfin's export authorization was amended by DOE/FE Order No. 4641 (Dec. 18, 2020) to include short-term export authority on a non-additive basis.

Liquefaction Project (Project), a floating liquefaction facility to be located in the Gulf of Mexico off the coast of Cameron Parish, Louisiana, to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, which currently has or in the future develops the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy (non-FTA countries).[2] Delfin is authorized to export this LNG in a volume equivalent to 657.5 billion cubic feet per year of natural gas for a term extending through December 31, 2050.[3]

Because Delfin's Project will be a ''deepwater port'' within the meaning of the Deepwater Port Act of 1974, as amended (DWPA), 33 U.S.C. 1501 *et seq.,* the Project requires a deepwater port license from the U.S. Department of Transportation Maritime Administration (MARAD), in conjunction with the U.S. Coast Guard.[4] In the Request, Delfin explains that, although it has received a favorable Record of Decision from MARAD, it has been waiting for ''nearly two years'' for MARAD to issue a final deepwater license authorizing the operation of Delfin's offshore facilities.[5]

Delfin's Project also involves certain onshore components that required the authorization of the Federal Energy Regulatory Commission (FERC), which Delfin received in 2017.[6] Delfin states that, on October 4, 2023, it obtained an extension from FERC of the deadline to construct and place its onshore facilities into service—from September 28, 2023, to September 28, 2027.[7]

As relevant here, Order No. 4028 requires Delfin to ''commence export operations using the planned liquefaction facilities no later than seven years from the date of issuance of [the] Order''—*i.e.,* by June 1, 2024.[8]

Request for Conditional Extension

In its Request, Delfin asks DOE to issue a supplemental order that would ''modify'' Order No. 4028 to provide Delfin a five-year ''conditional extension of time'' for Delfin to commence export operations from the Project—from June 1, 2024, to June 1, 2029.[9] Delfin states that this Request is consistent with DOE's Policy Statement on Export Commencement Deadlines (Commencement Extension Policy) issued on April 26, 2023.[10]

Specifically, Delfin proposes that DOE ''grant only a conditional extension that requires Delfin to certify by no later than nine (9) months after DOE/FECM's order that it has: (1) obtained the final DWPA license (to the extent that this has not occurred prior to DOE/FECM granting the conditional extension); (2) secured necessary financing arrangements to construct its first FLNGV [floating LNG vessel] and the Deepwater Port; (3) made its positive FID [Final Investment Decision] with respect to first FLNGV; and (4) issued an unconditional, full NTP [Notice to Proceed] for first FLNGV to the EPCI [Engineering, Procurement, Construction and Integration] contractor pursuant to the binding, executed EPCI contract.'' [11]

Delfin states that, although it ''is confident in its ability to satisfy those conditions within the requested time period, should it fail to do so then the export authorizations would expire at the end of that period.'' [12] Delfin further contends that ''imposition by DOE/FECM of these conditions on the extension of time will eliminate soon any uncertainty about the status of Delfin's project, providing assurance to DOE (and all other stakeholders and interested observers) that Delfin will actually commence LNG exports by the extended deadline.'' [13] Delfin thus asserts that its Request ''satisf[ies] the objective of the Commencement Extension Policy of reducing the 'regulatory overhang' between authorized export volumes and projects actually moving forward.'' [14]

In support of its Request, Delfin asserts that good cause exists to grant the requested conditional extension of time, and that Delfin's authorized exports remain in the public interest. Delfin also states that it meets the criteria established by DOE in the Commencement Extension Policy for such requests. Specifically, Delfin argues that its Project ''has been delayed by a series of extenuating circumstances outside its control,'' [15] and that ''[m]uch of the infrastructure for [the Project] has already been constructed and is in existence, namely the large offshore natural gas pipelines that will transport feed gas to the FLNGVs.'' [16]

Additionally, Delfin distinguishes its floating offshore Project from ''the land-based LNG export projects holding all other non-FTA authorizations.'' [17] Delfin states that ''the key part'' of its Project, the FLNGVs, ''will be constructed in existing shipyards overseas.'' [18] Delfin describes both its commercial progress to date for the FLNGV construction and the remaining steps needed to reach FID.[19]

Delfin states that, because it is not requesting an extension of its export term under Order No. 4028, as amended (which ends on December 31, 2050), or an increase in its authorized export volume, ''the result of the extension will be that Delfin will have five years fewer to export LNG for a significant decrease in the total volumes of LNG exports under the authorization than was previously authorized.'' [20]

Finally, Delfin asks DOE to grant the Request by its existing export commencement deadline of June 1, 2024. If DOE is unable to act on the Request by this date, Delfin asks DOE to ''toll'' the existing June 1, 2024, export commencement deadline in Order No. 4028 in light of the pending Request, so that ''the existing non-FTA authorization would not expire and DOE/FECM could subsequently grant the conditional extension

[2] 15 U.S.C. 717b(a).

[3] *Delfin LNG LLC,* DOE/FE Order No. 4028, as amended in Order No. 4028–B (Ordering Para. A).

[4] For more information on MARAD's deepwater port licensing, *see Delfin LNG LLC,* DOE/FE Order No. 4028, at 1–3, 126–35 (summarizing MARAD's process and Delfin's status at that time), 173 (Ordering Para. H), and Request at 5, 22–27.

[5] *See* Request at 2, 22–26.

[6] For more information on FERC's jurisdiction over limited onshore components of the Project, *see Delfin LNG LLC,* DOE/FE Order No. 4028, at 2–3, 173 (Ordering Para. H), and Request at 6 n.9, 7 n.12, 8 n.13.

[7] *See* Request at 6 n.9, 26–27 (citing *Delfin LNG LLC,* 185 FERC ¶ 61,009 (2023)).

[8] *Delfin LNG LLC,* DOE/FE Order No. 4028, at 173 (Ordering Para. D). Additionally, Delfin asks DOE to amend its existing FTA authorization (DOE/FE Order No. 3393, as amended). DOE will address the FTA portion of the Request separately pursuant to NGA section 3(c), 15 U.S.C. 717b(c).

[9] Delfin LNG LLC, Request for Supplemental Order Granting Conditional Extension of Time for Long-Term Authorizations to Export Liquefied Natural Gas, Docket No. 13–147–LNG, at 32, 43 (Mar. 1, 2024) [hereinafter Request]. Delfin states that it is not seeking to modify any other aspect of its Project or non-FTA authorization. *See id.* at 2.

[10] U.S. Dep't of Energy, Policy Statement on Export Commencement Deadlines in Authorizations to Export Natural Gas to Non-Free Trade Agreement Countries, 88 FR 25272 (Apr. 26, 2023), *https://www.energy.gov/sites/default/files/2023-06/Policy%20Statement%20on%20Export%20Commencement%20Deadlines%20in%20Authorizations%20to%20Export%20Natural%20Gas%20to%20Non-Free%20Trade%20Agreement%20Countries.pdf* [hereinafter Commencement Extension Policy].

[11] Request at 5; *see also id.* at 37.

[12] *Id.* at 5.

[13] *Id.* at 5–6.

[14] *Id.* at 6.

[15] *Id.* at 3–4 (citing, *e.g.,* ''the continuing evolution of FLNGV technology requiring a series of refinements of the project, complications related to trade with China, the impacts of the COVID–19 epidemic, the related slowdown in market demand for LNG, and significant challenges with the MARAD licensing process'').

[16] Request at 4; *see also id.* at 11–16.

[17] *Id.* at 4.

[18] *Id.*

[19] *Id.* at 4, 16–22, 27–31.

[20] *Id.* at 33.

notwithstanding passage of the pre-existing deadline.'' [21]

Additional details can be found in the Request, posted on the DOE website at: *www.energy.gov/sites/default/files/2024-03/Delfin%20DOE%20Extension%20request%20%28030124%20FINAL%29.pdf.*

DOE Evaluation

In reviewing Delfin's Request, DOE will consider any issues required by law or policy under NGA section 3(a), DOE's regulations, DOE's Commencement Extension Policy, and any other documents deemed appropriate.

Parties that may oppose the Request should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Request.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable, addressing the Request. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention. The public previously was given an opportunity to intervene in, protest, and comment on Delfin's non-FTA application in Docket No. 13–147–LNG.[22] Therefore, DOE will not consider comments or protests that do not bear directly on this Request.

Any person wishing to become a party to this proceeding evaluating Delfin's Request must file a motion to intervene or notice of intervention.[23] The filing of comments or a protest with respect to the Request will not serve to make the commenter or protestant a party to this proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Request. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590, including the service requirements.

Filings may be submitted using one of the following methods:

(1) Submitting the filing electronically at *fergas@hq.doe.gov;*

(2) Mailing the filing to the Office of Regulation, Analysis, and Engagement at the address listed in the **ADDRESSES** section; or

(3) Hand delivering the filing to the Office of Regulation, Analysis, and Engagement at the address listed in the **ADDRESSES** section.

For administrative efficiency, DOE prefers filings to be filed electronically. All filings must include a reference to ''Docket No. 13–147–LNG'' or ''Delfin LNG LLC Request'' in the title line.

For electronic submissions: Please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Request, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically on the DOE website at *www.energy.gov/fecm/regulation.*

A decisional record on the Request will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Order may be issued based on the official record, including the Request and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on March 25, 2024.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2024–06703 Filed 3–28–24; 8:45 am]

BILLING CODE 6450–01–P

[21] Request at 6.

[22] *See supra* note 1.

[23] Status as an intervenor in prior proceeding(s) in this docket does not continue to this proceeding evaluating Delfin's Request, and therefore any person interested in intervening to address the Request must file a new motion to intervene (or notice of intervention, as applicable). 10 CFR 590.303.

DEPARTMENT OF ENERGY

National Petroleum Council Meeting

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Petroleum Council. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, April 23, 2024; 9:00 a.m. to no later than 12:00 p.m. (EST).

ADDRESSES: Willard InterContinental, 1401 Pennsylvania Avenue NW, Washington, DC 20004. In-person meeting. Information to access a live stream of the meeting proceedings will be available at: *www.energy.gov/fecm/national-petroleum-council-npc.*

FOR FURTHER INFORMATION CONTACT: Nancy Johnson, U.S. Department of Energy, Office of Resource Sustainability (FECM–30), 1000 Independence Avenue SW, Washington, DC 20585; telephone: (202) 586–6458 or email: *nancy.johnson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas, and the oil and natural gas industries.

Purpose of the Meeting: The National Petroleum Council will hold a meeting on April 23, 2024, to present and approve the final reports of the Committees on Hydrogen Energy and GHG Emissions.

Tentative Agenda

- Call to Order and Introductory Remarks
- Department of Energy Remarks
- Presentations, Discussion, and Approval of the Final Reports of the NPC Hydrogen Energy and GHG Emissions Committees
- Discussion of Any Other Business Properly Brought Before the National Petroleum Council
- Adjournment

Public Participation: The meeting is open to the public. The Chair of the Council will conduct the meeting to facilitate the orderly conduct of business. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Nancy Johnson at the address or telephone number listed above. Approximately 15 minutes will be reserved for public comments. The time

allocated per speaker will depend on the number of requests received but will not exceed five minutes. Requests for oral statements must be received at least seven days prior to the meeting. Those not able to attend the meeting or having insufficient time to address the Council are invited to send a written statement to *nancy.johnson@hq.doe.gov.* Any member of the public who wishes to file a written statement to the Council will be permitted to do so, either before or after the meeting.

Minutes: The minutes of the meeting will be available at *https://www.energy.gov/fecm/national-petroleum-council-npc,* or by contacting Ms. Johnson. She may be reached at the postal address or email address listed previously.

Signing Authority: This document of the Department of Energy was signed on March 25, 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 26, 2024.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2024–06708 Filed 3–28–24; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–119]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed March 18, 2024 10 a.m. EST

Through March 25, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240052, Final, NCPC, DC, ADOPTION—Proposed Land Acquisition at Washington Navy Yard, Washington, DC, Review Period Ends: 04/29/2024, Contact: Matthew Flis 202–482–7236.

The National Capital Planning Commission (NCPC) has adopted the United States Navy's Final EIS No. 20230093 filed 07/28/2023 with the Environmental Protection Agency. The NCPC was not a cooperating agency on this project. Therefore, republication of the document is necessary under section 1506.3(b)(1) of the CEQ regulations.

EIS No. 20240053, Draft Supplement, USACE, MD, Mid-Chesapeake Bay Island Ecosystem Restoration Project: James Island, Dorchester County, Maryland, Comment Period Ends: 05/15/2024, Contact: Angela Sowers 410–962–7440.

EIS No. 20240054, Final, BIA, CA, Redding Rancheria Fee-to-Trust and Casino, Review Period Ends: 04/29/2024, Contact: Chad Broussard 916–978–6165.

EIS No. 20240055, Final, FTA, CA, West Santa Ana Branch Transit Corridor Final EIS/EIR, Review Period Ends: 04/29/2024, Contact: Rusty Whisman 213–202–3956.

Dated: March 25, 2024.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2024–06695 Filed 3–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2024–0145; FRL–11854–01–OGC]

Proposed Consent Decree, Clean Water Act Claim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Environmental Protection Agency (EPA) Administrator's March 18, 2022, memorandum regarding ''Consent Decrees and Settlement Agreements to resolve Environmental Claims Against the Agency,'' notice is hereby given of a proposed consent decree in *Sierra Club, et al.* v. *EPA, et al.,* No. 3:24–cv–00130 (S.D.W. Va. 2024). On March 18, 2024, the Sierra Club, the West Virginia Highlands Conservancy, Inc., and the West Virginia Rivers Coalition, Inc. (collectively, ''Plaintiffs'') filed a complaint in the United States District Court for the Southern District of West Virginia against EPA alleging that the Agency failed to perform a mandatory duty under the Clean Water Act (CWA) to establish Total Maximum Daily Loads (TMDLs) for certain waters located in the Lower Guyandotte River Watershed in West Virginia that are impaired due to ionic toxicity. This complaint followed Plaintiffs' submission to EPA of a Notice of Intent to Sue on March 21, 2023. EPA seeks public input on a proposed consent decree prior to its final decision-making with regard to potential settlement of the litigation.

DATES: Written comments on the proposed consent decree must be received by April 29, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0145 online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments, see the ''Additional Information About Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Alec Mullee, Water Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–9616; email address: *mullee.alec@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

On March 18, 2024, Plaintiffs filed a complaint in Federal district court asserting that EPA failed to perform a mandatory duty under the CWA to establish TMDLs for certain waters located in the Lower Guyandotte River Watershed in West Virginia that are biologically impaired due to ionic toxicity (Ionic Toxicity TMDLs). This complaint followed Plaintiffs' submission to EPA of a Notice of Intent to Sue (NOI) on March 21, 2023. Following submission of the NOI, Plaintiffs and EPA initiated settlement discussions, which resulted in the proposed consent decree. Under the consent decree, EPA would be obligated to establish Ionic Toxicity TMDLs for 11 waterbody segments in the Lower Guyandotte River Watershed by January

15, 2025. In exchange, Plaintiffs would permanently release any and all claims against EPA that the Agency must establish ionic toxicity TMDLs for any other waterbody segments within the Lower Guyandotte River Watershed except for six identified waterbody segments and any waterbody segments that are listed as biologically impaired for the first time after June 1, 2023. For those six waterbody segments and any waterbody segments listed as biologically impaired for the first time after June 1, 2023, Plaintiffs would refrain from bringing any such claims against EPA until January 15, 2039. Further, Plaintiffs would not bring such claims against EPA for any West Virginia waterbody segment outside the Lower Guyandotte River Watershed until after January 15, 2025.

For a period of thirty (30) days following the date of publication of this notice, EPA will accept written comments relating to the proposed consent decree from persons who are not parties to the litigation. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments received disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the CWA.

II. Additional Information About Commenting on the Proposed Consent Decree

A. How can I get a copy of the proposed consent decree?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2024–0145) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

B. How and to whom do I submit comments?

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0145 via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA does not plan to consider these late comments.

Steven M. Neugeboren,

Associate General Counsel.

[FR Doc. 2024–06661 Filed 3–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OGC–2024–0149; FRL–11857–01–OGC]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with the Clean Air Act, as amended (''CAA'' or ''the Act''), the Environmental Protection Agency (''EPA'' or ''the Agency'') is providing notice of a proposed consent decree in *Sierra Club, et al.* v. *United States Environmental Protection Agency, et al.,* No. 1:23–cv–01744–JDB (D. DC). Plaintiffs Sierra Club, National Parks Conservation Association, and Environmental Integrity Project (collectively, ''Plaintiffs''), brought suit in the United States District Court for the District of Columbia alleging that and the U.S. Environmental Protection Agency (''EPA'') and Michael Regan, in his official capacity as Administrator of the U.S. EPA (''the Administrator'') (collectively, ''Defendants''), failed to take final action on the second planning period regional haze state implementation plan (''SIP'') revisions submitted by the following 34 states: Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming. There are three intervenors in this action. PacifiCorp is acting as an intervenor-plaintiff and the State of North Dakota and the State of Nevada are acting as intervenor-defendants. The proposed consent decree would establish deadlines for the

EPA to sign a notice of proposed rulemaking for certain SIPs included in this action and a notice of final rulemaking for each of the SIPs included in this action.

DATES: Written comments on the proposed consent decree must be received by April 29, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0149, online at *https://www.regulations.gov* (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Additional Information about Commenting on the Proposed Consent Decree'' heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Yasmín Pérez Ortiz, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone: (202) 564–1077; email address: *perez-ortiz.yasmin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Consent Decree

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2024–0149) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree, and is available through *https://www.regulations.gov.* You may use *https://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search.''

II. Additional Information About the Proposed Consent Decree

Plaintiffs initially filed a complaint in the United States District Court for the District of Columbia alleging that EPA failed to perform its nondiscretionary duty under CAA section 110(k)(2)–(4) to approve, disapprove, or conditionally approve, in whole or in part the second planning period regional haze SIP revisions for seven states, Kansas, Massachusetts, Michigan, Ohio, Texas, and Wisconsin, within 12 months of a determination of completeness by EPA or a submittal being deemed complete by operation of law. Plaintiffs then filed an Amended Complaint challenging the same failure from Defendants to perform a nondiscretionary duty under 110(k)(2)–(4) to approve, disapprove, or conditionally approve, in whole or in part the second planning period regional haze for 27 additional states, for a total of 34 states: Alaska, Arkansas, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kansas, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming, within 12 months of a determination of completeness by EPA or a submittal being deemed complete by operation of law.

Under the terms of the proposed consent decree, no later than the dates set forth in the proposed consent decree, the Administrator or appropriate EPA official with delegated authority shall sign a notice of proposed rulemaking to approve, disapprove, conditionally approve, or approve in part and disapprove in part, pursuant to sections 110(k)(2)–(4) of the CAA, 42 U.S.C. 7410(k)(2)–(4), certain SIP submittals set forth in the proposed consent decree. In addition, under the terms of the proposed consent decree, no later than the dates set forth in the proposed consent decree, the Administrator or appropriate EPA official with delegated authority shall sign a notice of final rulemaking to approve, disapprove, conditionally approve, or approve in part and disapprove in part, pursuant to sections 110(k)(2)–(4) of the CAA, 42 U.S.C. 7410(k)(2)–(4), the SIP submittals set forth in the proposed consent decree.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

III. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA–HQ–OGC–2024–0149, via *https://www.regulations.gov.* Once submitted, comments cannot be edited or removed from this docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *https://www.regulations.gov* website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

Gautam Srinivasan,

Associate General Counsel.

[FR Doc. 2024–06722 Filed 3–28–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–11833–01–OA]

Request for Nominations of Candidates for the Science Advisory Board Integrated Risk Information System Chloroform Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office requests public nominations of scientific experts to form a Panel to review the draft EPA document titled, Integrated Risk Information System (IRIS) Toxicological Review of Chloroform (inhalation). The draft IRIS cancer and non-cancer assessment includes a hazard identification analysis, which summarizes the available evidence on health effects that may be associated with environmental or occupational exposure, and dose-response analysis that characterizes the quantitative relationship between chloroform inhalation exposure and each credible health hazard.

DATES: Nominations should be submitted by April 19, 2024 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Dr. Suhair Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board Staff Office by telephone/voice mail (202) 564–2057, or email at *shallal.suhair@epa.gov.* General information concerning the EPA SAB can be found at the EPA SAB website at *https://sab.epa.gov.*

SUPPLEMENTARY INFORMATION: The SAB (42 U.S.C. 4365) is a chartered Federal Advisory Committee that provides independent scientific and technical peer review, advice, and recommendations to the EPA Administrator on the technical basis for EPA actions. As a Federal Advisory Committee, the SAB conducts business in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. 10) and related regulations. The SAB Staff Office is forming an expert panel, the IRIS Chloroform Review Panel, under the auspices of the Chartered SAB. The IRIS Chloroform Review Panel will provide advice through the chartered SAB. The SAB and the IRIS Chloroform Review Panel will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

The IRIS Chloroform Review Panel will conduct the review of the draft IRIS Toxicological Review of Chloroform prepared by the EPA IRIS Program. The IRIS Program is located within EPA's Center for Public Health and Environmental Assessment (CPHEA) in the Office of Research and Development (ORD). The draft IRIS cancer and non-cancer assessment includes a hazard identification analysis, which summarizes the available evidence on health effects that may be associated with environmental or occupational exposure, and dose-response analysis that characterizes the quantitative relationship between chloroform inhalation exposure and each credible health hazard. The SAB IRIS Chloroform Review Panel will consider whether the conclusions found in the EPA's draft IRIS assessment are clearly presented and scientifically supported. The Panel will also be asked to provide recommendations on how the assessment may be strengthened.

Request for Nominations: The SAB Staff Office is seeking nominations of nationally and internationally recognized scientists with demonstrated expertise in the following disciplines: *toxicology, specifically inhalation toxicology/dosimetry, hepatic and nephrological toxicology; epidemiology; systematic review; biostatistics; uncertainty analysis; physiologically-based pharmacokinetic (PBPK) modeling; carcinogenesis; risk assessment; dose response analysis.*

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals in the areas of expertise described above for possible service on the SAB Panel. Individuals may self-nominate. Nominations should be submitted in electronic format (preferred) using the online nomination form on the SAB website at *https://sab.epa.gov* (see the ''Public Input on Membership'' list under ''Committees, Panels, and Membership'' following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed,'' provided on the SAB website (see the ''Nomination of Experts'' link under ''Current Activities'' at *https://sab.epa.gov*). To be considered, nominations should include the information requested below. EPA values and welcomes diversity. All qualified candidates are encouraged to apply regardless of sex, race, disability, or ethnicity. Nominations should be submitted in time to arrive no later than April 19, 2024.

The following information should be provided on the nomination form: contact information for the person making the nomination; contact information for the nominee; and the disciplinary and specific areas of expertise of the nominee. Nominees will be contacted by the SAB Staff Office and will be asked to provide a recent curriculum vitae and a narrative biographical summary that includes current position, educational background; research activities; and recent service on other national advisory committees or national professional organizations. Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB website, should contact the DFO at the contact information noted above. The names and biosketches of qualified nominees identified by respondents to this **Federal Register** Notice, and additional experts identified by the SAB Staff Office, will be posted in a List of Candidates for the Panel on the SAB website at *https://sab.epa.gov.* Public comments on the List of Candidates will be accepted for 21 days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider when evaluating candidates.

For the EPA SAB Staff Office, a balanced review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to

adequately address the charge. In forming the expert panel, the SAB Staff Office will consider public comments on the Lists of Candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a loss of impartiality; (e) skills working in committees, subcommittees, and advisory panels; and (f) for the panel as a whole, diversity of expertise and scientific points of view.

Candidates may be asked to submit the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form is required for Special Government Employees (SGEs) and allows EPA to determine whether there is a statutory conflict between a person's public responsibilities (which includes membership on an EPA federal advisory committee) and private interests and activities, or the appearance of a loss of impartiality, as defined by federal regulation. The form may be viewed and downloaded through the ''Ethics Requirements for Advisors'' link on the SAB website at *https://sab.epa.gov.* This form should not be submitted as part of a nomination.

V. Khanna Johnston,

Deputy Director, Science Advisory Board Staff Office.

[FR Doc. 2024–06758 Filed 3–28–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 15, 2024.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *The Daniel D. Fleming Trust, dated October 17, 1997, Daniel D. Fleming, as trustee and individually, both of Carlinville, Illinois; The William D. Fleming Revocable Trust, William D. Fleming, as trustee and individually, The Andrew W. Fleming Trust, Andrew W. Fleming, as trustee, Bailey D. Fleming Living Trust, Bailey D. Fleming, as trustee, The Jacob W. Fleming Trust, Jacob W. Fleming, as trustee and individually, Minor Child A, Andrew W. Fleming, as custodian, Minor Child B, Andrew W. Fleming, as custodian, Minor Child C, Jacob W. Fleming, as custodian, Minor Child D, Jacob W. Fleming, as custodian, Minor Child E, Jacob W. Fleming, as custodian, all of Litchfield, Illinois; and The Eaden Fleming Trust, Eaden Danae Nellyn Fleming, as trustee, Mt. Olive, Illinois;* as the Fleming Family Control Group, a group acting in concert, to retain voting shares of LBT Bancshares, Inc., and thereby indirectly retain voting shares of Bank & Trust Company, both of Litchfield, Illinois, and Security Bancshares, Inc., which controls Security National Bank, both of Witt, Illinois.

Board of Governors of the Federal Reserve System.

Erin Cayce,

Assistant Secretary of the Board.

[FR Doc. 2024–06757 Filed 3–28–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation LL (FR LL; OMB No. 7100–0380).

DATES: The revisions to the collection are applicable as of March 29, 2024.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884. Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation LL.

Collection identifier: FR LL.

OMB control number: 7100–0380.

General description of collection: Regulation LL—Savings and Loan Holding Companies (12 CFR part 238) requires certain large savings and loan holding companies (SLHCs) to submit a capital plan to the Board on an annual basis, request prior approval from the Board under certain circumstances before making a capital distribution, conduct company-run periodic stress tests, report the results of its company-run stress tests to the Board, publicly disclose a summary of the results of such stress tests, and comply with certain other reporting and recordkeeping requirements.

Capital is central to a firm's ability to absorb unexpected losses and continue to lend to creditworthy businesses and consumers. The Board's capital planning requirements for large bank holding companies help to ensure that these firms have robust systems and processes that incorporate forward-looking projections of revenue and losses to monitor and maintain their internal capital adequacy. The Board's stress testing and stress capital buffer requirements help ensure that a firm can meet its obligations to creditors and other counterparties, as well as continue to serve as a financial intermediary through periods of financial and economic stress.

Frequency: Ongoing, annual, biennial, or event-generated.

Respondents: Foreign SLHCs with average total consolidated assets of greater than $250 billion and domestic covered SLHCs with average total consolidated assets of greater than $100 billion.

Total estimated number of respondents: 1.

Total estimated change in burden: 31.

Total estimated annual burden hours: 14,430.[1]

Current actions: On September 28, 2023, the Board published a notice in the **Federal Register** (88 FR 66848) requesting public comment for 60 days on the extension, with revision, of the FR LL. The Board proposed to revise the FR LL to account for several reporting provisions and one recordkeeping provision which had not been previously cleared by the Board under the PRA. The comment period for this notice expired on November 27, 2023. The Board did not receive any comments. The revisions will be implemented as proposed.

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR LL.

Board of Governors of the Federal Reserve System, March 26, 2024.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–06716 Filed 3–28–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Structure Reporting and Recordkeeping Requirements for Domestic and Foreign Banking Organizations (FR Y–6, FR Y–7, FR Y–10, and FR Y–10E; OMB No. 7100–0297).

DATES: Comments must be submitted on or before May 28, 2024.

ADDRESSES: You may submit comments, identified by FR Y–6, FR Y–7, FR Y–10, and FR Y–10E, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions,

including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Structure Reporting and Recordkeeping Requirements for Domestic and Foreign Banking Organizations.

Collection identifier: FR Y–6, FR Y–7, FR Y–10, and FR Y–10E.

OMB control number: 7100–0297.

General description of collection: This information collection comprises the following four reports:

Annual Report of Holding Companies (FR Y–6), which collects financial and organizational information from holding companies (HCs) and foreign banking organizations (FBOs) that are not ''qualifying'' FBOs under section 211.23 of the Board's Regulation K—International Banking Operations (12 CFR part 211),

Annual Report of Foreign Banking Organizations (FR Y–7), which collects financial and organizational information from qualifying FBOs,

Report of Changes in Organizational Structure (FR Y–10), which is an event-generated report that captures changes in organizational structure or regulated investments and activities of various Board-supervised entities, and

Supplement to the Report of Changes in Organizational Structure (FR Y–10E), which is a formless supplement to the FR Y–10 that the Board may use to collect additional structural information on an emergency basis.

Proposed revisions: The Board proposes to revise the FR Y–7 report as described below. There are no proposed changes to the FR Y–6, FR Y–10, or FR Y–10E. The proposed effective date for the changes is December 31, 2024.

FR Y–7 Report Due Date

The Board proposes to change the due date of the FR Y–7 report from four months after the reporter's fiscal year end to 120 calendar days. This change provides more clarity around the actual due date of the report for respondents and end users of the data. The use of the actual number of days is also consistent with most other Federal Reserve reports, including the FR Y–6 report.

FR Y–7 Report Form Standard Templates

The Board proposes to add an electronic filing option for the FR Y–7, and to automate and add standard templates for a portion of reporting item one, financial statements; a portion of item two, organization chart; all of item three, shares and shareholders; all of item four, eligibility as a qualified foreign banking organization; and all of item five, prudential standards compliance. Unlike other Board reports, the FR Y–7 is not currently submitted electronically. Instead, respondents mail their initial report and any subsequent revisions to the appropriate Reserve Bank. The manual processes around the collection and maintenance of this report can be costly and burdensome for respondents. Adding the capability to submit and maintain the report electronically would reduce reporter burden and support costs over time. Moreover, an electronic filing option would streamline the report submission process and make it easier to revise reports.

Additionally, the FR Y–7 form, which primarily consists of a checklist, is in a relatively unstructured format that allows respondents to submit required data items in different formats. For example, respondents may submit shareholder information in a Microsoft Word document or in an Excel spreadsheet. In other cases, respondents submit their annual report with an attached cover memo referencing the appropriate page numbers where Federal Reserve analysts can locate the relevant FR Y–7 report information. The proposed templates would outline the specific information required and would eliminate the need for respondents to create multiple documents to submit data. It would also provide more clarity around reporting requirements and help eliminate extraneous information, which is often submitted along with the required data.

FR Y–7 Clarifications and Conforming Edits

Lastly, the Board proposes to make other minor clarifications and conforming edits to the FR Y–7 forms and instructions

Frequency: Annual, event-generated.

Respondents: The FR Y–6 panel comprises top-tier bank holding companies (BHCs), savings and loan holding companies (SLHCs), employee stock ownership plans (ESOPs) and employee share ownership trusts (ESOTs) or trusts that are BHCs or SLHCs, securities holding companies, intermediate holding companies (IHCs), and any FBO that does not meet the requirements of and is not treated as a qualifying FBO under Regulation K.

The FR Y–7 panel comprises all qualifying FBOs that engage in banking in the United States, either directly or indirectly.

The FR Y–10 and FR Y–10E panels comprise top-tier BHCs (including ESOPs or ESOTs that are BHCs and financial holding companies); top-tier SLHCs, including ESOPs, ESOTs, or trusts that are SLHCs pursuant to Regulation LL; FBOs; state member banks that are not controlled by an HC; Edge and agreement corporations that are not controlled by a member bank, a domestic HC, or an FBO; and nationally chartered banks that are not controlled by a BHC or an FBO (with regard to their foreign investments only); and securities holding companies.

Total estimated number of respondents:

FR Y–6—3,760.
FR Y–7—205.
FR Y–10 and FR Y–10E—3,790.

Estimated average hours per response:

Reporting

FR Y–6—2.5.
FR Y–7 Initial—10.10.
FR Y–7 Ongoing—4.63.
FR Y–10—2.5.
FR Y–10E—0.5.

Recordkeeping

FR Y–6—0.5.
FR Y–10—0.5.

Total estimated change in burden: 1,284.

Total estimated annual burden hours:

Reporting

FR Y–6—9,400.
FR Y–7 Initial—2,071.
FR Y–7 Ongoing—949.
FR Y–10—33,153.
FR Y–10E—1,895.

Recordkeeping

FR Y–6—1,880.

FR Y–10—6,631.[1]

Board of Governors of the Federal Reserve System, March 26, 2024.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–06717 Filed 3–28–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping Guidance Associated with Changes in Foreign Investments Made Pursuant to Regulation K (FR 2064; OMB No. 7100–0109).

DATES: Comments must be submitted on or before May 28, 2024.

ADDRESSES: You may submit comments, identified by FR 2064, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9 a.m. and 5 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2064. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Recordkeeping Guidance Associated with Changes in Foreign Investments Made Pursuant to Regulation K.

Collection identifier: FR 2064.

OMB control number: 7100–0109.

General description of collection: Internationally active U.S. banking organizations are expected to maintain adequate internal records to allow examiners to review compliance with the investment provisions of Regulation K. This recordkeeping guidance is what makes up the FR 2064. For each investment made under subpart A of Regulation K, a banking organization investor should maintain internal records regarding the type of investment; the amount of the investment; the percentage ownership; activities conducted by the company and the legal authority for such activities; and whether the investment was made under general consent, prior notice, or specific consent authority. With respect to investments made under general consent authority, information also should be maintained that

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR Y–6, FR Y–7, FR Y–10, and FR Y–10E.

demonstrates compliance with the various limits set out in section 211.9 of Regulation K. These records are reviewed by examiners during examinations, allowing the examiners to determine a banking organization's compliance with the Federal Reserve Act and subpart A of Regulation K. Monitoring banking organizations' international investments also permits the Federal Reserve to ensure that banking organizations do not expose themselves to undue risk.

Frequency: On-going.

Respondents: U.S. banking organizations (member banks, Edge Act and agreement corporations, and bank holding companies) that have made a foreign investment.

Total estimated number of respondents: 20.

Total estimated annual burden hours: 160.

Board of Governors of the Federal Reserve System, March 26, 2024.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–06713 Filed 3–28–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Interagency Guidance on Managing Compliance and Reputation Risks for Reverse Mortgage Products (FR 4029; OMB No. 7100–0330).

DATES: Comments must be submitted on or before May 28, 2024.

ADDRESSES: You may submit comments, identified by FR 4029, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Interagency Guidance on Managing Compliance and Reputation Risks for Reverse Mortgage Products.

Collection identifier: FR 4029.

OMB control number: 7100–0330.

General description of collection: In August 2010, the Federal Financial Institutions Examination Council (FFIEC), on behalf of its member agencies, published a **Federal Register** notice adopting supervisory guidance titled ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.'' The guidance is designed to assist financial institutions with risk management and efforts to ensure that their reverse mortgage lending practices adequately address consumer compliance and reputation risks. The reverse mortgage guidance

discusses the disclosures and recordkeeping required by federal laws and regulations and also discusses consumer disclosures that financial institutions typically provide as a standard business practice. Certain portions of the guidance are information collections subject to PRA requirements and are what are included in the FR 4029.

Frequency: Event-generated.

Respondents: State member banks, Edge and Agreement corporations, bank holding companies, savings and loan holding companies, foreign banking organizations, and branches and agencies of foreign banks.

Total estimated number of respondents: 5.

Total estimated annual burden hours: 72.[1]

Board of Governors of the Federal Reserve System, March 26, 2024.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–06714 Filed 3–28–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the International Applications and Prior Notifications under Subpart B of Regulation K (FR K–2; OMB No. 7100–0284).

DATES: Comments must be submitted on or before May 28, 2024.

ADDRESSES: You may submit comments, identified by FR K–2, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: International Applications and Prior Notifications under Subpart B of Regulation K.

Collection identifier: FR K–2.

OMB control number: 7100–0284.

General description of collection: Subpart B of Regulation K implements the International Banking Act of 1978 (IBA). Under the IBA foreign banks are required to obtain the prior approval of the Board to establish a branch, agency, or representative office in the United States; to establish or acquire ownership or control of a commercial lending company in the United States; or to change the status of an agency or

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR 4029.

limited branch to a branch in the United States. The Board's FR K–2 information collection consists of attachments submitted in connection with these prior approval applications and helps in supervising foreign banks with offices in the United States.

Frequency: Event-generated.

Respondents: Foreign banks.

Total estimated number of respondents: 13.

Estimated average hours per response: Reporting: 27.5; Disclosure: 1.1.

Total estimated annual burden hours: 372.[1]

Board of Governors of the Federal Reserve System, March 26, 2024.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–06715 Filed 3–28–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY (FR YY; OMB No. 7100–0350).

DATES: Comments must be submitted on or before May 28, 2024.

ADDRESSES: You may submit comments, identified by FR YY, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation YY.

Collection identifier: FR YY.

OMB control number: 7100–0350.

General description of collection: Section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) authorizes the Board to implement enhanced prudential standards and impose requirements related to stress tests on certain financial companies. The Board has relied on this authority to enact Regulation YY—Enhanced Prudential Standards (12 CFR part 252). The enhanced prudential standards and other requirements contained in Regulation YY include risk-based and leverage capital requirements, liquidity standards, requirements for overall risk management (including establishing a

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR K–2.

risk committee), stress test requirements, and debt-to-equity limits for companies that the Financial Stability Oversight Council (FSOC) has determined pose a grave threat to financial stability. The FR YY information collection includes reporting, recordkeeping, and disclosure requirements contained in Regulation YY.

Proposed revisions: The Board proposes to revise the FR YY to take into account existing provisions in Regulation YY that include information collections, but had not been included in previous clearances.

Frequency: Quarterly, biennial, annual, and event-generated.

Respondents: U.S. BHCs, domestic and foreign nonbank SIFIs, SMBs, FBOs, and U.S. IHCs.

Total estimated number of respondents: 43.

Total estimated change in burden: 2,578.

Total estimated annual burden hours: 26,458.[1]

Board of Governors of the Federal Reserve System, March 26, 2024.

Ann Misback,

Secretary of the Board.

[FR Doc. 2024–06718 Filed 3–28–24; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0066; Docket No. 2024–0053; Sequence No. 7]

Submission for OMB Review; Certain Federal Acquisition Regulation Part 22 Labor Requirements

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 a revision of a previously approved information collection requirement regarding certain Federal Acquisition Regulation (FAR) part 22 labor requirements.

DATES: Submit comments on or before April 29, 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: Ms. Dana Bowman, Procurement Analyst, at 202–803–3188 or at *dana.bowman@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0066, Certain Federal Acquisition Regulation Part 22 Labor Requirements.

B. Needs and Uses

The revision to the information collection is needed for the implementation of Executive Order (E.O.) 14063, Use of Project Labor Agreements for Federal Construction Projects, issued February 4, 2022 (87 FR 7363, February 9, 2022). E.O. 14063 mandates that Federal Government agencies require the use of project labor agreements (PLAs) for large-scale Federal construction projects, where the total estimated cost to the Government is $35 million or more, unless an exception applies. Agencies still have the discretion to require PLAs for Federal construction projects that do not meet the $35 million threshold.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR part 22 requirements:

- *FAR 52.222–2, Payment for Overtime Premiums.* This clause requires the contractor to request authorization for overtime premiums costs that exceed the amount negotiated in the contract. The request shall include information on the affected work unit current staffing and workload, how a denial of the request would impact performance on the instant contract or other contracts, and reasons why the work cannot be performed by using multishift operations or by employing additional personnel. Contracting officers use this information to evaluate whether the overtime is necessary.
- *FAR 52.222–6, Construction Wage Rate Requirements, and the Standard Form (SF) 1444.* This clause requires the contractor to establish additional classifications, if any laborer or mechanic is to be employed in a classification that is not listed in the wage determination applicable to the contract. In such cases, the contractor is required to complete and submit a SF 1444, Request for Authorization of Additional Classification and Rate, along with other pertinent data, containing the proposed additional classification and minimum wage rate including any fringe benefits payments. The contracting officer submits the SF 1444 to the Department of Labor (DOL) Wage and Hour Division with a request for conformance review to determine the appropriateness of the request.
- *FAR 52.222–11, Subcontracts (Labor Standards), and the SF 1413.* This clause requires a contractor to submit an SF 1413, Statement and Acknowledgment, for each subcontract for construction within the United States, including the subcontractor's signed and dated acknowledgment that the required labor clauses necessary to implement various labor statutes have been included in the subcontract. Contracting officers review the information on the form to ascertain whether contractors have included the required labor clauses in their subcontracts.
- *FAR 52.222–18, Certification Regarding Knowledge of Child Labor for Listed End Products.* This provision (and its commercial equivalent in the provision at 52.212–3) requires the offeror, as part of its annual representations and certifications, to either certify in paragraph (c)(1) that it will not supply an end product of a type identified on the DOL List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (*https://www.dol.gov/agencies/ilab*), or certify in paragraph (c)(2) that it has made a good faith effort to determine whether such child labor was used to mine, produce, or manufacture such end product, and is unaware of any such use of child labor. This information is used by the Government to ensure that a good faith effort has been made to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product on the List furnished under the contract.
- *FAR 52.222–33, Notice of Requirement for Project Labor Agreement.* When a PLA (a pre-hire collective bargaining agreement described in 29 U.S.C. 158(f)) is required for a large-scale construction project within the United States for which the total estimated cost of the construction contract to the Federal

[1] More detailed information regarding this collection, including more detailed burden estimates, can be found in the OMB Supporting Statement posted at *https://www.federalreserve.gov/apps/reportingforms/home/review.* On the page displayed at the link, you can find the OMB Supporting Statement by referencing the collection identifier, FR YY.

Government is $35 million or more, this provision requires the offeror to submit a copy of a PLA at the time offers are due, prior to award, or after contract award as determined by the agency. Subcontractors are required to become a party to the resulting PLA. An agency may require the use of a PLA on projects where the total cost to the Federal Government is less than $35 million, if appropriate.

• *FAR 52.222–34, Project Labor Agreement.* When a PLA is required for a large-scale construction project within the United States for which the total estimated cost of the construction contract to the Federal Government is $35 million or more, this clause requires the contractor to maintain the PLA in a current state throughout the life of the contract. The requirement for a PLA flows down to all subcontracts with subcontractors engaged in construction on the construction project.

• *FAR 52.222–46, Evaluation of Compensation for Professional Employees.* This provision requires offerors to submit for evaluation a total compensation plan setting forth proposed salaries and fringe benefits for professional employees working on the contract. The Government will use this information to determine if professional employees are compensated fairly and properly. Plans indicating unrealistically low professional employees' compensation may be assessed adversely as one of the factors considered in making a contract award.

C. Annual Burden

Respondents/Recordkeepers: 544,162.
Total Annual Responses: 619,558.
Total Burden Hours: 107,495 (107,174 reporting hours + 321 recordkeeping hours).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 51044 on August 19, 2022, as part of a proposed rule under FAR Case 2022–003, Use of Project Labor Agreements for Federal Construction Projects. Due to the public comments received in response to the proposed rule regarding the burden calculations, the estimated number of hours necessary for the implementation of a PLA were increased from a range of 40–80 to a range of 100–200 hours. Only the burden for the FAR provision at 52.222–33, and the FAR clause at 52.222–34 is affected by this revision. All other FAR part 22 provisions and clauses covered by OMB Control #9000–0066 remain the same as previously approved.

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. 9000–0066, Certain Federal Acquisition Regulation Part 22 Labor Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2024–06700 Filed 3–28–24; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[Notice—IEB–2024–00; Docket No. 2024–0002; Sequence No. 14]

Privacy Act of 1974; System of Records

AGENCY: Office of Enterprise Data & Privacy Management; General Services Administration (GSA).

ACTION: Rescindment of a System of Records Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, notice is given that the General Services Administration (GSA) proposes to rescind a System of Records Notice, GSA/PPFM–10, Purchase Card Program. This system of records provides control over expenditure of funds through the use of Federal Government purchase cards.

DATES: This system of records stopped being maintained in 2008.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal, *http://www.regulations.gov.* Submit comments by searching for GSA/PPFM–10.

FOR FURTHER INFORMATION CONTACT: Call or email Richard Speidel, Chief Privacy Officer at (202) 969–5830 and *gsa.privacyact@gsa.gov.*

SUPPLEMENTARY INFORMATION: GSA proposes to rescind a System of Records Notification, GSA/PPFM–10. This Notice is being rescinded due to the records of GSA/PPFM–10 being integrated into the government-wide SORN GSA SmartPay Purchase Charge Card Program (GSA/GOVT–6), beginning in 2008. This action is being taken to ensure that only one SORN covers the pertinent records.

SYSTEM NAME AND NUMBER:

Purchase Card Program, GSA/PPFM–10.

HISTORY:

This system was previously published in the **Federal Register** at 66 FR 39170, July 27, 2001, 70 FR 60347, October 17, 2005, 71 FR 48752, August 21, 2006, and 73 FR 22396, April 25, 2008.

Richard Speidel,

Chief Privacy Officer, Office of Enterprise Data & Privacy Management, General Services Administration.

[FR Doc. 2024–06724 Filed 3–28–24; 8:45 am]

BILLING CODE 6820–AB–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–24–23DV]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Focus groups among adults with or caring for individuals with congenital heart defects (CHD), muscular dystrophy (MD), and spina bifida (SB)'' to the Office of Management and budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on April 7, 2023 to obtain comments from the public and affected agencies. CDC received one public comment related to this notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Focus Groups Among Adults with or Caring for Individuals with Congenital Heart Defects (CHD), Muscular Dystrophy (MD), and Spina Bifida (SB)—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Congenital heart defects (CHD) are the most common type of structural birth defects in the United States, affecting approximately one in 110 live-born children, and are a leading cause of birth defect-associated infant mortality, morbidity, and healthcare costs. CHD mortality has decreased over the past few decades due to advances in diagnosis and medical interventions. As a result, more individuals are living into adulthood with CHD, a lifelong condition that can result in an increasing need for specialist care and clinical interventions over time. There is a lack of information on adults that are lost to cardiac care since most data sources only have access to patients that have been hospitalized or that are currently in cardiac care. A better understanding of the factors that contribute to adults not remaining in or seeking cardiac care will fill an important knowledge gap and could help shape future interventions to bring this population back to cardiac care.

Muscular dystrophies (MD) are a group of rare inherited disorders characterized by progressive and irreversible muscle weakness and wasting. The nine major types of MD (Duchenne and Becker [DBMD], myotonic dystrophy [DM], congenital [CMD], limb girdle [LGMD], Emory-Dreifuss [EDMD], facioscapulohumeral [FSHD], distal, and oculopharyngeal [OPMD]) vary by age of onset, muscle groups affected, genes involved, severity, and progression of disease. In 2002, CDC implemented the Muscular Dystrophy Surveillance, Tracking, and Research Network (MD STARnet [DD–19–002]). Now in its fourth funding cycle, MDSTARnet has conducted surveillance and collected epidemiologic and clinical data on people with DBMD, DM, FSHD, LGMD, CMD, OPMD, EDMD, and distal MD and has published numerous articles in scientific journals. However, qualitative data on the experiences of individuals with certain types of MD (DBMD, DM, FSHD, LGMD, and CMD) or their caregivers are limited. The MD portion of this collection will focus on gathering qualitative information to better understand the personal experiences of adults (≥18 years) with DBMD, FSHD, DM, and LGMD as well as adult caregivers of youth (<18 years) with DBMD, congenital or juvenile onset DM, and CMD. Specifically, qualitative data on barriers to accessing and receiving care, the journey to diagnosis, and for those diagnosed early in life the transition into adulthood will help to address a gap in the literature and inform future research and surveillance efforts.

Spina bifida (SB) is among the most common disabling birth defects in the United States. Based on national data from 2010–2014, the estimated birth prevalence for spina bifida is 3.9 per 10,000 live births. SB impacts different organ systems, resulting in the need for various types of clinical specialists. In 2008, CDC implemented the National Spina Bifida Patient Registry (NSBPR; [DD–19–001]) with SB clinics across the United States. In 2014, CDC funded a subset of NSBPR clinics to establish and implement the ''Urologic Management to Preserve Initial Renal Function Protocol for Young Children with Spina Bifida'' (UMPIRE Protocol; [DD–14–002]). NSBPR and UMPIRE have generated numerous publications on clinical interventions, health outcomes, and lessons learned. However, increases in survival for individuals with SB have prompted the need for greater understanding of the complexities involved in their clinical and psychological care. Qualitative data on individual and caregiver experiences with SB, including barriers to accessing specialty care, managing one's skin health and bowel and bladder function, and the transition from childhood to adulthood (for those with MD diagnosed prior to adulthood) are needed to guide future SB surveillance and research projects as well as the care of those aging into adulthood.

The purpose of this Information Collection Request (ICR) is to recruit individuals for virtual focus groups and gather qualitative data from adults with or caring for individuals with congenital heart defects (CHD), muscular dystrophies (MD), and spina bifida (SB). This data will be collected by KRC Research, a contracted research firm, over the course of the study and will provide firsthand perspectives on the types of care individuals receive with a special focus on receipt of and access to medical care and barriers and facilitators to accessing, receiving, or reengaging care; the journey to diagnosis; and the transition from pediatric to adult care (for persons diagnosed during childhood). This information may be used to address gaps in knowledge, inform future surveillance, research, and data collection, and gather patient and caregiver perspectives that may be shared with clinicians and inform clinical care.

The total estimated annualized burden for all audiences is 603 hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults with a CHD that have been out of cardiac care	CHD Screening Questionnaire	410	1	10/60
Adults with a CHD that have been out of cardiac care	CHD Focus Group Guide	80	1	105/60
Adults with MD or adult caregivers of individuals with MD	MD Screening Tool	210	1	10/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Adults with MD or adult caregivers of individuals with MD	MD Focus Group Guide	137	1	105/60
Adults with SB or adult caregivers of individuals with SB	SB Screening Tool	90	1	10/60
Adults with SB or adult caregivers of individuals with SB	SB Focus Group Guide	60	1	105/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2024–06754 Filed 3–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Solicitation for Nominations for Appointment to the Mine Safety and Health Research Advisory Committee

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Centers for Disease Control and Prevention (CDC), within the Department of Health and Human Services (HHS), is seeking nominations for membership on the Mine Safety and Health Research Advisory Committee (MSHRAC). MSHRAC consists of 10 experts in fields associated with mine safety and health research.

DATES: Nominations for membership on MSHRAC must be received no later than April 29, 2024. Packages received after this time will not be considered for the current membership cycle.

ADDRESSES: All nominations should be emailed to *mining@cdc.gov* or mailed to Steven Mischler, Ph.D., Designated Federal Officer, Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236.

FOR FURTHER INFORMATION CONTACT: Steven Mischler, Ph.D., Designated Federal Officer, Mine Safety and Health Research Advisory Committee, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236. Telephone: (412) 386–6588; email: *SMischler@cdc.gov.*

SUPPLEMENTARY INFORMATION: Nominations are sought for individuals who have the expertise and qualifications necessary to contribute to the accomplishment of the objectives of the Mine Safety and Health Research Advisory Committee (MSHRAC). Nominees will be selected based on expertise in fields associated with mine safety and health research, such as mining engineering, industrial hygiene, occupational safety and health engineering, chemistry, safety and health education, ergonomics, epidemiology, statistics, psychology, dissemination of scientific research findings, and currently practicing in their profession. Federal employees will not be considered for membership. Members may be invited to serve for up to four-year terms. Selection of members is based on candidates' qualifications to contribute to the accomplishment of MSHRAC objectives (*https://www.cdc.gov/faca/committees/mshrac.html*).

Department of Health and Human Services (HHS) policy stipulates that committee membership be balanced in terms of points of view represented and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens and cannot be full-time employees of the U.S. Government. Current participation on Federal workgroups or prior experience serving on a Federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees, requiring the filing of financial disclosure reports at the beginning of and annually during their terms. The Centers for Disease Control and Prevention (CDC) reviews potential candidates for MSHRAC membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in December 2024, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year.

Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- Cover letter, including a description of the candidate's qualifications and why the candidate would be a good fit for MSHRAC.
- At least one letter of recommendation from person(s) not employed by HHS. Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, National Institutes of Health, Food and Drug Administration).

Nominations may be submitted by the candidate or by the person/organization recommending the candidate.

The Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Office of Strategic Business Initiatives, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2024–06686 Filed 3–28–24; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0020]

SpecGX LLC, et al.; Withdrawal of Approval of 30 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is withdrawing approval of 30 abbreviated new drug applications (ANDAs) from multiple applicants. The applicants notified the Agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Approval is withdrawn as of April 29, 2024.

FOR FURTHER INFORMATION CONTACT: Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: The applicants listed in the table have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications under the process described in § 314.150(c) (21 CFR 314.150(c)). The applicants have also, by their requests, waived their opportunity for a hearing. Withdrawal of approval of an application or abbreviated application under § 314.150(c) is without prejudice to refiling.

Application No.	Drug	Applicant
ANDA 040163	Meperidine Hydrochloride (HCl) Preservative Free Injectable, 10 milligrams (mg)/milliliters (mL).	SpecGx LLC, 385 Marshall Ave., Webster Groves, MO 63119.
ANDA 040352	Meperidine HCl Tablets, 50 mg and 100 mg	Do.
ANDA 040680	Oxycodone and Acetaminophen Solution, 325 mg/5 mL; 5 mg/5 mL	Do.
ANDA 040773	Benzphetamine HCl Tablets, 50 mg	Do.
ANDA 063002	Ancef in Plastic Container (cefazolin sodium) Injectable, Equivalent to (EQ) 10 mg base/mL and EQ 20 mg base/mL.	Baxter Healthcare Corp., 1 Baxter Pkwy., Deerfield, IL 60015.
ANDA 076280	Tizanidine HCl Tablets, EQ 2 mg base and EQ 4 mg base	Target Health LLC, U.S. Agent for CASI Pharmaceuticals, Inc., 450 Commerce Boulevard, Carlstadt, NJ 07072.
ANDA 077021	Cilostazol Tablets, 100 mg	Do.
ANDA 077310	Cilostazol Tablets, 50 mg	Do.
ANDA 077517	Ondansetron HCl Tablets, EQ 4 mg base, EQ 8 mg base, and EQ 24 mg base.	Do.
ANDA 078319	Sumatriptan Succinate Injectable, EQ 4 mg base/0.5 mL (EQ 8 mg base/mL) and EQ 6 mg base/0.5 mL (EQ 12 mg base/mL).	Antares Pharma, Inc., 100 Princeton South Corporate Center, Suite 300, Ewing, NJ 08628.
ANDA 087748	Blephamide S.O.P (Prednisolone Acetate; Sulfacetamide Sodium) Ointment, 0.2%; 10%.	Allergan Sales, LLC, 2525 Dupont Dr., Irvine, CA 92612.
ANDA 087804	Butalbital, Acetaminophen, and Caffeine Tablets, 325 mg; 50 mg; 40 mg.	SpecGx LLC.
ANDA 087846	Imipramine HCl Tablets, 10 mg, 25 mg, and 50 mg	Do.
ANDA 090623	Ranitidine HCl Syrup, EQ 15 mg base/mL	Aurobindo Pharma USA, Inc., U.S. Agent for Aurobindo Pharma Ltd., 279 Princeton-Hightstown Rd., East Windsor, NJ 08520.
ANDA 202321	Oxymorphone HCl Tablets, 5 mg, and 10 mg	SpecGx LLC.
ANDA 202946	Oxymorphone HCl Extended-Release Tablets, 5 mg, 7.5 mg, 10 mg, 15 mg, 20 mg, 30 mg, and 40 mg.	Do.
ANDA 204823	Cyproheptadine HCl Syrup, 2 mg/5 mL	Patrin Pharma, Inc., P.O. Box 1481, Skokie, IL 60076.
ANDA 206672	Entecavir Tablets, 0.5 mg and 1 mg	Target Health LLC.
ANDA 206710	Paricalcitol Capsules, 1 microgram (mcg), 2 mcg, and 4 mcg	Alvogen PB Research and Development LLC, U.S. Agent for Lotus Pharmaceutical Co., Ltd., Nantou Plant, 44 Whippany Rd, Suite 300, Morristown, NJ 07960.
ANDA 207578	Ranitidine HCl Tablets, EQ 150 mg base	Aurobindo Pharma USA, Inc.
ANDA 207579	Ranitidine HCl Tablets, EQ 75 mg base	Do.
ANDA 209550	Tenofovir Disoproxil Fumarate Tablets, 300 mg	Target Health LLC.
ANDA 209787	Methotrexate Sodium Tablets, EQ 2.5 mg base	Alvogen PB Research and Development LLC.
ANDA 210228	Ranitidine HCl Tablets, EQ 150 mg base	PTS Consulting, LLC, U.S. Agent for THINQ Pharma-CRO Private Ltd., 6739 Vahalla Ct., Shawnee, KS 66217.
ANDA 210250	Ranitidine HCl Tablets, EQ 75 mg base	Do.
ANDA 211058	Ranitidine HCl Capsules, EQ 150 mg base and EQ 300 mg base	Aurobindo Pharma USA, Inc.
ANDA 212312	Sildenafil Citrate for Suspension, EQ 10 mg base/mL	Tris Pharma, Inc., 2033 Route 130, Suite D, Monmouth Junction, NJ 08852.
ANDA 212626	Vigabatrin for Solution, 500 mg/packet	SpecGx LLC.
ANDA 213456	Colesevelam HCl Tablets, 625 mg	SPH Phililab Inc., 5207 Militia Hill Rd., Suite 100, Plymouth Meeting, PA 19462.
ANDA 215343	Fluticasone Propionate Ointment, 0.005%	BF Suma Pharmaceuticals Inc., U.S. Agent for Bright Future Pharmaceutical Laboratories Ltd., 5001 Earle Ave., Rosemead, CA 91770.

Therefore, approval of the applications listed in the table, and all amendments and supplements thereto, is hereby withdrawn as of April 29, 2024. Approval of each entire application is withdrawn, including any strengths and dosage forms inadvertently missing from the table. Introduction or delivery for introduction into interstate commerce of products listed in the table without an approved new drug application or ANDA violates sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)). Drug products that are listed in the table that are in inventory on April 29, 2024 may continue to be dispensed until the inventories have been depleted or the drug products have reached their expiration dates or otherwise become violative, whichever occurs first.

Dated: March 26, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06730 Filed 3–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–1298]

Over-the-Counter Monograph Drug User Fee Program—Facility Fee Rates for Fiscal Year 2024

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the over-the-counter (OTC) monograph drug facility (MDF) fee rates under the OTC monograph drug user fee program (OMUFA) for fiscal year (FY) 2024. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to assess and collect user fees from qualifying manufacturers of OTC monograph drugs and submitters of OTC monograph order requests (OMORs). This notice publishes the OMUFA facility fee rates for FY 2024.

DATES: These facility fees are effective on October 1, 2023, and will remain in effect through September 30, 2024.

FOR FURTHER INFORMATION CONTACT: Olufunmilayo (Funmi) Ariyo, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., 6th Floor, Beltsville, MD 20705–4304, 240–402–4989; or the User Fees Support Staff at *OO-OFBAP-OFM-UFSS-Government@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 744M of the FD&C Act (21 U.S.C. 379j–72), authorizes FDA to assess and collect: (1) facility fees from qualifying owners of OTC monograph drug facilities and (2) fees from submitters of qualifying OTC OMORs. The OTC OMOR fee rates for FY 2024 were published on September 12, 2023.[1] These fees are to support FDA's OTC monograph drug activities, which are detailed in section 744L(6) of the FD&C Act (21 U.S.C. 379j–71(6)) and include various FDA activities associated with OTC monograph drugs. For OMUFA purposes:

- An OTC monograph drug is a nonprescription drug without an approved new drug application that is governed by the provisions of section 505G of the FD&C Act (21 U.S.C. 355h) (see section 744L(5) of the FD&C Act);
- An OTC MDF is a foreign or domestic business or other entity that, in addition to meeting other criteria, is engaged in manufacturing or processing the finished dosage form of an OTC monograph drug (see section 744L(10) of the FD&C Act); and
- A contract manufacturing organization (CMO) facility is an OTC monograph drug facility where neither the owner nor any affiliate of the owner or facility sells the OTC monograph drug produced at such facility directly to wholesalers, retailers, or consumers in the United States (see section 744L(2) of the FD&C Act).

Under section 744M(a)(1)(A) of the FD&C Act, a facility fee for FY 2024 shall be assessed with respect to each facility that is identified as an OTC monograph drug facility during the fee-liable period from January 1, 2023, through December 31, 2023.[2] Consistent with the statute, FDA will assess and collect facility fees with respect to the two types of OTC monograph drug facilities—MDF and CMO facilities. A full facility fee will be assessed to each qualifying person that owns a facility identified as an MDF (see section 744M(a)(1)(A) of the FD&C Act), and a reduced facility fee of two-thirds will be assessed to each qualifying person that owns a facility identified as a CMO facility (see section 744M(a)(1)(B)(ii) of the FD&C Act). The facility fees for FY 2024 are due on June 3, 2024 (see section 744M(a)(1)(D)(ii) of the FD&C Act).[3]

As discussed in greater detail below:

- OTC monograph drug facilities are exempt from FY 2024 facility fees if they had ceased OTC monograph drug activities, and updated their registration with FDA to that effect, prior to December 31, 2022 (see section 744M(a)(1)(B)(i) of the FD&C Act).
- Entities that registered with FDA during the Coronavirus Disease 2019 (COVID–19) pandemic whose sole activity with respect to OTC monograph drugs during the pandemic consists (or had consisted) of manufacturing OTC hand sanitizer products[4] are not identified as OTC monograph drug facilities subject to OMUFA facility fees for FY 2024.[5]

For FY 2024, the OMUFA facility fee rates are: MDF facility fees ($34,166) and CMO facility fees ($22,777). These fees are effective for the period from October 1, 2023, through September 30, 2024.[6] This document is issued pursuant to section 744M(a)(4) and 744M(c)(4)(B) of the FD&C Act and describes the calculations used to set the OMUFA facility fees for FY 2024 in accordance with the directives in the statute.

II. Facility Fee Revenue Amount for FY 2024

A. Base Fee Revenue Amount

Under OMUFA, FDA sets annual facility fees to generate the total facility fee revenues for each fiscal year

[1] *https://www.federalregister.gov/documents/2023/09/12/2023-19609/over-the-counter-monograph-drug-user-fee-program-otc-monograph-order-requests-fee-rates-for-fiscal.*

[2] Under section 744M(a)(1) of the FD&C Act, ''Each person that owns a facility identified as an OTC monograph drug facility on December 31 of the fiscal year or at any time during the preceding 12-month period shall be assessed an annual fee for each such facility.'' For purposes of FY 2024 facility fees, that time period is January 1, 2023, through December 31, 2023.

[3] Assuming that, as we anticipate, the FY 2024 fee appropriation will occur prior to June 3, 2024. Under section 744M(a)(1)(D)(ii), the FY 2024 facility fees are due on the later of: (1) the first business day of June 2024 (*i.e.,* June 3, 2024) or (2) the first business day after the enactment of an appropriations Act providing for the collection and obligation of FY 2024 OMUFA fees.

[4] The term ''hand sanitizer'' commonly refers to consumer antiseptic rubs. However, because the Department of Health and Human Services (HHS) notice published January 12, 2021, referred to ''persons that entered the over-the-counter drug market to supply hand sanitizer products in response to the COVID–19 Public Health Emergency'' (86 FR 2420 *https://www.federalregister.gov/documents/2021/01/12/2021-00237/notice-that-persons-that-entered-the-over-the-counter-drug-market-to-supply-hand-sanitizer-during*), we are using the same terminology—''hand sanitizer products''—to refer to OTC monograph drug products intended for use (without water) as antiseptic hand rubs or antiseptic hand wipes by consumers or healthcare personnel.

[5] See HHS **Federal Register** notice of January 12, 2021, 86 FR 2420, *https://www.federalregister.gov/documents/2021/01/12/2021-00237/notice-that-persons-that-entered-the-over-the-counter-drug-market-to-supply-hand-sanitizer-during.*

[6] These OMUFA fees are for FY 2024, per section 744M(a) of the FD&C Act.

established by section 744M(b) of the FD&C Act. The yearly base revenue amount is the starting point for setting annual facility fee rates. The base revenue for FY 2024 is the dollar amount of the total revenue amount for the previous fiscal year, without certain adjustments made for that previous year, and is $21,421,133 (see section 744M(b)(3)(B) of the FD&C Act).

B. Fee Revenue Adjustment for Inflation

Under OMUFA, the annual base revenue amount for facility fees is adjusted for inflation for FY 2024 and each subsequent fiscal year (see section 744M(c)(1) of the FD&C Act). That provision states that the dollar amount of the inflation adjustment is equal to the product of the annual base revenue for the fiscal year and the inflation adjustment percentage. For FY 2024 the inflation adjustment percentage is the sum of:

- (I) the average annual percent change in cost, per full-time equivalent (FTE) position of FDA, of all personnel compensation and benefits paid with respect to such positions for the first 3 years of the preceding 4 fiscal years, multiplied by the proportion of personnel compensation and benefits (PC&B) costs to total costs of the OTC monograph drug activities for the first 3 years of the preceding 4 fiscal years (see section 744M(c)(1)(C)(ii)(I) of the FD&C Act); and
- (II) the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; Not Seasonally Adjusted; All items; Annual Index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than personnel compensation and benefits costs to total costs of OTC monograph dug activities for the first 3 years of the preceding 4 fiscal years (see section 744M(c)(1)(C)(ii)(II) of the FD&C Act).

As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018, the ''Washington, DC-Baltimore'' index was discontinued and replaced with two separate indices (*i.e.,* the ''Washington-Arlington-Alexandria'' and ''Baltimore-Columbia-Towson'' indices). To continue applying a CPI that best reflects the geographic region in which FDA is located and that provides the most current data available, the ''Washington-Arlington-Alexandria'' index is used in calculating the inflation adjustment percentage.

Table 1 summarizes the actual cost and FTE data for the specified fiscal years, provides the percent changes from the previous fiscal years, and provides the average percent changes over the first 3 of the 4 fiscal years preceding FY 2024. The 3-year average is 3.9280 percent.

TABLE 1—FDA PC&B EACH YEAR AND PERCENT CHANGES

Year	2020	2021	2022	3-Year average
Total PC&B	2,875,592,000	3,039,513,000	3,165,477,000	.....
Total FTE	17,535	18,501	18,474	.....
PC&B per FTE	163,992	164,289	171,348	.....
Percent Change From Previous Year	7.3063%	0.1811%	4.2967%	3.9280%

Under the statute, this 3.9280 percent would be multiplied by the proportion of PC&B costs to the total FDA costs of OTC Monograph drug activities for the first 3 years of the preceding 4 fiscal years (see section 744M(c)(1)(C)(ii) of the FD&C Act). Because OMUFA was first authorized beginning with FY 2021, FDA used cost data of OTC monograph drug activities for the preceding three fiscal years (*i.e.,* FYs 2021–2023) to align with OMUFA's authorization.[7]

Table 2 shows the PC&B and the total obligations for OTC monograph drug activities for the last 3 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR OTC MONOGRAPH DRUG ACTIVITIES

Year	2021	2022	2023	3-Year average
Total PC&B	23,133,775	25,415,237	39,133,075	.....
Total Costs	35,030,659	49,644,273	68,480,052	.....
PC&B Percent	66.0387%	51.1947%	57.1452%	58.1262%

The payroll adjustment is 3.9280 percent from table 1 multiplied by 58.1262 percent resulting in 2.2832 percent.

Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Arlington-Alexandria, DC-VA-MD-WV. The data are published by the Bureau of Labor Statistics on its website: *https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0.*

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV AREA

Year	2020	2021	2022	3-Year average
Annual CPI	267.16	277.728	296.117	.....

[7] We note that in preparing this FY 2024 facility fee rate notice, the Agency had final cost data for FY 2023 OTC monograph drug activities, while in preparing the preceding FY 2024 OMOR fee rate notice (referenced above), the Agency used estimated final FY 2023 cost data, as described therein.

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA, DC-VA-MD-WV AREA—Continued

Year	2020	2021	2022	3-Year average
Annual Percent Change	0.8989%	3.9568%	6.6212%	3.8256%

The statute specifies that this 3.8256 percent be multiplied by the proportion of all costs other than PC&B to total costs of OTC monograph drug activities for the first 3 years of the preceding 4 fiscal years (and again, FDA is using cost data of OTC monograph drug activities for the preceding 3 fiscal years, *i.e.,* FYs 2021–2023, to align with OMUFA's authorization). Because 58.12624 percent was obligated for PC&B (as shown in table 2), 41.8738 percent is the portion of costs other than PC&B (100 percent minus 58.1262 percent equals 41.8738 percent). The non-payroll adjustment is 3.8256 percent times 41.8738 percent, or 1.6019 percent.

Next, we add the payroll adjustment (2.2832 percent) to the non-payroll adjustment (1.6019 percent), for a total inflation adjustment of 3.8851 percent for FY 2024.

Pursuant to the statute, the FY 2024 base revenue of $21,421,133 is increased by the total inflation adjustment of 3.8851 percent, yielding an inflation adjusted base revenue amount of $22,253,365 for FY 2024 (see section 744M(c)(1)(A)).

C. Additional Dollar Amounts

For FY 2024, the inflation adjusted revenue amount of $22,253,365 is increased by an additional dollar amount of $7 million as specified in the statute (see section 744M(b)(2)(E) of the FD&C Act). This yields an adjusted fee revenue subtotal of $29,253,365.

D. Fee Revenue Adjustment for Additional Direct Cost

Fee revenue is further adjusted for additional direct costs as specified in the statute. In FY 2024, $3 million is added to the facility fee revenues to account for additional direct costs (see section 744M(c)(3)(B) of the FD&C Act). Adding the additional direct costs amount of $3 million to $29,253,365 yields an additional direct cost adjusted fee revenue of $32,253,365.

E. Fee Revenue Adjustment for Operating Reserve

Under OMUFA, FDA may further increase the FY 2024 facility fee revenue and fees if such an adjustment is necessary to provide up to 10 weeks of operating reserves of carryover user fees for OTC monograph drug activities (see section 744M(c)(2)(B) of the FD&C Act). Accordingly, in setting fees for FY 2024, the Agency must estimate its carryover for FY 2024 to ensure the Agency has sufficient carryover to continue its OTC monograph drug activities, as required under the statute, including an operating reserve to mitigate certain financial risks, such as under collections, unanticipated surges in program costs, or a lapse in appropriations. Under the statute, if FDA has carryover for OTC monograph drug activities that would exceed 10 weeks of such operating reserves, FDA is required to decrease FY 2024 fee revenues and fees to provide for not more than 10 weeks of operating reserves of carryover user fees (see section 744M(c)(2)(C) of the FD&C Act).

Per the statute, OMUFA facility fees are not due until the third quarter of each fiscal year (*i.e.,* the first business day in June). To address this timing of facility fee collections for late in the fiscal year, the Agency must set aside additional carryover, beyond that for an operating reserve, to sustain the Agency's OTC monograph drug activities until the facility fees for the subsequent fiscal year are due and payable on the first business day in June (*i.e.,* June 2, 2025). Thus, the Agency will require FY 2024 carryover sufficient to cover payroll and operating expenses for the first 8 months (*i.e.,* 35 weeks rounded) of the following fiscal year (*i.e.,* October 1, 2024, to May 31, 2025). We refer to the amount of carryover needed to cover this 35-week period as the ''continuity set-aside'', consistent with the Agency's use of this term in the annual OMUFA Financial Reports.[8]

To determine the amount of this continuity set-aside, the Agency starts with the additional direct cost adjusted fee revenue of $32,253,365 (calculated in section D), divides it by 52 to yield a weekly operating amount of $620,257, and then multiplies the weekly operating amount by 35. Based on this calculation, FDA requires $21,708,995 to support the program until the FY 2025 facility fees are due. After running analyses on the projected collections and obligations for FY 2024, including accounting for possible financial risks described above, FDA estimates the FY 2024 carryover to be $24,578,371, which is $2,869,361 above the continuity set-aside amount needed to support the program through the 35-week period until the FY 2025 facility fees are due.

To determine whether the carryover above this continuity set-aside is within the 10-week limit for the operating reserve, FDA multiplies the weekly operating amount ($620,257) by 10, resulting in an operating reserve limit of $6,202,570. Because the estimated FY 2024 carryover above the continuity set-aside is below the 10-week threshold, FDA will not increase or reduce the FY 2024 fees or fee revenue under the statutory provision for an operating reserve adjustment. The final FY 2024 OMUFA target facility fee revenue is $32,253,000 (rounded to the nearest thousand dollars).

III. Facility Fee Calculations

A. Facility Fee Revenues and Fees

For FY 2024, facility fee rates are being established to generate a total target revenue amount, as determined under the statute, equal to $32,253,000 (rounded to the nearest thousand dollars). FDA used the methodology described below to determine the appropriate number of MDF and CMO facilities to be used in setting the OMUFA facility fees for FY 2024. FDA took into consideration that the CMO facility fee is equal to two-thirds of the amount of the MDF facility fee (see section 744M(a)(1)(B)(ii) of the FD&C Act).

B. Calculating the Number of Qualifying Facilities and Setting the Facility Fees

For FY 2024, FDA utilized data consisting of the number of facilities that were registered in FDA's electronic Drug Registration and Listing System (eDRLS) to manufacture human OTC products produced under a monograph [9]

[8] *https://www.fda.gov/about-fda/user-fee-financial-reports/omufa-financial-reports.*

[9] See section 744M(d) of the FD&C Act. OTC monograph drug facilities had selected in the eDRLS the business operation qualifiers of ''manufactures human over-the-counter drug products produced under a monograph'' or ''contract manufacturing for human over-the-counter drug products produced under a monograph'' and indicated at least one of the following business operations: finished dosage form

during the FY 2023 fee-liable period (*i.e.,* January 1, 2022, through December 31, 2022, and that paid FY 2023 OMUFA facility fees, as the primary sources for estimating the number of each facility fee type (*i.e.,* MDF and CMO). In addition, the Agency considered data provided by firms regarding their operation as MDFs and CMOs during FY 2023 (*i.e.,* October 1, 2022, through September 30, 2023) when they were submitting OTC Monograph User Fee Cover Sheets to pay the FY 2023 fee. These data helped FDA estimate the number of firms operating as MDF and CMO facilities during the FY 2024 fee-liable period (*i.e.,* January 1, 2023, through December 31, 2023) [9] [10] and thus informed FDA's calculation of the number and ratio of MDF and CMO facilities used in determining the FY 2024 fee rates. FDA's review of data also reflected input received during the FY 2024 fee-liable period from facilities whose manufacturing or processing practices meet the definition of fee-eligible OTC monograph drug facilities, to help capture those facilities that are in the market and intend to remain in the market for FY 2024.

Those facilities that only manufacture the active pharmaceutical ingredient of an OTC monograph drug do not meet the definition of an OTC monograph drug facility (see section 744L(10)(A)(i)(II)) of the FD&C Act). Likewise, a facility is not an OTC monograph drug facility if its only manufacturing or processing activities are one or more of the following: (1) production of clinical research supplies; (2) testing; or (3) placement of outer packaging on packages containing multiple products, for such purposes as creating multipacks, when each monograph drug product contained within the overpackaging is already in a final packaged form prior to placement in the outer overpackaging (see section 744L(10)(A)(iii) of the FD&C Act).

Consistent with the January 12, 2021 HHS **Federal Register** notice [11] (HHS FRN) and FDA's subsequent **Federal Register** notices published on March 26, 2021, March 16, 2022, and March 27, 2023, announcing the FY 2021, FY 2022, and FY 2023 OMUFA fees (respectively),[12] [13] [14] facilities are not identified as an ''OTC monograph drug facility'' and will not be assessed a FY 2024 OMUFA facility fee if they: (1) were not registered with FDA as OTC drug manufacturers prior to the HHS declaration of the COVID–19 public health emergency (PHE) on January 27, 2020; [15] (2) registered with FDA on or after the declaration of the COVID–19 PHE; and (3) registered for the sole purpose of producing hand sanitizer products during the COVID–19 PHE. We note, however, that under the FD&C Act, whether an entity is subject to OMUFA fees has no bearing on whether the entity or the entity's products are subject to other requirements under the FD&C Act. FDA will continue to use its regulatory compliance and enforcement tools to protect consumers, including from hand sanitizers or other drugs that are potentially dangerous or subpotent.

Although this notice addresses FY 2024 OMUFA facility fees, the Agency is highlighting the following information for interested parties in the interest of transparency regarding the Agency's planning for assessment of OMUFA facility fees for FY 2025: the January 12, 2021 HHS FRN explains that ''[t]he Department's conclusion [that certain hand sanitizer manufacturers are not identified as OTC monograph drug facilities] does not apply to such persons which (1) manufacture, distribute, and sell over-the-counter drugs in addition to hand sanitizer or (2) *continue to manufacture* (as opposed to hold, distribute, or sell existing inventories) *hand sanitizer products as of December 31 of the year immediately following the year during which the COVID–19 Public Health Emergency is terminated. In those cases, the Department may identify such persons as OTC drug manufacturing facilities*'' [16] (emphasis added). Accordingly, as the PHE expired on May 11, 2023, those facilities which ''continue to manufacture'' solely hand sanitizer products as of December 31, 2024, will be identified as OTC monograph drug facilities and be subject to an OMUFA facility fee for FY 2025. Conversely, if such facilities cease manufacturing hand sanitizer products and delist and deregister to reflect that before 12 a.m. EST on December 31, 2024, they will not be identified as an OTC monograph drug facility [17] and will not be considered fee liable for purposes of FY 2025 OMUFA facility fees.[18] In other words if facilities described in the January 12, 2021 HHS FRN, *i.e.,* those that first registered with FDA on or after the declaration of the COVID–19 PHE for the sole purpose of producing hand sanitizer products during the COVID–19 PHE, seek to avoid being identified as OTC monograph drug facilities subject to OMUFA facility fees for FY 2025 and beyond, they will need to cease production of hand sanitizer products and update their registration and listing accordingly, before 12 a.m. on December 31, 2024.

In undertaking the statutorily directed fee calculations for FY 2024 fees, the Agency also made certain assumptions, including that: (1) facilities using expired Structured Product Labeling codes in eDRLS, that have not reregistered, were no longer manufacturing and marketing OTC monograph drugs; (2) facilities that have deregistered in eDRLS have exited the market; (3) facilities that FDA believes registered incorrectly as OTC monograph drug facilities (for example, because the associated drug listings for these facilities did not include OTC monograph drugs but instead indicated such products as OTC drug products under an approved drug application or OTC animal drug products) were not engaged in manufacturing or processing the finished dosage form of an OTC monograph drug; (4) facilities that registered but did not have an active OTC monograph drug product listing associated in their registration profile

manufacture, label, manufacture, pack, relabel, or repack.

[10] FDA considers relabelers and repackagers to be a category of OTC monograph drug facilities subject to OMUFA facility fees. See section 744L(10)(A); see also section 744L(10)(A)(iii) of the FD&C Act, excluding from the definition of ''OTC monograph drug facility'' those facilities whose manufacturing or processing consists solely of a narrow range of specified activities (*e.g.,* placement of outer overpackaging on products already in final packaged form); *cf* section 744A(6)(A)(ii) of the FD&C Act (which expressly excludes from the definition of ''facility'', for purposes of Generic Drug User Fee Amendments facility fees, a business or other entity whose only manufacturing or processing activities are repackaging, relabeling, or testing). See also 21 CFR 207.1 (addressing drug establishment registration), stating that ''[m]anufacture means each step in the manufacture, preparation, propagation, compounding, or processing of a drug,'' and indicating that ''the term 'manufacture, preparation, propagation, compounding, or processing,' as used in section 510 of the Federal Food, Drug, and Cosmetic Act, includes relabeling, repackaging, and salvaging activities.''

[11] See 86 FR 2420, *https://www.federalregister.gov/documents/2021/01/12/2021-00237/notice-that-persons-that-entered-the-over-the-counter-drug-market-to-supply-hand-sanitizer-during.*

[12] See 86 FR 16223, *https://www.federalregister.gov/documents/2021/03/26/2021-06361/fee-rates-under-the-over-the-counter-monograph-drug-user-fee-program-for-fiscal-year-2021.*

[13] See 87 FR 14888, *https://www.federalregister.gov/documents/2022/03/16/2022-05542/over-the-counter-monograph-drug-user-fee-rates-for-fiscal-year-2022.*

[14] See 88 FR 18156, *https://www.federalregister.gov/documents/2023/03/27/2023-06299/over-the-counter-monograph-drug-user-fee-rates-for-fiscal-year-2023.*

[15] See *https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx.*

[16] See *https://www.federalregister.gov/documents/2021/01/12/2021-00237/notice-that-persons-that-entered-the-over-the-counter-drug-market-to-supply-hand-sanitizer-during.*

[17] Id.

[18] Id.

were not manufacturing or processing such drug products; and (5) facilities that, at the close of FY 2023, remain on the arrears list for failure to satisfy the FY 2021, FY 2022, or FY 2023 facility fee are likely to be placed on the FY 2024 arrears list as well.

Based on the above-referenced factors and assumptions, FDA estimates there will be 1,102 OMUFA fee-paying units. The Agency estimates that 57 percent ($1{,}102 \times 0.57 = 628$, rounded) will incur the MDF fee and 43 percent ($1{,}102 \times 0.43 = 474$, rounded) will incur the CMO fee.

To determine the number of full fee-paying equivalents (the denominator) to be used in setting the OMUFA fees, FDA assigns a value of 1 to each MDF (628) and a value of ⅔ to each CMO ($474 \times ⅔ = 316$) for a full facility equivalent of 944 (rounded). The target fee revenue of $32,253,000 is then divided by 944 for an MDF fee of $34,166 and a CMO fee of $22,777.

V. Fee Schedule for FY 2024

The fee rates for FY 2024 are displayed in table 4.

TABLE 4—FEE SCHEDULE FOR FY 2024

Fee category	FY 2024 Fee rates
Facility Fees:	
MDF	$34,166
CMO	22,777

VI. Fee Payment Options and Procedures

The new facility fee rates are for the period from October 1, 2023, through September 30, 2024. To pay the MDF and CMO fees, complete an OTC Monograph User Fee Cover Sheet, available at: *https://userfees.fda.gov/OA_HTML/omufaCAcdLogin.jsp.*

A user fee identification (ID) number will be generated. Payment must be made in U.S. currency by electronic check or wire transfer, payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card for payments under $25,000 (Discover, VISA, MasterCard, American Express).

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov*, a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the OTC Monograph User Fee Cover Sheet and generating the user fee ID number. Secure electronic payments can be submitted using the User Fees Payment Portal at *https://userfees.fda.gov/pay.* (*Note:* Only full payments are accepted through *https://userfees.fda.gov/pay.* No partial payments can be made online). Once an invoice is located, ''Pay Now'' should be selected to be redirected to *Pay.gov.* Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than $25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied, which could result in consequences of nonpayment per section 744M(e)(1) of the FD&C Act. The originating financial institution may charge a wire transfer fee. Applicable wire transfer fees must be included with payment to ensure fees are fully paid. Questions about wire transfer fees should be addressed to the financial institution. The account information for wire transfers is as follows: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53–0196965.

If you are assessed an FY 2024 OMUFA facility fee and believe your facility is not an OTC monograph drug facility as described in this notice, please contact *CDERCollections@fda.hhs.gov.*

Dated: March 26, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06723 Filed 3–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–D–1242]

Animal Studies for Dental Bone Grafting Material Devices—Premarket Notification (510(k)) Submissions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Animal Studies for Dental Bone Grafting Material Devices—Premarket Notification (510(k)) Submissions.'' This draft guidance document provides animal study design recommendations and animal study information to include to support a 510(k) submission for dental bone grafting material devices. This draft guidance may help manufacturers comply with some special controls for dental bone grafting material devices. The recommendations reflect current review practices and are intended to promote consistency and facilitate efficient review of these submissions. This draft guidance is not final nor is it for implementation at this time.

DATES: Submit either electronic or written comments on the draft guidance by May 28, 2024 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and

Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–D–1242 for ''Animal Studies for Dental Bone Grafting Material Devices—Premarket Notification (510(k)) Submissions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Animal Studies for Dental Bone Grafting Material Devices—Premarket Notification (510(k)) Submissions'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Joel Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. G234, Silver Spring, MD 20993–0002, 301–796–6520.

SUPPLEMENTARY INFORMATION:

I. Background

A dental bone grafting material device is a material that is intended to fill, augment, or reconstruct periodontal or bony defects of the oral and maxillofacial region. This draft guidance document provides premarket notification (510(k)) submission recommendations for animal studies that may help manufacturers comply with the in vivo performance special control identified in FDA's guidance, ''Class II Special Controls Guidance Document: Dental Bone Grafting Material Devices'' (*https://www.fda.gov/medical-devices/guidance-documents-medical-devices-and-radiation-emitting-products/dental-bone-grafting-material-devices-class-ii-special-controls-guidance-industry-and-fda-staff*) for dental bone grafting material devices. This draft guidance document also provides recommendations for manufacturers who choose to combine an animal study that evaluates in vivo safety and performance of the dental bone grafting material with a biocompatibility evaluation of implantation (or the local effects after implantation) to help reduce the total number of animals used to support the 510(k) submission. The recommendations reflect current review practices and are intended to promote consistency and facilitate efficient review of these submissions.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Animal Studies for Dental Bone Grafting Material Devices—Premarket Notification (510(k)) Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products*. This guidance document is also available at *https://www.regulations.gov* and *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*. Persons unable to download an electronic copy of ''Animal Studies for Dental Bone Grafting Material Devices—Premarket Notification (510(k)) Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number GUI00007042 and complete title to identify the guidance you are requesting.

III. Paperwork Reduction Act of 1995

While this guidance contains no new collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in the following table have been approved by OMB:

21 CFR part or guidance	Topic	OMB control No.
807, subpart E	Premarket notification	0910–0120

21 CFR part or guidance	Topic	OMB control No.
''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program''.	Q-submissions and Early Payor Feedback Request Programs for Medical Devices.	0910–0756
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies.	0910–0119

Dated: March 26, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–06734 Filed 3–28–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Heritable Disorders in Newborns and Children

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act this notice announces that the Advisory Committee on Heritable Disorders in Newborns and Children (ACHDNC or Committee) has scheduled a public meeting. Information about ACHDNC and the agenda for this meeting can be found on the ACHDNC website at *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html.*

DATES: Thursday, May 9, 2024, from 10 a.m. to 5 p.m. eastern time (ET) and Friday, May 10, 2024, from 10 a.m. to 3 p.m. ET.

ADDRESSES: This meeting will be held in person with webcast options. While this meeting is open to the public, advance registration is required.

Please visit the ACHDNC website for information on registration: *https://www.hrsa.gov/advisory-committees/heritable-disorders/index.html* by the deadline of 12 p.m. ET on Wednesday, May 8, 2024. Instructions on how to access the meeting via webcast will be provided upon registration.

If you are a non-U.S. citizen who would like to attend the May meeting in-person, please contact *ACHDNC@hrsa.gov* by April 19, 2024.

FOR FURTHER INFORMATION CONTACT: Kim Morrison, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Room, Rockville, Maryland 20857; 301–443–6672; or *ACHDNC@hrsa.gov.*

SUPPLEMENTARY INFORMATION: ACHDNC provides advice and recommendations to the Secretary of Health and Human Services (Secretary) on the development of newborn screening activities, technologies, policies, guidelines, and programs for effectively reducing morbidity and mortality in newborns and children having, or at risk for, heritable disorders. The ACHDNC reviews and reports regularly on newborn and childhood screening practices, recommends improvements in the national newborn and childhood screening programs, and fulfills requirements stated in the authorizing legislation. In addition, ACHDNC's recommendations regarding inclusion of additional conditions for screening on the Recommended Uniform Screening Panel, following adoption by the Secretary, are evidence-informed preventive health services provided for in the comprehensive guidelines supported by HRSA pursuant to section 2713 of the Public Health Service Act (42 U.S.C. 300gg–13). Under this provision, non-grandfathered group health plans and health insurance issuers offering non-grandfathered group or individual health insurance are required to provide insurance coverage without cost-sharing (a co-payment, co-insurance, or deductible) for preventive services for plan years (*i.e.,* policy years) beginning on or after the date that is 1 year from the Secretary's adoption of the condition for screening.

During the May 9–10, 2024, meeting, ACHDNC will hear from experts in the fields of public health, medicine, heritable disorders, rare disorders, and newborn screening. Agenda items may include the following topics:

(1) A possible presentation on drug trials for rare diseases;

(2) A possible presentation on assessing evidence from qualitative research using the GRADE–CERQUAL approach;

(3) Updates from Committee ad hoc topic groups. Potential topics include: the nomination process and revisions to the decision matrix, counting conditions, and naming conditions;

(4) An update on the evidence review of Duchenne Muscular Dystrophy (DMD), which was previously nominated for Committee consideration; and

(5) Following the DMD evidence review presentation, a potential vote on whether to recommend to the Secretary the addition of DMD to the Recommended Uniform Screening Panel at this time or to take other Committee action regarding this nominated condition. Agenda items are subject to change as priorities dictate. Information about ACHDNC, including a roster of members and past meeting summaries, is also available on the ACHDNC website.

Members of the public also will have the opportunity to provide comments on any or all of the above agenda items. Public participants may request to provide general oral comments and may submit written statements in advance of the scheduled meeting. Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to provide a written statement or make oral comments to ACHDNC must be submitted via the registration website by 12 p.m. ET on Friday, April 26, 2024. Written comments will be shared with the Committee prior to the meeting so that they have an opportunity to consider them in advance of the meeting.

Individuals who need special assistance or another reasonable accommodation should notify Kim Morrison at the address and phone number listed above at least 10 business days prior to the meeting.

Since this meeting occurs in a federal government building, attendees must go through a security check to enter the building. Non-U.S. Citizen attendees must notify HRSA of their planned attendance at least 15 business days prior to the meeting to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–06689 Filed 3–28–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Applications for Deemed Public Health Service Employment With Liability Protections Under the Federal Tort Claims Act for Health Centers, Deemed Health Center Volunteers, and Free Clinic Sponsored Individuals

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than April 29, 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Joella Roland, the HRSA Information Collection Clearance Officer, at *paperwork@hrsa.gov* or call (301) 443–3983.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Applications for Deemed Public Health Service (PHS) Employment with Liability Protections Under the Federal Tort Claims Act (FTCA) for Health Centers, Deemed Health Center Volunteers, and Free Clinic Sponsored Individuals OMB No. 0915–xxxx–New.

Abstract: Section 224(g)–(n) of the PHS Act (42 U.S.C. 233(g)–(n)) states that entities receiving funds under section 330 of the PHS Act and specified individuals of that entity may be deemed to be PHS employees for the purpose of eligibility for liability protections, including FTCA coverage, for the performance of medical, surgical, dental, and related functions within the scope of deemed employment upon approval of an application for deemed employment. The Health Center Program and Health Center FTCA Program are administered by HRSA. Health centers submit deeming applications annually to HRSA in the prescribed form and manner in order to obtain deemed PHS employee status, with the associated eligibility for FTCA coverage. Such applications must be approved by HRSA in a Notice of Deeming Action. Deemed health centers must resubmit applications annually meeting all deeming requirements in order to maintain deemed status.

Volunteer Health Professionals (VHPs)

Section 224(q) of the PHS Act (42 U.S.C. 233(q)), extends eligibility for deemed PHS employee status to VHPs sponsored by deemed health centers upon approval of an individual deeming sponsorship application for deemed PHS employment. The Health Center VHP FTCA Program is administered by HRSA. In order to maintain deemed status for VHPs, deemed health centers must submit to HRSA an annual deeming sponsorship application on behalf of individually named VHPs. For liability protections to apply, such applications must be approved by HRSA in a Notice of Deeming Action applicable to the individual VHP, which, absent other intervening facts, generally is applicable to covered activities within the scope of such deemed PHS employment for a calendar year.

Free Clinics

Section 224(o) of the PHS Act (42 U.S.C. 233(o)) extends eligibility for deemed PHS employee status to free clinic health professionals, including employees, officers, board members, contractors, and volunteer health professionals, at qualifying free clinics. The Free Clinics FTCA Program is administered by HRSA. Free clinics must submit deeming sponsorship applications to HRSA in the specified form and manner on behalf of named individuals for HRSA's review and approval. In order to continue to participate in the Free Clinics FTCA Program and maintain deemed status for individuals, free clinics must submit to HRSA an annual deeming sponsorship application on behalf of named individuals. For liability protections to apply, such applications must be approved by HRSA in a Notice of Deeming Action applicable to the sponsored individual, which, absent other intervening facts, generally is applicable to covered activities within the scope of such deemed PHS employment for a calendar year. Approvals result in a ''deeming determination'' that includes associated FTCA coverage for these individuals.

HRSA is proposing to combine the three existing ICRs for these programs into a single ICR consisting of the three application forms. The three existing ICRs are: (1) Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA (OMB No. 0906–0035), (2) Application for Deemed Health Center Program Award Recipients to Sponsor VHPs for Deemed PHS Employment (OMB No. 0906–0032), and (3) FTCA Program Deeming Sponsorship Applications for Free Clinics (OMB No. 0915–0293). HRSA recognizes that the content of these three FTCA applications differs but is proposing to combine these three separate ICRs in order to increase efficiencies, decrease burden on stakeholders, and allow commentors to more easily provide feedback where applicable to commonalities that may impact all three ICRs. Pursuant to section 224(g)–(o), and (q) of the PHS Act (42 U.S.C. 233(g)–(o) and (q)), as amended, all three collections are done for the purpose of collecting information from certain health centers that receive grant funding under section 330 of the PHS Act and free clinics to determine eligibility for liability protections, including FTCA coverage. Applications for these programs must be submitted through HRSA's web-based application system, the Electronic Handbooks. These electronic application forms decrease the time and effort required to complete the older, paper-based OMB approved FTCA application forms. In order to make the terminology more consistent, the names of the applications are now as follows: (1) Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA, (2) Application for Deemed Health Center Program Recipients to Sponsor VHPs for Deemed PHS Employment with Liability Protections Under the FTCA, and (3) Application for Free Clinics to Sponsor Individuals for Deemed PHS Employment with Liability Protections Under the FTCA. In this single ICR, HRSA is proposing to update the content of the applications forms, which OMB has previously approved as three

individual ICRs. These revisions are described below.

Proposed Revisions

1. Application for Health Center Program Recipients for Deemed PHS Employment With Liability Protections Under the FTCA

HRSA is proposing several changes to the content of the Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA, to be used for health center deeming applications for calendar year (CY) 2024 and thereafter, to improve question clarity and clarify required documentation. The application includes: Contact Information, Section 1: Review of Risk Management Systems; Section 2: Quality Improvement/Quality Assurance (QI/QA); Section 3: Credentialing and Privileging; Section 4: Claims Management; and Section 5: Additional Information, Certification, and Signatures. In addition to minor grammatical changes made for clarity, the application includes the following proposed changes:

- A disclaimer regarding training for health center staff was added to the beginning of the Review of Risk Management Systems, QI/QA, Credentialing and Privileging, and Claims Management sections.

Review of Risk Management Systems:

- Questions related to required FTCA trainings for Obstetrics, Infection Control, the Health Insurance Portability and Accountability Act, and other specific areas of risk were separated into four questions, and detailed guidance for Obstetrics training was added for clarity.
- To facilitate the verification of compliance with training requirements, applicants will be required to enter their training tracking information in a Word or PDF document that will be part of the information collection tool.
- To enhance clarity and ensure accurate uploading of information, the quarterly assessments have been divided into four separate questions. This change aims to outline the required elements and information necessary for each risk assessment.

Credentialing and Privileging:

- The credentialing and privileging section was revised to include clarification regarding policy and procedure requirements for temporary privileging.
- A new attestation question was added to clearly outline the requirements of Chapter 5 of the Health Center Compliance Manual, Clinical Staffing regarding Credentialing and Privileging of health care practitioners.
- A new question was added to ensure health centers ensure credentialing and privileging for all provider types, including Licensed Independent Practitioners, Other Licensed or Certified Practitioners, and Other Clinical Staff.

Claims Management:

A new claims management question was added to ensure documents relating to potential tort claims are in the correct format when transmitted to the Department of Health and Human Services, Office of the General Counsel's General Law Division.

2. Application for Deemed Health Center Program Recipients To Sponsor VHPs for Deemed PHS Employment With Liability Protections Under the FTCA

HRSA is proposing several changes to the content of the Application for Deemed Health Center Program Recipients to Sponsor VHPs for Deemed PHS Employment with Liability Protections Under the FTCA, to be used for deeming sponsorship applications for CY 2024 and thereafter, to improve question clarity, clarify required documentation, and support HRSA's analysis and understanding of program impact. The application includes the following sections: Acknowledgments of Deemed Status Requirements, Acknowledgment of Required Performance Conditions, and Information on the Volunteers Sponsored for Deeming. Specifically, the application includes the following proposed changes:

- *Volunteers Sponsored for Deeming:* Since the publication of the 60-day notice, HRSA has decided to no longer add a new question to the VHP application tool related to performing activities during declared emergencies. Instead, HRSA is adopting a new streamlined *VHP Emergency Deeming Sponsorship Application,* that may be used by certain health centers (as identified by HRSA) that are affected by a declared emergency or other emergency, to seek expedited deemed status for sponsored VHPs for a limited time period to support short-term staffing needs based on the impact of the identified emergencies. The purpose of this streamlined deeming sponsorship application is to facilitate rapid onboarding of VHPs for health centers affected by a declared emergency or other emergency situation. This application will be an abbreviated version of the normal VHP application and will require less attachments and uses primarily attestation statements. Health centers affected by a declared emergency or other emergency situation requesting FTCA coverage on behalf of a subrecipient's VHPs must submit a VHP Emergency Deeming Sponsorship Application on behalf of each individually named volunteer health practitioner on the subrecipient's behalf. This tool will be made available in the Electronic Handbooks at HRSA's discretion.
- *Credentialing and Privileging:* Language has been added to ensure grantees understand the 2-year requirement for credentialing and privileging.

3. Application for Free Clinics To Sponsor Individuals for Deemed PHS Employment With Liability Protections Under the FTCA

HRSA is proposing several changes to the content of the Applications for Free Clinics to Sponsor Individuals for Deemed PHS Employment with Liability Protections Under the FTCA, to be used for deeming sponsorship applications for CY 2024 and thereafter, to improve question clarity and clarify required documentation. Specifically, the application includes the following proposed changes:

- In Section III, ''Sponsoring Free Clinic Eligibility,'' a note was added to clarify the non-profit status documentation requirements for free clinics; and
- In Section VII, ''Patient Visit Data,'' clarifying language was added to ensure that free clinics provide precise and accurate data.

A 60-day notice published in the **Federal Register** on December 13, 2023, 88 FR 86346, received no public comments.

Need and Proposed Use of the Information: Deeming applications must address certain specified criteria required by law to be approved, and FTCA application forms are critical to HRSA's deeming determination process. The application submissions provide HRSA with the information essential to evaluate the application and make a deeming determination. Moreover, the application information is also used to determine whether a site visit is appropriate to assess issues relating to quality of care and to determine technical assistance needs.

Likely Respondents: Respondents include Health Center Program funding recipients seeking deemed PHS employee status for purposes of eligibility for liability protections, including FTCA coverage; Health Center Program funding recipients that have been deemed as PHS employees and that seek to sponsor VHPs for deemed PHS employee status for purposes of eligibility for liability protections,

including FTCA coverage; and free clinics that seek to sponsor individuals for deemed PHS employee status for purposes of eligibility for liability protections, including FTCA coverage.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Application for Health Center Program Recipients for Deemed PHS Employment with Liability Protections Under the FTCA	1,160	1	1,160	2.5	2,900
Application for Deemed Health Center Program Recipients to Sponsor Volunteer Health Professionals for Deemed PHS Employment with Liability Protections Under the FTCA	1,156	3	3,468	2.0	6,936
Volunteer Health Professionals Emergency Deeming Sponsorship Application	60	1	60	1.0	60
Application for Free Clinics to Sponsor Individuals for Deemed PHS Employment with Liability Protections Under the FTCA	374	3	1,122	2.0	2,244
Total	2,750		5,810		12,140

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2024–06687 Filed 3–28–24; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Change in Publication Policy of Notices of Funding Opportunity

Per the current policy of the Department of Health and Human Services, the Indian Health Service (IHS) will begin using *Grants.gov* as the primary publication outlet for IHS Notices of Funding Opportunity (NOFO), as of February 1, 2024. Links to the announcement in *Grants.gov* and to the NOFO will be posted to the IHS Division of Grants Management website, at *https://www.ihs.gov/dgm/funding/.*

Any questions regarding this change should be directed to the Division of Grants Management by email to *DGM@ihs.gov.*

Roselyn Tso,

Director, Indian Health Service.

[FR Doc. 2024–06679 Filed 3–28–24; 8:45 am]

BILLING CODE 4166–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer 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 meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; FEB2024 Cycle 46 NExT SEP Committee Meeting.

Date: May 7, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To evaluate the NCI Experimental Therapeutics Program Portfolio.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, Maryland 20892 (Virtual Meeting).

Contact Persons: Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, Maryland 20817, 301–496–4291, *mroczkoskib@mail.nih.gov*.

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, Maryland 20850, 240–276–5683, *toby.hecht2@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 26, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06744 Filed 3–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of meetings of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: April 30, 2024.

Time: 2:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators. The agenda will include an overview of the National Center for Complementary and Integrative Health (NCCIH) program.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Virtual Meeting).

Date: May 6–7, 2024.

Time: May 6, 2024, 9:00 a.m. to 8:00 p.m. May 7, 2024, 9:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators. The agenda will include review of an investigator in the National Center for Complementary and Integrative Health (NCCIH) program.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeffrey S. Diamond, Ph.D., Scientific Director, c/o Caren Collins, National Institute of Neurological Disorders and Stroke, NIH, Building 35, Room GF–149, Bethesda, MD 20892, 301–435–1896, *diamondj@ninds.nih.gov; collinsca@ninds.nih.gov*.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: June 14, 2024.

Time: 12:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Porter Neuroscience Research Center, Building 35A, 35 Convent Drive, Bethesda, MD 20892 (Virtual Meeting).

Date: June 24–25, 2024.

Time: June 24, 2024, 8:30 a.m. to 9:00 p.m. June 25, 2024, 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Neuroscience Center, 6001 Executive Boulevard Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Jeffrey S. Diamond, Ph.D., Scientific Director, c/o Caren Collins, National Institute of Neurological Disorders and Stroke, NIH, Building 35, Room GF–149, Bethesda, MD 20892, 301–435–1896, *diamondj@ninds.nih.gov; collinsca@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: March 26, 2024

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06698 Filed 3–28–24; 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; Member Conflict: Integrative Vascular Biology and Hematology Coagulation.

Date: April 26, 2024.

Time: 9:00 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dmitri V. Gnatenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, *gnatenkod2@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 26, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06696 Filed 3–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Time-Sensitive Obesity Policy Review.

Date: April 25, 2024.

Time: 1:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7353, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 25, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06663 Filed 3–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of NOT–AA–23–015: Mentored Clinical Scientist Research Career Development Award Parent K08.

Date: April 26, 2024.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: March 26, 2024.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–06745 Filed 3–28–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[OMB Control Number 1651–0074]

Agency Information Collection Activities; Extension; Prior Disclosure

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 29, 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 submit written 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 submit written comments in English. 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** (89 FR 792) on January 05, 2024, 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: Prior Disclosure.

OMB Number: 1651–0074.

Form Number: N/A.

Current Actions: CBP proposes to extend the expiration date of this information collection with a decrease in annual burden hours.

Type of Review: Extension (w/ change).

Affected Public: Businesses.

Abstract: The Prior Disclosure program establishes a method for a potential violator to disclose to CBP that they have committed an error or a violation with respect to the legal requirements of entering merchandise into the United States, such as underpaid tariffs or duties, or misclassified merchandise, or regarding the payment or credit of any drawback claim. The procedure for making a prior disclosure is set forth in 19 CFR 162.74. This provision requires that respondents submit information about the merchandise involved, a specification of the false statements or omissions, and what the true and accurate information should be. A valid prior disclosure will entitle the disclosing party to the reduced penalties pursuant to 19 U.S.C. 1592(c)(4) or 19 U.S.C. 1593a(c)(3).

The respondents to this information collection are members of the trade community who are familiar with CBP regulations.

The information is to be used by CBP officers to verify and validate the commission of a violation of 19 U.S.C. 1592 or 19 U.S.C. 1593a by the disclosing party. A valid prior disclosure will entitle the disclosing party to reduced penalties pursuant to 19 U.S.C. 1592(c)(4) or 19 U.S.C. 1593a(c)(3). A prior disclosure may be submitted orally or in writing to CBP. In the case of an oral disclosure, the disclosing party shall confirm the

disclosure in writing within 10 days of the date of the oral disclosure. A written prior disclosure must be addressed to the Commissioner of Customs, have conspicuously printed on the face of the envelope the words ''prior disclosure,'' and be presented to a Customs officer at the Customs port of entry or a Center of the disclosed violation.

Type of Information Collection: Prior Disclosure.

Estimated Number of Respondents: 762.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 762.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden Hours: 2,286.

Dated: March 26, 2024.

Emily K. Rick,

Branch Chief, Trade and Commercial Regulations Branch, U.S. Customs and Border Protection.

[FR Doc. 2024–06699 Filed 3–28–24; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6455–N–01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development, HUD.

ACTION: Notice.

SUMMARY: In compliance with the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against FHA-approved mortgagees in fiscal year 2023.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW, Room B–133, Washington, DC 20410–8000; telephone (202) 402–2701 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD ''publish in the **Federal Register** a description of and the cause for administrative action against a[n FHA-approved] mortgagee'' by HUD's Mortgagee Review Board (''Board''). In compliance with the requirements of section 202(c)(5), this Notice advises of actions that have been taken by the Board in its meetings from the beginning of fiscal year 2023, October 1, 2022, through September 30, 2023, where settlement agreements have been reached, civil money penalties were imposed, or FHA participation was terminated as of December 9, 2023. The notice also includes actions from prior fiscal years which have not previously been published.

I. Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, and Reprimands

1. Academy Mortgage Corporation, Draper, UT

Action: On November 21, 2022, the Board voted to accept a False Claims Act settlement agreement between the United States and Academy Mortgage Corporation (''Academy''). The settlement agreement required Academy to make an administrative payment of $23,750,000. Pursuant to the settlement agreement, the Board provided a release of administrative liability under 24 CFR parts 25 and 30 for FHA loans covered by the settlement agreement. The settlement does not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Academy caused the submission of false claims to FHA's Mutual Mortgage Insurance Fund through systemic violations of FHA underwriting guidelines and quality control requirements for loans underwritten between January 1, 2008 and April 27, 2017.

2. American Financing Corp, Aurora, CO [Docket No. 21–2233–MR]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with American Financing Corp. (''American Financing'') that included a civil money penalty of $166,072. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: American Financing (a) failed to implement a Quality Control (''QC'') plan; (b) failed to ensure that its QC staff performed accurate loan sample risk assessments; (c) failed to comply with FHA's self-reporting requirements pertaining to two FHA-insured loans; and (d) failed to timely notify FHA of a sanction in its fiscal year 2022.

3. AmNet ESOP Corporation, Chula Vista, CA [Docket No. 23–3002–MR]

Action: On August 24, 2023, the Board voted to withdraw AmNet ESOP Corporation (''AmNet'') for a period of one year.

Cause: The Board took this action based on the following alleged violations of FHA requirements: AmNet (a) failed to maintain the minimum required adjusted net worth in its fiscal year 2021 and 2022; (b) failed to timely notify FHA its adjusted net worth deficiency in its fiscal year 2021; and (c) failed to maintain the minimum required adjusted net worth in its fiscal year 2022.

4. AmRes Corporation, Trevose, PA [Docket No. 23–3020–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with AmRes Corporation (''AmRes'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: AmRes failed to timely notify FHA of a sanction in its fiscal year 2022.

5. Bay Valley Mortgage Group, Garden Grove, CA [Docket No. 23–3023–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Bay-Valley Mortgage Group (''Bay-Valley'') that included a civil money penalty of $11,011. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Bay-Valley failed to timely notify FHA of a sanction in its fiscal year 2022.

6. Beeline Loans, Inc., Providence, RI [Docket No. 23–3016–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Beeline Loans, Inc. (''Beeline'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Beeline failed to maintain the required minimum liquid assets in its fiscal year 2021.

7. Community Mortgage LLC, Independence, MO [Docket No. 23–3022–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Community Mortgage LLC (''Community Mortgage'') that included a civil money penalty of $15,366. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Community Mortgage (a) failed to timely notify FHA of a sanction in its fiscal year 2021; and (b) submitted a false certification to FHA concerning its fiscal year 2021.

8. Crossfire Financial Network, Miami, FL [Docket No. 22–2052–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Crossfire Financial Network (''Crossfire Financial'') that included a civil money penalty of $18,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Crossfire Financial (a) failed to maintain the minimum required adjusted net worth in its fiscal years 2021 and 2022; and (b) failed to timely notify FHA of its adjusted net worth deficiency in its fiscal year 2021.

9. Efinity Financial Inc., Bedford, TX [Docket No. 22–2017–MR]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with Efinity Financial Inc. (''Efinity'') that included a civil money penalty of $20,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Efinity (a) failed to timely notify FHA of an operating loss exceeding 20 percent of the lender's net worth in its fiscal year 2021; (b) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year 2021; (c) failed to maintain the minimum required adjusted net worth in its fiscal year 2022; and (d) failed to timely notify FHA of a minimum adjusted net worth deficiency in its fiscal year 2022.

10. FFC Mortgage Corp., Irvine, CA [Docket No. 22–2064–MRT]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with FFC Mortgage Corp. (''FFC'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: FFC (a) failed to comply with the annual recertification requirements following its fiscal year 2021; (b) failed to timely notify FHA of an operating loss exceeding 20 percent of its net worth in its fiscal year 2021; and (c) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year 2021.

11. First Home Mortgage Corp., Baltimore, MD [Docket No. 22–2035–MR]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with First Home Mortgage Corp. (''First Home'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: First Home (a) failed to timely notify FHA of a state sanction in its fiscal year 2020; and (b) submitted a false certification to FHA concerning its fiscal year 2020.

12. Greystone Funding Company, Atlanta, GA [Docket No. 23–3037–MR]

Action: On June 21, 2023, the Board voted to enter into a settlement agreement with Greystone Funding Company (''Greystone'') that included a civil money penalty of $1,000,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Between 2017 and 2019 Greystone submitted 21 applications for FHA-insured loans for skilled nursing facilities that included 65 false certifications made by Greystone and the borrower entities concerning borrower entity litigation.

13. Hometown Equity Mortgage LLC, Lake Forest, CA [Docket No. 22–2072–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Hometown Equity Mortgage LLC (''Hometown Equity'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Hometown Equity failed to timely notify FHA of a sanction in its fiscal year 2022.

14. Hudson Realty Finance LLC, New York, NY [Docket No. 23–3007–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Hudson Realty Finance LLC (''Hudson'') that included a civil money penalty of $24,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Hudson Realty (a) failed to timely notify FHA of operating losses in excess of 20 percent of its net worth in its fiscal year 2021; and (b) failed to timely submit quarterly financial statements as required when operating losses exceeded 20% of net worth in fiscal year 2021.

15. InstaMortgage Inc. d/b/a Arcus VA Mortgage, San Jose, CA [Docket No. 23–3030–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with InstaMortgage Inc. d/b/a Arcus VA Mortgage (''InstaMortgage'') that included a civil money penalty of $18,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: InstaMortgage (a) failed to timely notify FHA of a sanction in its fiscal year end July 31, 2022; (b) failed to timely notify FHA of an operating loss exceeding 20 percent of its net worth in its fiscal year end July 31, 2022; and (c) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year end July 31, 2022.

16. Intercontinental Capital Group, Inc., Melville, NY [Docket No. 22–2071–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with Intercontinental Capital Group, Inc., (''ICG'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: ICG (a) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year 2021; and (b) failed to timely notify FHA that it incurred an operating loss exceeding 20 percent of its net worth in its fiscal year 2022.

17. International City Mortgage, Santa Ana, CA [Docket No. 23–3038–MR]

Action: On August 24, 2023, the Board voted to enter into a settlement agreement with International City Mortgage (''International City'') that included a civil money penalty of $17,864. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: International City (a) failed to timely notify FHA of a state sanction in its fiscal year 2021; and (b) submitted a false certification to FHA concerning its fiscal year 2021.

18. James B. Nutter & Company, Kansas City, MO [Docket No. 19–1928–MR]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with James B. Nutter & Company (''Nutter'') that included a civil money penalty of $400,000 and reimbursement to FHA of mortgage insurance payments equal to $175,000 related to eight FHA-insured loans. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Nutter (a) failed to timely remit periodic mortgage insurance premiums; and (b) made numerous servicing violations including improper applications of FHA's loss mitigation waterfall.

19. K & B Capital Corporation, Boca Raton, FL [Docket No. 22–2075–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with K & B Capital Corporation (''K & B'') that included a civil money penalty of $20,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: K & B (a) failed to maintain the minimum required adjusted net worth in its fiscal year 2021; (b) failed to timely notify FHA of its adjusted net worth deficiency in its fiscal year 2021; (c) failed to timely notify FHA of operating losses exceeding 20 percent of its net worth in its fiscal year 2022; and (d) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year 2022.

20. Lenox Financial Mortgage Corporation, Santa Ana, CA [Docket No. 23–3019–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Lenox Financial Mortgage Corporation (''Lenox'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Lenox failed to timely notify FHA of a sanction in its fiscal year 2022.

21. Loan Simple, Inc., Englewood, CO [Docket No. 22–2081–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Loan Simple, Inc. (''Loan Simple'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Loan Simple (a) failed to timely notify FHA of operating losses exceeding 20 percent of its net worth in fiscal years 2021 and 2022; and (b) failed to file quarterly financial statements following its operating losses in excess of 20 percent of its net worth in fiscal years 2021 and 2022.

22. Meadowbrook Financial Mortgage Bankers Corp., Westbury, NY [Docket No. 23–3035–MR]

Action: On June 21, 2023, the Board voted to enter into a settlement agreement with Meadowbrook Financial Mortgage Bankers Corp. (''Meadowbrook'') that included a civil money penalty of $6,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Meadowbrook failed to timely notify FHA of a sanction in its fiscal year 2022.

23. MidWest Mortgage Association Corporation, Colorado Springs, CO [Docket No 23–3004–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Midwest Mortgage Association Corporation (''Midwest'') that included a civil money penalty of $18,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Midwest (a) failed to maintain the minimum required adjusted net worth during its fiscal years 2021 and 2022; and (b) failed to timely notify FHA of its failure to maintain the minimum required adjusted net worth during its fiscal year 2021.

24. Mortgage Network Inc., Danvers, MA [Docket No. 22–2080–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with Mortgage Network Inc. (''Mortgage Network'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Mortgage Network failed to timely notify FHA of a sanction in its fiscal year 2022.

25. Mortgage300 Corporation, Palm Beach Gardens, FL [Docket No. 23–3008–MR]

Action: On August 24, 2023, the Board voted to enter into a settlement agreement with Mortgage300 Corporation (''Mortgage300'') that included a civil money penalty of $6,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Mortgage300 failed to timely notify FHA of a sanction in its fiscal year 2022.

26. Movement Mortgage, LLC, Indian Land, SC

Action: On November 21, 2022, the Board voted to accept a False Claims Act settlement agreement between the United States and Movement Mortgage, LLC (''Movement Mortgage''). The settlement required Movement Mortgage to pay FHA $5,770,820 in restitution and to enter into life-of-loan indemnification agreements for 9 FHA-insured loans, resulting in an additional payment to FHA of $464,000. Pursuant to the settlement agreement, the Board provided a release of administrative liability under 24 CFR parts 25 and 30 for FHA loans covered by the False Claims Act settlement.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Between July 2008 and July 2018, Movement Mortgage knowingly violated FHA requirements while underwriting FHA-insured loans, which resulted in false claims for mortgage insurance benefits.

27. Nationwide Home Loans, Inc., Englewood, CO [Docket No. 22–2073–MR]

Action: On February 2, 2023, the Board voted to withdraw the FHA-approval of Nationwide Home Loans,

Inc. (''Nationwide'') for a period of one year.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Nationwide (a) failed to maintain the minimum required adjusted net worth in its fiscal year 2021; and (b) failed to timely notify FHA of an adjusted net worth deficiency in its fiscal year 2021.

28. Network Capital Funding Corporation, Irvine, CA [Docket No. 22–2065–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with Network Capital Funding Corporation (''Network Capital'') that included a civil money penalty of $15,366. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Network Capital (a) failed to timely notify FHA of a state sanction in its fiscal year 2021; and (b) submitted a false certification to FHA concerning its fiscal year 2021.

29. NextMortgage, LLC, San Ramon, CA [Docket No. 22–2068–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with NextMortgage, LLC (''NextMortgage'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: NextMortgage (a) failed to maintain the minimum required adjusted net worth in its fiscal years 2021 and 2022; and (b) failed to timely notify FHA of its adjusted net worth deficiencies in its fiscal years 2021 and 2022.

30. NMSI, Inc., Los Angeles, CA [Docket No. 22–2082–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with NMSI, Inc. (''NMSI'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: NMSI failed to timely notify FHA of a sanction in its fiscal year 2022.

31. On Q Financial, Inc., Tempe, AZ [Docket No. 23–3017–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with On Q Financial, Inc. (''On Q'') that included a civil money penalty of $15,366. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: On Q (a) failed to timely notify FHA of a state sanction in its fiscal year 2021; and (b) submitted a false certification to FHA concerning its fiscal year 2021.

32. Point Mortgage Corporation, Chula Vista, CA [Docket No. 23–3034–MR]

Action: On June 21, 2023, the Board voted to enter into a settlement agreement with Point Mortgage Corporation (''Point Mortgage'') that included a civil money penalty of $12,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Point Mortgage (a) failed to timely notify FHA of operating losses exceeding 20 percent of its net worth in its fiscal year 2022, and (b) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in fiscal year 2022.

33. PR Electric Power Authority Employees' Retirement, Santurce, PR [Docket Nos.22–2023–MRT and 22–2062–MR]

Action: On April 18, 2023, the Board voted to withdraw the FHA approval of PR Electric Power Authority Employees' Retirement (''PR Electric'') for a period of one (1) year.

Cause: The Board took this action based on the following alleged violation of FHA requirements: PR Electric (a) failed to comply with the annual recertification requirements for fiscal year end June 30, 2021; and (b) failed to timely notify FHA of a change of a corporate officer during the fiscal year end June 30, 2021.

34. Precision Mortgage, LLC, Rockville, MD [Docket No. 22–2076–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Precision Mortgage, LLC (''Precision Mortgage'') that included a civil money penalty of $6,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Precision Mortgage failed to maintain the minimum required adjusted net worth in its fiscal year 2021.

35. Quick Mortgage Corp., Bloomingdale, IL [Docket No. 23–3006–MR]

Action: On April 18, 2023, the Board voted to withdraw the FHA approval of Quick Mortgage Corp. for a period of one year.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Quick Mortgage Corp. failed to maintain the minimum required adjusted net worth in its fiscal year end April 30, 2022

36. Reliant Mortgage, LLC, Baton Rouge, LA [Docket No. 22–2029–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Reliant Mortgage, LLC (''Reliant'') that included a civil money penalty of $15,366. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Reliant (a) failed to timely notify FHA of a state sanction in its fiscal year end August 31, 2021; and (b) submitted a false certification to FHA concerning its fiscal year end August 31, 2021.

37. ReNew Lending Inc., Reno, NV [Docket No. 23–3026–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Renew Lending Inc. (''ReNew'') that included a civil money penalty of $6,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: ReNew failed to maintain the minimum required adjusted net worth in its fiscal year 2022.

38. ResMac Inc., Delray Beach, FL [Docket No. 22–2020–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with ResMac, Inc. (''ResMac'') that included a civil money penalty of $71,250 and a life-of-loan indemnification agreement for one FHA-insured loan. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: ResMac (a) failed to comply with requests made by FHA to produce information and documentation; (b) failed to obtain and retain the required documents to properly verify and reverify the borrower's employment and income; and (c) failed to timely notify FHA of

five state sanctions in its fiscal years 2019, 2021, and 2022.

39. Rocket Mortgage, LLC, Detroit, MI [Docket No. 23–3005–MR]

Action: On June 21, 2023, the Board voted to enter into a settlement agreement with Rocket Mortgage, LLC (''Rocket'') that included a civil money penalty of $17,864. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Rocket (a) failed to timely notify FHA that it was sanctioned in its fiscal year 2021; and (b) submitted a false certification to FHA concerning its fiscal year 2021.

40. Ross Mortgage Company Inc., Westborough, MA [Docket No. 23–3039–MR]

Action: On June 21, 2023, the Board voted to enter into a settlement agreement with Ross Mortgage Company Inc. (''Ross'') that included a civil money penalty of $6,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Ross failed to timely notify FHA of a sanction in its fiscal year end September 30, 2023.

41. Secure One Capital Corporation, Costa Mesa, CA [Docket No. 22–2070–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Secure One Capital Corporation (''Secure One'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Secure One (a) failed to timely notify FHA of an operating loss that exceeded 20 percent of its net worth in its fiscal year 2021; and (b) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year 2021.

42. Siwell, Inc. d/b/a Capital Mortgage Services of Texas, Lubbock, TX [Docket No. 20–2020–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Siwell, Inc. d/b/a Capital Mortgage Services of Texas (''Siwell'') that included a civil money penalty of $88,083 and probation. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Siwell (a) failed to timely notify FHA of five state sanctions in its fiscal years 2016, 2017, 2018,and 2020; (b) submitted a false certification to FHA concerning its fiscal years 2016, 2017, and 2018; (c) approved a Home Affordable Modification Program (HAMP) modification and partial claim for a loan that was ineligible for the loss mitigation it received; and (d) failed to possess and implement a compliant QC plan.

43. SN Servicing Corporation, Baton Rouge, LA [Docket No. 22–2040–MR]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with SN Servicing Corporation (''SN Servicing'') that included a civil money penalty of $20,732. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: SN Servicing (a) failed to maintain the minimum required adjusted net worth in its fiscal year 2021; and (b) failed to timely notify FHA of its adjusted net worth deficiency in its fiscal year 2021.

44. Southwest Funding, LP, Dallas, TX [Docket No. 22–2078–MR]

Action: On June 21, 2023, the Board voted to enter into a settlement agreement with Southwest Funding, LP (''Southwest Funding'') that included a civil money penalty of $160,956. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Southwest Funding (a) failed to adopt and maintain a valid QC Plan in compliance with FHA requirements; (b) failed to implement a QC plan in compliance with FHA staffing requirements; (c) failed to comply with FHA's self-reporting requirements to report material findings in FHA loans that were not mitigated; (d) failed to complete timely QC reviews of its Early Payment Default Loans in compliance with FHA requirements; and (e) failed to timely update its business information in Lender Electronic Assessment Portal (''LEAP'') in compliance with FHA requirements.

45. St. Fin Corp. d/b/a Star Financial, Laguna Hills, CA [Docket No. 23–2002–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with St. Fin Corp. d/b/a Star Financial (''Star Financial'') that included a civil money penalty of $6,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Star Financial failed to timely notify FHA of a sanction in its fiscal year 2021.

46. TAM Lending Center Inc., Audubon, NJ [Docket No. 23–3001–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with TAM Lending Center Inc. (''TAM Lending'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: TAM Lending failed to timely notify FHA of a sanction in its fiscal year 2022.

47. Titan Mutual Lending Inc., Irvine, CA. [Docket No. 22–2079–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with Titan Mutual Lending Inc. (''Titan'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Titan failed to timely notify FHA of a sanction in its fiscal year 2022.

48. Tomo Mortgage, LLC, Austin, TX [Docket No. 23–3017–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Tomo Mortgage LLC (''Tomo'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Tomo (a) failed to timely notify FHA of operating losses exceeding twenty percent of its net worth in its fiscal year 2022, and (b) failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year 2022.

49. Umpqua Bank, Tigard, OR [Docket No. 22–2067–MR]

Action: On April 18, 2023, the Board voted to enter into a settlement agreement with Umpqua Bank (''Umpqua'') that included a civil money penalty of $5,000. The settlement did

not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Umpqua failed to timely notify FHA of a sanction in its fiscal year 2021.

50. Van Dyk Mortgage Corporation, Grand Rapids, MI [Docket No. 22–2074–MR]

Action: On February 2, 2023, the Board voted to enter into a settlement agreement with Van Dyk Mortgage (''Van Dyk'') that included a civil money penalty of $88,088. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Van Dyk (a) failed to timely notify FHA of a sanction in its fiscal year 2022; and (b) failed to check on a semiannual basis that its officers, directors, managers, and supervisors who participate in FHA programs were eligible to participate in its fiscal year 2022.

51. V.I.P. Mortgage, Inc., Scottsdale, AZ [Docket No. 22–2025–MR]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with V.I.P. Mortgage, Inc. (''V.I.P.'') that included a civil money penalty of $100,490, a five-year indemnification agreement for each of two FHA-insured loans, and a requirement to provide FHA with the lender's quality control reports for a period of six months.

Cause: The Board took this action based on the following alleged violations of FHA requirements: V.I.P. (a) failed to ensure its senior management timely reviewed post-closing quality control findings reports and timely respond to each instance of fraud, material representation, or other material findings; (b) failed to report to FHA instances of fraud, material misrepresentation, and unmitigated material findings relating to FHA-insured loans; and (c) violated FHA's branch registration requirements by conducting FHA business at four locations that V.I.P. did not properly register as FHA branches and for which V.I.P. did not pay the registration fee.

52. Wendover Financial Services Corporation, Greensboro, NC [Docket No. 22–2015–MR]

Action: On June 16, 2022, the Board voted to withdraw the FHA approval of Wendover Financial Services Corporation (''Wendover'') for a period of one year. Wendover appealed the withdrawal but, as part of a settlement, agreed to dismiss its appeal. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: Wendover (a) did not have as its principal activity the lending or investment of funds in real estate mortgages or a directly related field in its fiscal year end March 31, 2021; and (b) failed to timely notify FHA of a change in its principal activity in its fiscal year end March 31, 2021.

53. WesBanco Bank, Inc., Wheeling, WV [Docket No 22–2027–MR]

Action: On November 21, 2022, the Board voted to enter into a settlement agreement with WesBanco Bank, Inc. (''WesBanco'') that included a civil money penalty of $35,732 and a five-year indemnification agreement for one FHA-insured loan. The settlement did not constitute an admission of liability or fault.

Cause: The Board took this action based on the following alleged violations of FHA requirements: WesBanco (a) failed to verify a borrower's liquid assets; (b) failed to verify the borrower's effective income; (c) failed to downgrade and underwrite a loan manually with a case number assignment date within three years of the date of transfer of title through a Pre-Foreclosure Sale; and (d) failed to document properly the life-of-loan flood certification forms for two FHA-insured loans for properties in Special Flood Hazard Areas.

54. Western Express Lending d/b/a WeLending, Lake Forest, CA [Docket No. 22–2060–MR]

Action: On February 2, 2023, the Board voted to withdraw the FHA-approval of Western Express Lending d/b/a WeLending (''Western Express'') for a period of one year.

Cause: The Board took this action based on the following alleged violation of FHA requirements: Western Express failed to file quarterly financial statements following its operating loss in excess of 20 percent of its net worth in its fiscal year 2021.

II. Lenders That Failed To Timely Obtain the Required Unique Entity Identifier

Each lender in the following list violated FHA requirements by failing to timely submit an Information Update through the LEAP and establish that it had a Unique Entity Identifier (''UEI'') assigned to it through the System of Award Management website in accordance with the OMB Directive and applicable FHA handbook.

The Federal Funding Accountability and Transparency Act of 2006, as amended by the Digital Accountability and Transparency Act of 2014, required federal agencies to report data about federal awards, which are tracked using the UEI. The definition of award types was expanded with the release of 2 CFR part 25 to include loans, insurance, and loan guarantees, which would include all FHA-approved institutions. All entities currently conducting or seeking to do business with the federal government must have a UEI registered in GSA's System of Award Management.

On August 23, 2022, FHA published Mortgagee Letter 2022–14 (ML 22–14) that provided information on a new eligibility requirement for all FHA approved lenders and stipulated the compliance deadline of December 31, 2022. On December 19, 2022, and January 15, 2023, instructive reminders were sent via email to those institutions that had not input a UEI in their institution profile in the Lender Electronic Assessment Portal.

On April 19, 2023, Notices of Deficiency were sent via email to the lenders that failed to respond to the reminders by entering the UEI in the LEAP institution profile.

Finally, beginning on May 16, 2023, lenders that had not provided their respective UEI were issued Notices of Violation for failure to comply with FHA's eligibility requirements.

The following five lenders are in this category and each paid a civil money penalty of $3,000.00.

1. Area Federal Credit Union, Aberdeen, SD [Docket No. 23–3213–MR];

2. ClearPath Lending, Irvine, CA [Docket No. 23–3133–MR];

3. Lending Hand Mortgage, LLC, Madison, TN [Docket No. 23–3237–MR];

4. Mortgage One Solutions Inc., Vienna, VA [Docket No. 23–3261–MR]; and

5. Trust Mortgage Lending Corp., Doral, FL [Docket No. 23–3263–MR]

III. Lenders That Failed To Timely Meet Requirements for Annual Recertification of FHA Approval But Came Into Compliance

Action: The Board entered into settlement agreements with the following lenders, which required the lender to pay a civil money penalty without admitting fault or liability.

Cause: The Board took actions based upon allegations that the listed lenders failed to comply with FHA's annual recertification requirements in a timely manner.

The following lenders paid civil money penalties of $11,864.00:

1. A Plus Mortgage Services, Inc., Muskego, WI [Docket No. 23–3349–MRT];

2. City National Bank of Florida, Miami, FL [Docket No. 23–3010–MRT];

3. Eagle Mortgage & Funding Inc., Memphis, TN [Docket No. 23–3356–MRT];

4. Essential Mortgage Partners, LLC, Kenner, LA [Docket No. 23–3369–MRT];

5. GreenState Credit Union, North Liberty, IA [Docket No. 23–3374–MRT];

6. ResMac, Inc., Delray Beach, FL [Docket No. 23–3034–MRT]; and

7. Statewide Funding Inc., Ontario, CA [Docket No. 23–3370–MRT]

The following lenders paid a civil money penalty of $6,000.00:

1. American Heritage Lending, LLC, Irvine, CA [Docket No. 23–3372–MRT];

2. Bank of Idaho, Pocatello, ID [Docket No. 23–3068–MRT];

3. Mid Valley Financial Services, Fresno, CA [Docket No. 23–3102–MRT]; and

4. Southwest Bank, Odessa, TX [Docket No. 23–3092–MR]

The following lenders paid civil money penalties of $5,000.00:

1. Ameritrust Mortgage Corp, Tustin, CA [Docket No. 22–2045–MRT];

2. Community First Bank, Kennewick, WA [Docket No. 23–3063–MRT]; and

3. Statebridge Company LLC, Greenwood Village, CO [Docket No. 22–2050–MRT]

IV. Lenders That Failed To Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board voted to withdraw the FHA approval of each of the lenders listed below for a period of one (1) year.

Cause: The Board took this action based upon allegations that the lenders listed below were not in compliance with HUD's annual recertification requirements.

1. Accelerate Mortgage, LLC, Newark, DE [Docket No. 23–3040 MRT];

2. American Bank of Missouri, Wright City, MO [Docket No. 23–3087–MR];

3. Graystone Funding Company Salt Lake City, UT

4. Interstate Bank, Perryton, TX

5. James B Nutter and Company, Kansas City, MO [Docket No. 23–3088–MR];

6. Loan Cabin, Inc., Lombard, IL [Docket No. 23–3012–MRT];

7. Mortgage Master Service Corporation, Kent, WA [Docket No. 23–3321–MR];

8. Republic First Bank d/b/a Republic Bank, Philadelphia, PA [Docket No. 23–3075–MR];

9. Rogue Credit Union, Medford, OR [Docket No. 22–2066–MRT];

10. Sprout Mortgage, LLC, Port Saint Lucie, FL [Docket No. 23–3083–MR];

11. The Home Loan Expert, LLC, Saint Louis, MO [Docket No. 23–3072–MR];

12. Tri-Emerald Financial Group Inc, Aliso Viejo, CA [Docket No. 22–2077–MRT];

13. US Employees OC Federal Credit Union, Oklahoma City, OK [Docket No. 22–2047–MRT];

14. Valley Exchange Bank of Lennox, Lennox, SD [Docket No. 23–3098–MR]; and

15. WestStar Credit Union, Las Vegas, NV [Docket No. 23–3071–MR]

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Administration, Mortgagee Review Board, Chairperson.

[FR Doc. 2024–06735 Filed 3–28–24; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2024–0048; FXIA16710900000–245–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by April 29, 2024.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2024–0048.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2024–0048.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2024–0048; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185 or via email at *DMAFR@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or to an address not in **ADDRESSES.** We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Toledo Zoo, Toledo, OH; Permit No. PER9252324

The applicant requests a permit to import from Canada one captive-bred male Amur leopard (*Panthera pardus orientalis*) for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Loma Linda University, Loma Linda, CA; Permit No. PER9040983

The applicant requests to import blood and/or skin samples from live specimens and parts and/or carcasses from dead wild found specimens. The imported specimens will consist of the following sea turtles: hawksbill sea turtle (*Eretmochelys imbricata*), green sea turtle (*Chelonia mydas*), olive ridley sea turtle (*Ledipochelys olivacea*), leatherback sea turtle (*Demochelys coriacea*), and loggerhead sea turtle (*Caretta caretta*), for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Duke University Lemur Center, Durham, NC; Permit No. PER3848559

The applicant requests a permit to export four live captive-bred Mongoose lemur (*Eulemur mongoz*) to Tierpark Berlin Zoo, Berlin, Germany, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Kent State University, Kent, OH; Permit No. PER2139364

The applicant requests a permit to import biological samples taken from accessioned specimens of Diana monkey (*Cercopithecus diana*), red-eared guenon (*Cercopithecus erythrotis*), and L'hoest's monkey (*Cercopithecus lhoesti*) from the Royal Museum for Central Africa, Tervuren, Belgium, for the purpose of scientific research. This notification is for a single import.

Applicant: Cornell University New York State Veterinary Diagnostic Laboratory/Animal Health Diagnostic Center, Ithaca, NY; Permit No. PER9378141

The applicant requests a permit to import biological samples taken from wild African wild dogs (*Lycaon pictus*) in South Africa for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Columbus Zoo and Aquarium, Powell, OH; Permit No. PER8970502

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species, to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Common name	Scientific name
Cheetah	*Acinonyx jubatus.*
Black rhinoceros	*Diceros bicornis.*
Asian elephant	*Elephas maximus.*
Western gorilla	*Gorilla gorilla.*
Japanese (red-crowned) crane.	*Grus japonensis.*
Koala	*Phascolarctos cinereus.*
African lion	*Panthera leo melanochaita.*
Pygmy chimpanzee (bonobo).	*Pan paniscus.*
Bornean orangutan	*Pongo pygmaeus pygmaeus.*
Mandrill	*Mandrillus (=Papio) sphinx.*
African penguin	*Spheniscus demersus.*
Siberian tiger	*Panthera tigris altaica.*

Applicant: Fairplay Pythons, Punta Gorda, FL; Permit No. PER9244630

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for radiated tortoise (*Astrochelys radiata*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Pinola Conservancy, Shreveport, LA; Permit No. PER9314361

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for Japanese crane (*Grus japonensis*) and Cabot's tragopan pheasant (*Tragopan caboti*), to enhance the propagation or survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to *regulations.gov* and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2024–06765 Filed 3–28–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R4–ES–2024–0036; FXES11140400000–245–FF04EF4000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink and Blue-Tailed Mole Skink; Osceola County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Toho Water Authority (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole skink (*Eumeces egregius lividus*) incidental to the construction of the Westside Boulevard Extension in Osceola County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that the proposed permitting action may be eligible for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations, the Department of the Interior's (DOI) NEPA regulations, and the DOI Departmental Manual. To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: We must receive your written comments on or before April 29, 2024.

ADDRESSES:

Obtaining Documents: The documents this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R4–ES–2024–0036 at *https://www.regulations.gov.*

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing by one of the following methods:

- *Online: https://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R4–ES–2024–0036.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–R4–ES–2024–0036; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: John Wrublik, by telephone at 772–226–8130 or via email at *john_wrublik@fws.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service (Service), announce receipt of an application from the Toho Water Authority (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*) and blue-tailed mole-skink (*Eumeces egregius lividus*) (skinks) incidental to the construction of the Westside Boulevard Extension in Osceola County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and on the Service's preliminary determination that this proposed ITP qualifies as low effect, and may qualify for a categorical exclusion pursuant to the Council on Environmental Quality's National Environmental Policy Act (NEPA) regulations (40 CFR 1501.4), the Department of the Interior's (DOI) NEPA regulations (43 CFR part 46), and the DOI's Departmental Manual (516 DM 8.5(C)(2)). To make this preliminary determination, we prepared a draft environmental action statement and low-effect screening form, both of which are also available for public review.

Proposed Project

The applicant requests a 5-year ITP to take skinks via the conversion of approximately 9.2 acres (ac) of occupied nesting, foraging, and sheltering skink habitat incidental to the construction of the Westside Boulevard Extension within a 17-ac parcel at latitude 28.295591°, longitude −81.648670°, Osceola County, Florida. The applicant proposes to mitigate for take of the skinks by purchasing credits equivalent to 18.41 ac of skink-occupied habitat from a Service-approved conservation bank. The Service would require the applicant to purchase the credits within 30 days of the issuance of the permit and prior to engaging in any construction phase of the project.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project would individually and cumulatively have a minor or negligible effect on the skinks and the human environment. Therefore, we have preliminarily determined that the proposed ESA section 10(a)(1)(B) permit would be a low-effect ITP that individually or cumulatively would have a minor effect on the sand skink and may qualify for application of a categorical exclusion pursuant to the Council on Environmental Quality's NEPA regulations, DOI's NEPA regulations, and the DOI Departmental Manual. A low-effect incidental take permit is one that would result in (1) minor or nonsignificant effects on species covered in the HCP; (2) nonsignificant effects on the human environment; and (3) impacts that, when added together with the impacts of other past, present, and reasonably foreseeable actions, would not result in significant cumulative effects to the human environment.

Next Steps

The Service will evaluate the application and the comments to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the preceding and other matters, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number PER 7310948 to the Toho Water Authority.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment, including your personal identifying information, may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Authority

The Service provides this notice under section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and

its implementing regulations (40 CFR parts 1500–1508 and 43 CFR part 46).

Robert L. Carey,

Division Manager, Environmental Review, Florida Ecological Services Office.

[FR Doc. 2024–06693 Filed 3–28–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2023–0056]

Notice of Availability of a Joint Record of Decision for the Proposed Sunrise Wind Farm Offshore New York, Massachusetts, and Rhode Island

AGENCY: Bureau of Ocean Energy Management, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce; National Park Service, Interior.

ACTION: Record of decision; notice of availability.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of the joint record of decision (ROD) on the Final Environmental Impact Statement (EIS) for the construction and operations plan (COP) submitted by Sunrise Wind, LLC (Sunrise Wind) for its proposed Sunrise Wind Offshore Wind Farm Project (Project), offshore New York, Massachusetts, and Rhode Island. The joint ROD includes the Department of the Interior's (DOI's) decision regarding the COP, the National Park Service's (NPS) decision regarding special use permits (SUPs) and a Right-of-Way (ROW) permit, and the National Marine Fisheries Service's (NMFS) plans for decision, pending completion of all statutory processes, regarding Sunrise Wind's requested Incidental Take Regulations (ITR) and an associated Letter of Authorization (LOA) under the Marine Mammal Protection Act (MMPA). NMFS has adopted the final EIS to support its decision of whether or not to promulgate the requested ITR under the MMPA. The NPS has adopted the final EIS to support its decision to issue a ROW permit and SUPs. The joint ROD concludes the National Environmental Policy Act process for each agency.

ADDRESSES: The joint ROD and associated information are available on BOEM's website at *https://www.boem.gov/renewable-energy/state-activities/sunrise-wind-activities.*

FOR FURTHER INFORMATION CONTACT: For information related to BOEM's action, contact Jessica Stromberg, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, VAM–OREP, Sterling, Virginia 20166, (703) 787–1730, or *jessica.stromberg@boem.gov.* For information related to NMFS' action, contact Katherine Renshaw, National Oceanic and Atmospheric Administration (NOAA) Office of General Counsel, (302) 515–0324, or *katherine.renshaw@noaa.gov.* For information related to NPS' action, contact Kristin Andel, NPS Resource Planning and Compliance Program, (617) 564–7613, or *Kristin_Andel@nps.gov.*

SUPPLEMENTARY INFORMATION: Sunrise Wind seeks approval to construct, operate, and maintain the Project: a wind energy facility and the associated export cables on the Outer Continental Shelf (OCS) offshore New York, Massachusetts, and Rhode Island, and to construct a portion of the Project within NPS-administered waters and submerged lands within the Fire Island National Seashore. The Project would be developed within the range of design parameters outlined in the COP, subject to applicable mitigation measures.

A notice of availability for the final EIS was published in the **Federal Register** on December 15, 2023. On March 20, 2024, BOEM published an errata on its website that included certain edits to the North Atlantic right whale cumulative impact determination of the no action alternative in final EIS chapter 3. The errata also provide corrections for benthic resources in a no action alternative table in final EIS chapter 2. These corrections are neither substantive nor do they affect the analysis or conclusions in the final EIS.

The Project as proposed in the COP would include up to 94 wind turbine generators (WTGs) within 102 potential locations, 1 offshore converter station, inter-array cables linking the individual WTGs to the offshore substation, 1 offshore export cable, 1 onshore converter station, 1 fiber optic cable that runs through the conduit from Fire Island National Seashore (the Seashore) to the proposed wind farm, and onshore interconnection cables connecting to the existing electrical grid in New York. The WTGs, offshore substation, and inter-array cables would be located on the OCS approximately 16.4 nautical miles (nm) (18.9 statute miles[mi]) south of Martha's Vineyard, Massachusetts, approximately 26.5 nm (30.5 mi) east of Montauk, New York, and 14.5 nm (16.7 mi) from Block Island, Rhode Island, within the area defined by Renewable Energy Lease OCS–A 0487 (Lease Area). The offshore export cables would be buried below the seabed surface on the U.S. OCS and State of New York-owned submerged lands, including submerged lands where the United States holds an easement for use and occupancy for the purposes of the Seashore. The onshore export cables, substation, and grid connection would be located in Holbrook, New York. After carefully considering public comments on the draft EIS and the alternatives described and analyzed in the final EIS, DOI selected Alternative C–3b (84 WTGs within 87 potential locations), which combines elements of the ''Habitat Impact Minimization Alternative'' and the results of BOEM's independent feasibility review. This combination is the preferred alternative identified in the final EIS. The anticipated mitigation, monitoring, and reporting requirements, which will be included in BOEM's COP approval as terms and conditions, are included in the ROD, which is available at: *https://www.boem.gov/renewable-energy/state-activities/sunrise-wind-activities.*

NMFS has adopted BOEM's final EIS to support its decision of whether or not to promulgate the requested ITR and issue the associated LOA to Sunrise Wind. NMFS' final decision of whether or not to promulgate the requested ITR and issue the LOA will be documented in a separate Decision Memorandum prepared in accordance with internal NMFS policy and procedures. The final ITR and a notice of issuance of the LOA, if issued, will be published in the **Federal Register**. The LOA would authorize Sunrise Wind to take small numbers of marine mammals incidental to Project construction and would set forth permissible methods of incidental taking, means of affecting the least practicable adverse impact on the species and their habitat, and requirements for monitoring and reporting. Pursuant to section 7 of the Endangered Species Act (ESA), NMFS issued a final Biological Opinion to BOEM on September 28, 2023, evaluating the effects of the proposed action on ESA-listed species. The proposed action in the Biological Opinion includes the associated permits, approvals, and authorizations that may be issued.

The NPS has adopted BOEM's final EIS to support its decision to issue a ROW permit and two SUPs to Sunrise Wind. These permits would allow Sunrise Wind to access certain waters and submerged lands of the Seashore in order to connect to the onshore grid from inside Smith Point County Park, which is contained within the Seashore's legislated boundaries, and carry out construction within the

Seashore and in both the Atlantic Ocean and the intracoastal waterway between Fire Island and Long Island. NPS' decision to grant these permits will be further documented in the forthcoming permits, including permit terms and conditions, in accordance with internal NPS policy and procedures.

Authority: National Environmental Policy Act of 1969, as amended, (42 U.S.C. 4321 *et seq.*); 40 CFR 1505.2.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2024–06752 Filed 3–28–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Fiber-Optic Connectors, Adapters, Jump Cables, Patch Cords, Products Containing the Same, and Components Thereof,* DN 3733*;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.*

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of US Conec, Ltd. on March 22, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain fiber-optic connectors, adapters, jump cables, patch cords, products containing the same, and components thereof. The complaint names as respondents: Senko Advance Co., Ltd. of Japan; Senko Advanced Components, Inc. of Hudson, MA; Eaton Corp. of Ireland; Tripp Lite Holdings, Inc. of Woodridge, IL; FS.com Inc.of New Castle, DE; Infinite Electronics, Inc. of Irvine, CA; L-com, Inc. of North Andover, MA; Sumitomo Electric Industries, Ltd. of Japan; Sumitomo Electric Lightwave Corp. of Raleigh, NC; Sumitomo Electric U.S.A., Inc. of Torrance, CA; EZconn Corp. of Taiwan; Flexoptix GmbH of Germany; Changzhou Co-Net Electronic Technology Co., Ltd. of China; Shenzhen UnitekFiber Solution Ltd. of China; Hubbell Inc. of Shelton, CT; Hubbell Premise Wiring, Inc. of Shelton, CT; Shenzhen IH Optics Co., Ltd. of China; Rayoptic Communication Co., Ltd. of China; and HuNan Surfiber Technology Co., Ltd. of China. The complainant requests that the Commission issue a general exclusion order or, in the alternative, limited exclusion orders and cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers. Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3733'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1]

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. Government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: March 25, 2024.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2024–06792 Filed 3–28–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Representative Payee Report, Representative Payee Report (Short Form), and Physician's/Medical Officer's Statement

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 29, 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: Representative Payee Report (CM–623) and Representative Payee Report Short Form (CM–623S) are used to ensure that benefits paid to a representative payee are being used for the beneficiary's well-being. Physician's/Medical Officer's Statement (CM–787) is used to determine the beneficiary's capability to manage monthly Black Lung benefits. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on January 12, 2024 (89 FR 2254).

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: Representative Payee Report, Representative Payee Report (Short Form), and Physician's/Medical Officer's Statement.

OMB Control Number: 1240–0020.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 282.

Total Estimated Number of Responses: 282.

Total Estimated Annual Time Burden: 154 hours.

Total Estimated Annual Other Costs Burden: $192.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michelle Neary,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2024–06760 Filed 3–28–24; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Report of Changes That May Affect Your Black Lung Benefits

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 29, 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.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: This information collection is necessary to help determine continuing eligibility of primary beneficiaries receiving black lung benefits from the Disability Trust Fund. It is also necessary to verify and update on a regular basis factors that affect a beneficiary's entitlement to benefits, including income, marital status, receipt of State Worker's Compensation, and dependent status. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December, 4, 2023 (88 FR 84175).

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: Report of Changes That May Affect Your Black Lung Benefits.

OMB Control Number: 1240–0028.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 21,681.

Total Estimated Number of Responses: 21,681.

Total Estimated Annual Time Burden: 6,373 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. 2024–06761 Filed 3–28–24; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0028]

Personal Protective Equipment (PPE) for General Industry Standard; Extension of the Office of Management and Budget (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval for the information collection requirements specified in its Personal Protective Equipment (PPE) for General Industry Standard.

DATES: Comments must be submitted (postmarked, sent, or received) by May 28, 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 *https://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 website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and OSHA docket number OSHA–2009–0028 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).

Subpart I specify several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it.

Hazard Assessment and Verification

(Section 1910.132(d) & (g))

Paragraph 1910.132(d)(1) and the Personal Fall Protection standard require that employers perform a hazard assessment of the workplace to determine whether hazards are present, or likely to be present, that make the use

of PPE necessary.[1] Where such hazards are present, employers must select and have each affected worker use PPE that protects them from the identified hazards (section 1910.132(d)(1)(i)), and communicate PPE selection decisions to each affected worker (section 1910.132(d)(1)(ii)).

Paragraph 1910.132(d)(2) requires that employers certify in writing they have performed the required hazard assessment. The certification must include the date, the name of the person certifying that the hazard assessment was conducted, and identification of the workplace evaluated (area or location). The Personal Fall Protection standard expands the hazard assessment requirement to personal fall protection systems (section 1910.132(g)).

Conducting a PPE hazard assessment ensures that potential workplace hazards necessitating PPE use have been identified and that the PPE selected is appropriate for those hazards and the affected workers. Communicating information on PPE selection decisions to affected workers ensures they are aware that the PPE selected will protect them from the hazards that the assessment identified. The certification of the hazard assessment verifies that employers have conducted the required assessment.

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 collection, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in the Personal Protective Equipment (PPE) for General Industry standard. The agency is requesting a decrease in burden hours from 3,778,003 to 3,683,262, a difference of 94,741 hours. The changes in the number of establishments using fall protection accounts for the net decrease in burden hours.

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: Personal Protective Equipment (PPE) for General Industry Standard.

OMB Control Number: 1218–0205.

Affected Public: Business or other for-profits.

Number of Respondents: 2,421,683.

Frequency of Responses: On occasion.

Total Responses: 2,347,415.

Average Time per Response: Varies.

Estimated Total Burden Hours: 3,683,262.

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 *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (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–2009–0028). You may supplement electronic submissions by uploading document files electronically.

Comments and submissions are posted without change at *http://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 submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://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. 2024–06759 Filed 3–28–24; 8:45 am]

BILLING CODE 4510–26–P

[1] Section 1910.132 (g) specifies that the hazard assessment (29 CFR 1910.132(d)) requirements only apply to PPE for the eyes, face, head, feet, and hands. The final rule revised (29 CFR 1910.132 (g)) to also apply the hazard assessment requirements to personal fall protection systems.

LEGAL SERVICES CORPORATION

Notice to LSC Grantees of Application Process for Making 2024 Mid-Year and 2025 Basic Field Grant Subgrants

AGENCY: Legal Services Corporation.

ACTION: Notice of application dates and format for applications for approval to make 2024 mid-year and 2025 Basic Field Grant fund subgrants.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to low-income households. LSC hereby announces the submission dates for applications to make 2024 mid-year and 2025 Basic Field Grant subgrants. LSC is also providing information about where applicants may locate subgrant application questions and directions for providing the information required to apply for a subgrant.

DATES: See **SUPPLEMENTARY INFORMATION** section for application dates.

ADDRESSES: Legal Services Corporation—Office of Compliance and Enforcement, 3333 K Street NW, Third Floor, Washington, DC 20007–3522.

FOR FURTHER INFORMATION CONTACT: Megan Lacchini, Office of Compliance and Enforcement at *lacchinim@lsc.gov* or (202) 295–1506 or visit the LSC website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.*

SUPPLEMENTARY INFORMATION: Under 45 CFR part 1627, LSC must publish, on an annual basis, ''notice of the requirements concerning the format and contents of the application annually in the **Federal Register** and on LSC's website.'' 45 CFR 1627.4(b). This Notice and the publication of the Subgrant Application on LSC's website satisfy

§ 1627.4(b)'s notice requirement for the Basic Field Grant program. Only current or prospective recipients of LSC Basic Field Grants may apply for approval to subgrant these funds.

Applications for approval to make subgrants of 2024 mid-year and calendar year 2025 Basic Field Grant funds will be available on or around April 15, 2024. An applicant must apply to make a mid-year subgrant of LSC Basic Field Grant funds through GrantEase at least 45 days before the subgrant's proposed effective date. 45 CFR 1627.4(b)(2). An applicant must apply to make calendar year subgrants of 2025 Basic Field Grant funds through GrantEase in conjunction with its application(s) for 2025 Basic Field Grant funding. 45 CFR 1627.4(b)(1). The deadline for 2025 Basic Field Grant funding application submissions is June 3, 2024.

All applicants must provide answers to the application questions in GrantEase and upload the following documents:

- A draft subgrant agreement (with the required terms provided in LSC's Subgrant Agreement Template); and
- A subgrant budget (using LSC's Subgrant Budget Template).

Applicants seeking to subgrant to a new subrecipient that is not a current LSC grantee, or to renew a subgrant with an organization that is not a current LSC grantee in a year in which the applicant is required to submit a full funding application, must also upload:

- The subrecipient's accounting manual;
- The subrecipient's most recent audited financial statements;
- The subrecipient's current cost allocation policy (if not in the accounting manual); and
- The recipient's 45 CFR part 1627 policy (required under 45 CFR 1627.7).

A list of subgrant application questions, the Subgrant Agreement Template, and the Subgrant Budget Template are available on LSC's website at *http://www.lsc.gov/grants-grantee-resources/grantee-guidance/how-apply-subgrant.*

LSC encourages applicants to use LSC's Subgrant Agreement Template as a model subgrant agreement. If the applicant does not use LSC's Template, the proposed agreement must include, at a minimum, the substance of the provisions of the Template.

Once submitted, LSC will evaluate the application and provide applicants with instructions on any needed modifications to the submitted documents or Draft Agreement provided with the application. The applicant must then upload a final and signed subgrant agreement through GrantEase by the date requested.

As required by 45 CFR 1627.4(b)(3), LSC will inform applicants of its decision to disapprove or approve an application for a 2024 mid-year subgrant no later than the subgrant's proposed effective date. As required by 45 CFR 1627.4(b)(1)(ii), LSC will inform applicants of its decision to disapprove or approve a 2025 calendar-year subgrant no later than the date LSC informs applicants of LSC's 2025 Basic Field Grant funding decisions.

(Authority: 42 U.S.C. 2996g(e))

Dated: March 26, 2024.

Stefanie Davis,

Deputy General Counsel, Legal Services Corporation.

[FR Doc. 2024–06711 Filed 3–28–24; 8:45 am]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

Revisions to OMB's Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

AGENCY: Office of Information and Regulatory Affairs, Office of Management and Budget, Executive Office of the President.

ACTION: Notice of decision.

SUMMARY: By this Notice, the Office of Management and Budget (OMB) is announcing revisions to Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (SPD 15). The revised SPD 15 is presented at the end of this Notice; it replaces and supersedes OMB's 1997 *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*. OMB is taking this action to meet its responsibilities to develop and oversee the implementation of Government-wide principles, policies, standards, and guidelines concerning the development, presentation, and dissemination of statistical information. These revisions to SPD 15 are intended to result in more accurate and useful race and ethnicity data across the Federal government.

DATES: The provisions of these standards are effective March 28, 2024 for all new record keeping or reporting requirements that include racial or ethnic information. All existing record keeping or reporting requirements should be made consistent with these standards through a non-substantive change request to the Office of Information and Regulatory Affairs (OIRA), or at any time a collection of information is submitted to OIRA for approval of either a revision or extension under the Paperwork Reduction Act of 1995 (PRA), as soon as possible, but not later than March 28, 2029.

ADDRESSES: Please send correspondence about OMB's decisions to: Dr. Karin Orvis, U.S. Chief Statistician, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW, Washington, DC 20506, email address: *Statistical_Directives@omb.eop.gov*.

Electronic Availability: This **Federal Register** Notice can be found along with supplemental materials, including the final report of the Working Group and its six annexes, on the **Federal Register**: *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''. Additional background materials, including previous OMB standards and guidance related to the collection of race and ethnicity can be found at *https://www.statspolicy.gov* under ''Policies'' and on the Working Group's website: *https://www.spd15revision.gov*.

FOR FURTHER INFORMATION CONTACT: Bob Sivinski, Statistical and Science Policy, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St. NW, Washington, DC 20506; email address: *Statistical_Directives@omb.eop.gov,* phone number (202) 395–1205.

SUPPLEMENTARY INFORMATION:

A. Background

Overview of this Notice. Based on the recommendations of the Federal Interagency Technical Working Group on Race and Ethnicity Standards (Working Group), SPD 15 is revised to: collect data using a single combined race and ethnicity question, allowing multiple responses; add Middle Eastern or North African (MENA) as a minimum reporting category, separate and distinct from the White category; require the collection of more detail beyond the minimum race and ethnicity reporting categories, unless an agency requests and receives an exemption from OMB's Office of Information and Regulatory Affairs because the potential benefit of the detailed data would not justify the additional burden to the agency and the public or the additional risk to privacy or confidentiality; update terminology in SPD 15; and require agency Action Plans on Race and Ethnicity Data and timely compliance with this revision to SPD 15.

The Supplementary Information in this Notice provides background information on SPD 15 (Section A); a summary of the review process that began in the summer of 2022 (Section B); a synopsis of the major revisions to SPD 15, including discussion of the initial proposals of the Working Group, public input on the standards including responses to a January 2023 **Federal Register** Notice (FRN) [1] that presented the initial proposals, the final recommendations from the Working Group to OMB, and OMB's decisions on revisions to SPD 15 (Section C); and areas for future research (Section D).

OMB's Statistical Policy Directives. To operate efficiently and effectively, the Nation relies on the flow of objective, credible statistics to support the decisions of individuals, households, governments, businesses, and other organizations. As part of its role as coordinator of the Federal statistical system under the Paperwork Reduction Act of 1995, OMB, through the Chief Statistician of the United States, must ensure the efficiency and effectiveness of the system as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes.[2] This includes developing and overseeing the implementation of Government-wide principles, policies, standards, and guidelines concerning the development, presentation, and dissemination of statistical information.[3] OMB maintains a set of statistical policy directives to implement these requirements, and periodically reviews these directives to ensure they continue to meet their intended purpose. These reviews are based on input from subject matter experts and relevant program staff across government, evidence generated by research and testing, and input from the public.

History of SPD 15. OMB initially developed SPD 15 in 1977 in cooperation with other Federal agencies to provide consistent data on race and ethnicity throughout the Federal Government, including the decennial census, household surveys, and Federal administrative forms.[4] Initial development of these data standards stemmed in large part from new Federal responsibilities to enforce civil rights laws.[5] Since 1977, SPD 15 has been revised one time, resulting in an update in 1997.

The Goals of SPD 15. The goals of SPD 15 remain unchanged: to ensure the comparability of race and ethnicity across Federal datasets and to maximize the quality of these data by ensuring the format, language, and procedures for collecting the data are consistent.[6] To achieve these goals, SPD 15 provides a minimum set of categories that all Federal agencies must use when collecting information on race and ethnicity, regardless of the collection mechanism, as well as additional guidance on the collection, compilation, and dissemination of these data.

Defining race and ethnicity. For purposes of SPD 15, the race and ethnicity categories set forth are sociopolitical constructs and are not an attempt to define race and ethnicity biologically or genetically.

Rescissions. Finally, this Notice rescinds the following OMB guidance: *OMB Bulletin No. 00–02—Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement* (2000); [7] *Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity* (2000); [8] and *Flexibilities and Best Practices for Implementing the Office of Managements and Budget's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity* (2022).[9]

B. Comprehensive Review Process for SPD 15

Since the 1997 revision to SPD 15, there have been large societal, political, economic, and demographic shifts in the United States, including increasing racial and ethnic diversity, a growing number of people who identify as more than one race or ethnicity, and changing immigration and migration patterns. Recognizing the critical need for revisions to SPD 15, OMB announced a formal review in June 2022 with the goal of updating SPD 15 to better reflect the diversity of the Nation.[10] The process to review and revise SPD 15 included four major phases: (1) OMB established the Working Group; (2) the Working Group developed initial proposals and sought public input; (3) the Working Group developed final recommendations for revising SPD 15; and (4) OMB deliberated and developed the revisions presented in this Notice.

Establishing the Federal Interagency Technical Working Group on Race and Ethnicity Standards. Consistent with OMB's established processes, the Working Group was composed of Federal staff with subject matter expertise in the collection and use of Federal race and ethnicity data. The 13 OMB-recognized principal statistical agencies,[11] the 24 agencies enumerated by the Chief Financial Officers Act (CFO Act),[12] and the U.S. Equal Employment Opportunity Commission (EEOC) were invited to nominate representatives to the Working Group through their Federal Statistical Officials.[13] Of the invitees, 12 principal statistical agencies, 22 Chief Financial Officers Act agencies, and the EEOC all provided staff to participate in the Working Group. The Working Group was chaired and co-chaired by career staff members from OMB and the U.S. Census Bureau, respectively.

OMB tasked the Working Group with developing a set of recommendations for improving the quality and usefulness of Federal race and ethnicity data with a focus on developing recommendations on topics including, but not limited to:

- whether the minimum reporting categories should be changed and how to best address detailed race and ethnicity groups in SPD 15;
- whether updates should be made to the question format, terminology, and wording of the questions, as well as the

[1] 88 FR 5375 (Jan. 27, 2023), *available at https://www.federalregister.gov/documents/2023/01/27/2023-01635/initial-proposals-for-updating-ombs-race-and-ethnicity-statistical-standards.*

[2] 44 U.S.C. 3504(e)(1).

[3] 44 U.S.C. 3504(e)(3).

[4] U.S. Dep't of Com., *Statistical Policy Handbook* 37–38 (May 1978), *available at https://www2.census.gov/about/ombraceethnicityitwg/1978-statistical-policy-handbook.pdf.*

[5] 62 FR 58782 (Oct. 20, 1997), *available at https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf.*

[6] *See, e.g., id.;* U.S. Dep't of Com., *Statistical Policy Handbook* 37–38 (May 1978), *available at https://www2.census.gov/about/ombraceethnicityitwg/1978-statistical-policy-handbook.pdf.*

[7] OMB, Exec. Office of the President, *OMB Bulletin No. 00–02—Guidance on Aggregation and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement* (Mar. 9, 2000), *available at https://www.whitehouse.gov/wp-content/uploads/2017/11/bulletins_b00-02.pdf.*

[8] OMB, Exec. Office of the President, *Provisional Guidance on the Implementation of the 1997 Standards for Data on Race and Ethnicity* (Dec. 15, 2000), *available at https://www.esd.whs.mil/Portals/54/Documents/DD/info_collect/files_public/Race%20%20Ethnicity%20Guidance.pdf?ver=2018-11-01-094407-913.*

[9] *Flexibilities and Best Practices for Implementing the Office of Management and Budget's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (Statistical Policy Directive No. 15)* (Jul. 2022), *available at https://www.whitehouse.gov/wp-content/uploads/2022/07/Flexibilities-and-Best-Practices-Under-SPD-15.pdf.*

[10] Karin Orvis, *Reviewing and Revising Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity,* The White House (June 15, 2022), *available at https://www.whitehouse.gov/omb/briefing-room/2022/06/15/reviewing-and-revising-standards-for-maintaining-collecting-and-presenting-federal-data-on-race-and-ethnicity/.*

[11] A list of the 13 principal statistical agencies is available at *https://statspolicy.gov.*

[12] A list of the 24 Chief Financial Officers Act Agencies is available at *https://www.cfo.gov/about-the-council/.*

[13] 5 U.S.C. 314.

instructions for respondents and associated guidance; and

• whether guidance for the collection and reporting of these data can be improved, including in instances when self-identification is not possible.

The Working Group adopted a set of principles to govern their work (*e.g.,* category changes should be based on sound research; all racial and ethnic categories should adhere to public law; operational feasibility should also be considered) consistent with processes used by the working groups for the original 1977 SPD 15 and the 1997 revision.[14]

Developing Initial Proposals. The Working Group developed initial proposals for revising SPD 15 by examining existing evidence and building on the work of a previous interagency working group that reviewed SPD 15 from 2014 to 2018. The existing evidence included several large-scale, rigorous studies conducted by the Census Bureau.

The initial set of proposals developed by the Working Group included collecting race and ethnicity together with a single question; adding a MENA response category, separate from the White category; requiring the collection of more detailed data beyond the minimum categories as a default; and updating SPD 15's terminology, definitions, and question wording. The Working Group also developed a set of questions regarding various aspects of the proposals, implementation issues, and additional topics for public feedback. OMB published these preliminary proposals and questions in a January 2023 FRN [15] that provided the public an opportunity to submit comments from January 27 to April 27, 2023.

Developing Final Recommendations. To meet the goal of producing accurate and useful race and ethnicity data across the Federal Government, it is important to base SPD 15 on a solid portfolio of evidence that includes rigorous testing, input from the public on how individuals prefer to identify, and input from data providers and users.

In developing their initial and final recommendations, the Working Group relied heavily on research conducted by Federal agencies over the last decade, especially the U.S. Census Bureau's 2015 National Content Test (NCT).[16] The NCT specifically tested the impact and effectiveness of using a combined question, adding a MENA category, and making various revisions to question wording and terminology. The NCT included a nationally representative sample of 1.2 million housing units across the United States, including Puerto Rico. Importantly, it also included a re-interview of approximately 75,000 cases, designed to generate better understanding of how respondents interpret the questions and prefer to identify. In addition to pre-existing research conducted over the last decade, several agencies represented on the Working Group collaborated to conduct supplementary qualitative and quantitative research. This additional research helped inform and improve the Working Group's final recommendations to OMB.

In recognition of the importance of public participation in the revision of SPD 15, obtaining input and feedback from the public played a key role in the development of the final recommendations. The Working Group and OMB used a variety of approaches to raise awareness and encourage input. Outreach efforts included White House blog posts and social media posts, the creation of a dedicated website for the review process (*https://www.spd15revision.gov*), interviews with news outlets, participation in professional conferences and workshops, and direct outreach to stakeholders using contact lists maintained by the agencies participating on the Working Group. In September 2022, the Working Group began conducting bi-monthly listening sessions with members of the public, which allowed organizations, advocacy groups, academics, and the general public to share their perspectives and recommendations regarding SPD 15.[17] In March 2023, the Chief Statistician of the United States, joined by the chair and co-chair of the Working Group, hosted a series of three virtual public town hall meetings. OMB also held a Tribal consultation with Tribal leaders and members to discuss the proposed revisions. As a result of these efforts, members of the public submitted over 20,000 comments to the FRN,[18] the Working Group scheduled 94 separate 30-minute listening sessions, and about 3,350 people joined the virtual town halls where over 200 people spoke to share their perspectives on SPD 15.

The input from the experts on the Working Group, the strong existing research base, and the robust participation of the public, all helped shape the activities of the Working Group, their final recommendations to OMB, and OMB's final decisions.

C. Revisions to SPD 15

The revised standards presented in the Notice adopt several revisions intended to improve the quality and usefulness of Federal race and ethnicity data. This section explains the revisions by: describing the initial proposals of the Working Group, summarizing public input, describing the final recommendations of the Working Group (and how they differed, if at all, from the initial proposals), and presenting and explaining OMB's decisions.

1. Collect Race and Ethnicity Information Using One Combined Question

Working Group's Initial Proposals. The Working Group initially proposed that SPD 15 move from two separate questions to a single combined race and ethnicity question as the required design for self-reported race and ethnicity information collections. Refer to Section C, Part 1 of the January 2023 FRN [19] for additional information about this initial proposal from the Working Group.

Summary of Public Input. Many comments stated the current two questions structure is confusing to respondents, especially respondents who identify as Hispanic or Latino and do not identify with the 1997 SPD 15 race categories. Some commenters expressed that the current format with two separate questions creates an impediment to the collection of accurate race data on the Hispanic or Latino population. A common theme was the proposed change would improve the collection of race data for the Hispanic or Latino population by reducing the number of responses that leave the race question blank or are classified as ''Some Other Race'' when that option is available.[20] Some commenters, while

[14] Refer to the Working Group's final report on for additional details, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[15] 88 FR 5375.

[16] Kelly Mathews et al., U.S. Census Bureau, *2015 National Content Test Race and Ethnicity Analysis Report: A New Design for the 21st Century* (Feb. 28, 2017), *available at https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/plan/final-analysis/2015nct-race-ethnicity-analysis.html.*

[17] Karin Orvis, *OMB Launches New Public Listening Sessions on Federal Race and Ethnicity Standards Revision,* The White House (Aug. 30, 2022), *available at https://www.whitehouse.gov/omb/briefing-room/2022/08/30/omb-launches-new-public-listening-sessions-on-federal-race-and-ethnicity-standards-revision/.*

[18] Initial Proposals for Updating OMB's Race and Ethnicity Data Standards Docket, *Regulations.gov, available at https://www.regulations.gov/docket/OMB-2023-0001/comments* (last visited Feb. 15, 2024).

[19] 88 FR 5379.

[20] Under the 1997 standards, data collections by Federal agencies may not include a Some Other

generally in support of a combined question, suggested removing the words ''race'' and ''ethnicity'' from the question stem and emphasizing that respondents should select all categories that apply to them.

Some comments were opposed to, and expressed concerns about, this initial proposal. A notable concern was that the new format would lead to the potential loss of data about Afro-Latino respondents. Some commenters viewed a combined race and ethnicity question as conflating two distinct concepts and implying that Hispanic or Latino is a ''race.'' Commenters viewed that a combined question would result in a large percentage of Afro-Latinos only identifying as Hispanic or Latino, thereby contributing to an undercount of the Afro-Latino population. Overall, the majority of comments on the subject expressed support for using a single combined question and allowing multiple responses.[21]

Working Group's Final Recommendations. The final recommendation to OMB, consistent with the initial proposal, was to combine the current separate questions on Hispanic or Latino ethnicity and race into a single combined race and ethnicity question that allows respondents to select one or multiple categories, and require the use of this single-question format for both self-response and proxy response (for example, when one member of a household responds on behalf of other members). The final recommendation further specifies that a single selection would be considered a complete response (*e.g.,* Hispanic or Latino respondents are not required to select an additional category), although respondents will be encouraged to provide multiple responses when appropriate.

The Working Group's final report states that ''[s]ince 1980, responses to the decennial census in each subsequent decade have shown increasing non-response to the race question, confusion, and concern from the public about separate questions on ethnicity and race. . . . Results from the 2020 Census showed that 43.5 percent of those who self-identified as Hispanic or Latino either did not report a race or were classified as 'Some Other Race' (SOR) alone (over 23 million people).'' This increasing non-response and reporting of SOR was one of the primary indicators to OMB that SPD 15 was no longer providing options that align with how respondents prefer to identify. The NCT described in Section B, along with other Census Bureau research conducted in preparation for the 2020 Census,[22] found that a combined question reduced confusion and improved data quality, including drastically reducing the selection of SOR by Hispanic or Latino respondents.

In response to concerns from the Afro-Latino community about the potential impact of a combined question on population estimates, the Working Group evaluated several sources of evidence to inform their recommendations. The NCT compared Afro-Latino population estimates when using a combined question versus a separate questions format and did not find a significant difference between the approaches. In fact, Afro-Latino population estimates were slightly higher when using a combined question with detailed checkboxes and write-in fields. Additionally, the Working Group conducted cognitive interviews with Afro-Latino participants to explore how they identify and how they interpret questions about race and ethnicity. About half of interview participants selected only the Hispanic or Latino response category when shown a combined question, despite selecting both Hispanic or Latino and Black or African American response categories during recruitment. These cognitive interviews contributed to the Working Group's recommendation for future research on collecting data for Afro-descendent populations.[23]

OMB Decisions. OMB accepts the recommendation to combine the separate questions on race and ethnicity into a single combined race and ethnicity question. Because respondents may perceive categories like Hispanic or Latino or MENA as either a race or ethnicity, the revised SPD 15 requires agencies to treat the categories equally and report them as ''race and/or ethnicity'' categories.

OMB's decision on this recommendation reflects the strong evidence that a combined question format results in higher quality and more useful data, and provides a format that is clearer and more concise for respondents while still allowing them to select as many race and/or ethnicity options that correspond to how they identify. OMB recognizes that additional research, testing, and stakeholder engagement is needed to understand how to best encourage the selection of multiple race and/or ethnicity categories for people who identify as Afro-Latino, and is prioritizing that research as discussed further in Section D. Finally, we note here that the revised SPD 15 adopts the Working Group's recommendation to modify the question instructions to better signal to respondents that they should select all of the categories that reflect their identity.

2. Add Middle Eastern or North African as a New Minimum Category

Working Group's Initial Proposals. The Working Group initially proposed that Middle Eastern or North African be added to SPD 15 as a new minimum reporting category distinct from all other reporting categories, and that the definition of the current White reporting category be edited to remove MENA from its definition. Refer to Section C, Part 2 of the January 2023 FRN [24] for additional information about this initial proposal from the Working Group.

Summary of Public Input. Nearly all comments addressing the MENA category supported the proposal. Commenters expressed that the current classification of MENA respondents as White does not reflect the reality of many who are MENA. A few commenters were opposed, either stating some individuals from the MENA region of the world do consider themselves to be White or that race and ethnicity data should not be collected by the Federal Government.

Many commenters also provided feedback about which groups should be considered MENA or have a checkbox under the MENA category, commenting that it was important for groups such as Armenians, Somalis, and Sudanese to be part of any MENA category. Overall, the vast majority of comments expressed

Race (SOR) response category unless required by statute. Since 2005, the decennial census and American Community Survey (ACS) are required by law to include a SOR category, thereby adding a sixth minimum race category for these collections. The decennial census and ACS are the only information collections with a statutory requirement for the use of a SOR category. *See* Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Public Law 109–108, tit. II, 119 Stat. 2290, 2308–09 (2005).

[21] A comprehensive review of public input on this initial proposal can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[22] Elizabeth Compton et al., U.S. Census Bureau, *2010 Census Race and Hispanic Origin Alternative Questionnaire Experiment* (Feb. 28, 2013), *available at https://www.census.gov/programs-surveys/decennial-census/decade/2010/program-management/cpex/2010-cpex-211.html*; Jacquelyn Harth, U.S. Census Bureau, *2016 American Community Survey Content Test: Race and Hispanic Origin* (Sept. 19, 2017), *available at https://www.census.gov/library/working-papers/2017/acs/2017_Harth_01.html.*

[23] Refer to the Working Group's final report and its Annexes 1 and 2 to learn more about the Working Group's research and analysis that ultimately led to this recommendation, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[24] 88 FR 5379.

support for adding a MENA minimum category, separate and distinct from White.[25]

Working Group's Final Recommendations. The Working Group's final recommendation was not changed from the initial proposal: ''Add MENA as a new minimum reporting category distinct from all other reporting categories. Revise the definition for the White category to remove references to MENA, and classify and tabulate MENA responses under the new MENA category.'' [26]

OMB Decisions. OMB accepts the recommendation to create a new minimum reporting category for MENA separate and distinct from the White category, and to revise the White category definition accordingly.

MENA groups and members of the public generally have long voiced the need for a separate MENA minimum category. The 1997 revision to SPD 15 also identified MENA as a topic for further research because there was a lack of public consensus on how to define the category (*e.g.,* shared language, geography) at the time.[27] Since then, Federal agencies have conducted research and stakeholder outreach showing broad public support for the use of the term ''Middle Eastern or North African,'' and that MENA respondents understand the use of the category and select it when available.[28]

Described further in Part 3 below and consistent with the existing minimum categories, the detailed checkboxes and definition examples for the MENA category were selected to represent the largest population groups in the United States as reported by the 2020 Census. Although several commenters expressed interest in explicitly including Armenian, Somali, or Sudanese, the 2015 NCT found that most respondents who identify as Armenian, Somali, and Sudanese did not select MENA when it was offered.[29] Additional research is needed on these groups to monitor their preferred identification.

3. Require the Collection of Detailed Race and Ethnicity Categories as a Default

Working Group's Initial Proposals. The Working Group initially proposed requiring data collection of specific detailed data beyond the minimum categories, unless an agency determines the potential benefit of the detailed data would not justify the additional burden to the agency and the public or the additional risk to privacy or confidentiality and the agency requests and receives an exemption from OIRA. In those cases, agencies must at least use SPD 15's minimum categories. In any circumstance, agencies are encouraged to collect and provide more granular data than the minimum categories.

The specific detailed checkboxes shown in the January 2023 FRN represent the six largest population groups in the United States within each minimum category, based on responses to the 2010 Census. The exception to this rule is the six checkboxes shown for the MENA category, which represent the two largest Arab nationalities in the United States from the Middle East (Lebanese and Syrian), the two largest Arab nationalities in the United States from North Africa (Egyptian and Moroccan), and the two largest non-Arab nationalities in the United States from the MENA region (Iranian and Israeli). Refer to Section C, Part 3 of the January 2023 FRN [30] for additional information about this initial proposal from the Working Group.

Summary of Public Input. Comments supporting this proposal cited the diverse experiences of groups within each minimum reporting category. In particular, a number of health organizations expressed the importance of having data available for detailed groups to measure differences in healthcare outcomes. There were also comments advocating for flexibility in SPD 15 to allow for changes in the specific detailed categories used as new demographic data of the United States become available. Some urged that Federal agencies should be allowed to adapt the detailed categories based on their data collection needs and contexts, while others urged strict requirements for all agencies out of concern that any flexibility could be misused.

A few commenters were opposed, expressing concerns with the burden on Federal agencies, the risks to data privacy and disclosure for small population groups, and burden on respondents. Overall, the majority of comments expressed support for requiring the collection of more detail beyond the minimum categories as a default, but allowing agencies to determine what additional data to collect in order to best meet program and stakeholder needs.[31]

Working Group's Final Recommendations. The final recommendation of the Working Group differed from the initial proposal in the January 2023 FRN, reflecting input from Federal agencies concerned about the lack of flexibility. The Working Group's final recommendation was to require the collection of data on race and ethnicity with greater detail beyond the minimum reporting categories as a default, but to allow agencies flexibility to determine what additional data to collect to best meet program and stakeholder needs, provided the detailed data aggregate into the minimum reporting categories, and subject to OIRA approval. In cases where agencies determine the additional burden would outweigh the potential benefits of collecting detailed data, Federal agencies may seek approval from OIRA to use the minimum reporting categories. In any circumstance, SPD 15 should encourage to collect and provide more granular data than the minimum reporting categories.[32]

OMB Decisions. OMB accepts the recommendation to require the collection of more detailed data as a default. However, the intent of SPD 15 to produce consistent and comparable data is best served by providing a common framework for the collection of detailed data, rather than allowing each agency to determine what additional detail to collect. Therefore, agencies are required to collect the detailed

[25] A comprehensive review of public input on this initial proposal can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[26] Refer to the Working Group's final report and its Annex 1 to learn more about the Working Group's research and analysis that ultimately led to this recommendation, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[27] 62 FR 58787.

[28] Stephanie Wilson & Sheba K. Dunston, Nat'l Ctr. for Health Stat., Ctrs. for Disease Control & Prevention, *Cognitive Interview Evaluation of the Revised Race Question, with Special Emphasis on the Newly Proposed Middle Eastern/North African Response Option* (2017), *available at https://wwwn.cdc.gov/qbank/report/Willson_2017_NCHS_MENA.pdf*; Kelly Mathews, *supra* note 16.

[29] In NCT test panels that *did not include* a MENA category, Armenian respondents chose the White category 90.8% of the time and Some Other Race 9.6% of the time, Somali respondents chose the Black or African American category 96.2% of the time, and Sudanese respondents chose the Black or African American category 98.4% of the time.

In NCT test panels that *did include* a MENA category, Armenian respondents chose the White category 79.0% of the time, the MENA category 12.6% of the time, and Some Other Race 9.3% of the time; Somali respondents chose the Black or African American category 94.2% of the time, Some Other Race 4.8% of the time, and the MENA category 0.0% of the time; Sudanese respondents chose the Black or African American category 87.2% of the time and MENA 8.0% of the time.

[30] 88 FR 5380.

[31] A comprehensive review of public input on this initial proposal can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[32] Refer to the Working Group's final report and its Annex 1 to learn more about the Working Group's research and analysis that ultimately led to this recommendation, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for''OMB–2023–0001''.

categories described in this Notice as a default. These detailed categories were selected to represent the largest population groups within the minimum categories, according to the results of the 2020 Census. Selecting the largest groups by United States population prioritizes the utility of the data by maximizing the sample sizes. Small sample sizes are often the primary barrier to publication of data for specific groups; small samples decrease precision, make it harder to identify differences between groups, and increase privacy risk.

OMB recognizes racial and ethnic identities and terminology are continuously changing and SPD 15 needs to balance the need for consistency with the ability to adapt to change and meet specific program needs. An agency may submit a request to OIRA for an exemption to the requirement to collect more detailed data beyond the minimum categories if the agency determines that the potential benefit of the detailed data would not justify the additional burden to the agency and the public or the additional risk to privacy or confidentiality. Agencies may also submit a request to OIRA for a variance to the detailed categories if they determine that collecting different detailed data categories than the ones listed in SPD 15 provides more useful or accurate data for the collection's specific context and intended uses. Any variances in detailed data collection must be able to be aggregated up to the required minimum categories. OIRA will review agency requests for exceptions and variances, and they will only be approved if they contain sufficient justification. Finally, due to the extensive testing done in the context of the American Community Survey, agencies may collect the detailed categories used on the most recent version of that survey, should they differ from the detailed categories listed in SPD 15, without further justification.

4. Updates to Terminology in SPD 15

Working Group's Initial Proposals. The Working Group initially proposed SPD 15 remove certain terms or phrases in the minimum category definitions: ''Negro'' from the Black or African American definition; ''Far East'' from the Asian definition, replacing with ''East Asian;'' ''Other'' from Native Hawaiian and Other Pacific Islander; and ''who maintain tribal affiliation or community attachment'' from the American Indian or Alaska Native (AIAN) definition.

The FRN also proposed: (1) correcting ''Cuban'' from being listed twice in the minimum category definition for Hispanic or Latino; (2) changing the AIAN minimum category description to: ''The category 'American Indian or Alaska Native' includes all individuals who identify with any of the original peoples of North, Central, and South America;'' (3) discontinuing the use of the terms ''majority'' and ''minority;'' (4) using ''race'' and ''ethnicity'' as part of the question stem, *e.g.,* ''What is < your/name's > race or ethnicity?;'' and (5) updating the current instructions of ''Mark one or more'' and ''Select one or more'' to ''Mark all that apply'' and ''Select all that apply.'' Refer to Section C, Part 4 of the January 2023 FRN [33] for additional information about this initial proposal from the Working Group.

Summary of Public Input. Comments generally demonstrated support for these proposals. The removal of the phrase ''who maintain tribal affiliation or community attachment'' was supported by several key organizations including the National Congress of American Indians. Some commenters called for greater clarity in which geographic areas would be referenced in the Asian definition. Comments from organizations that work with Central Asian populations in the United States explicitly requested ''Central Asia'' be included in the Asian definition. A number of public comments supported the replacement of the term ''Far East'' in the Asian definition and the removal of the term ''Other'' from the Native Hawaiian and Other Pacific Islander definition. Among those who submitted comments about SPD 15 terminology, the majority agreed with the proposal to remove ''Negro'' from the Black or African American definition; however, some comments asked to retain the term, citing its long history on government records such as birth certificates and prior decennial census records.[34]

Working Group's Final Recommendations. The Working Group refined their initial proposals based on public comment and delivered the following recommendations to OMB to update terminology in SPD 15.[35]

(a) Remove ''majority'' and ''minority'' terminology, except when statistically accurate and used for statistical descriptions or when legal requirements call for use of the terms.

(b) Use ''race and/or ethnicity'' in the question stem.

(c) Use instructions that emphasize reporting multiple categories is allowed (and encouraged), regardless of whether minimum or detailed reporting categories are collected. Explicit instructions that the respondent can select all that apply AND provide detailed reporting is helpful. For example:

i. In a self-administered instrument collecting the minimum reporting categories: ''Select all that apply. Note, you may report more than one group.''

ii. In a self-administered instrument collecting detailed categories: ''Select all that apply and enter additional details in the spaces below. Note, you may report more than one group.''

(d) Use ''Multiracial and/or Multiethnic'' in tabulations to represent people who identify with multiple minimum reporting categories.

(e) Provide balance for definitions and use six example groups to illustrate the breadth and diversity of the category. In addition, make the following updates to the race and ethnicity definitions:

i. Remove the phrase ''who maintains tribal affiliation or community attachment'' in the AIAN definition.

ii. Change ''(including Central America)'' to having ''Central America'' listed co-equally with North and South America in the AIAN definition.

iii. Replace ''Far East'' with ''Central or East Asia'' and ''Indian Subcontinent'' with ''South Asia'' in the Asian definition.

iv. Remove ''Negro'' from the Black or African American definition.

v. Correct ''Cuban'' being listed twice in the Hispanic or Latino definition.

vi. Remove ''. . . regardless of race. The term 'Spanish origin' can be used in addition to 'Hispanic or Latino' '' from the Hispanic or Latino definition.

vii. Remove ''Other'' from the ''Native Hawaiian and Other Pacific Islander'' category title.

OMB Decisions. OMB accepts the Working Group's final recommendations for revising the terminology in SPD 15, including the recommendations for revisions to the question stem and minimum category definitions, with the following two exceptions. First, in regards to recommendation (c) above, OMB does not include the phrase ''Note, you may report more than one group'' in the required question instructions. Additional testing conducted after the Working Group delivered their final recommendations found that including this phrase had the opposite of the

[33] 88 FR 5382.

[34] A comprehensive review of public input on this initial proposal can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[35] Refer also to the Working Group's final report and its Annex 1 to learn more about the Working Group's research and analysis that ultimately led to these recommendations, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

intended effect and resulted in a sizeable decrease in the number of respondents selecting multiple responses. Encouraging multiple responses whenever appropriate is critical to measuring the completeness and complexity of racial and ethnic identity. The revised standards require the use of the following question instructions: ''What is your race and/or ethnicity? Select all that apply and enter additional details in the spaces below.'' Section D of this notice, which identifies OMB's priority areas for future research, includes the following research topic: how to encourage respondents to select multiple race and/or ethnicity categories when appropriate by enhancing question design and inclusive language.

Second, in regards to recommendation (e) above, to align better with the other category definitions, as well as the previous definition, the revised SPD 15 adopts the following definition for the Hispanic or Latino category: ''*Hispanic or Latino.* Includes individuals of Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, and other Central or South American or Spanish culture or origin.'' Consistent with the Working Group's recommendations, the revised category definitions list six example groups reflecting the largest population groups in the United States according to the 2020 Census.

These revisions will bring the terminology in SPD 15 more up to date, will more clearly explain that respondents should select more than one category when appropriate, and greatly increase the consistency and clarity of the minimum category definitions.

5. Implementation Guidance

Working Group's Initial Proposals. The Working Group requested public input on how to best implement revisions to SPD 15. It listed several related issues including dates agencies must meet as they incorporate revisions; statistical methods to connect data produced from previous and revised collection formats; approaches for collecting race and ethnicity information by proxy when self-identification is not possible; approaches for reporting data for respondents who select more than one race or ethnicity; obtaining OIRA approval under the PRA to revise existing collections; and best practices for communicating SPD 15 revisions to stakeholders. Refer to Section C, Part 5 of the January 2023 FRN [36] for additional information about the Working Group's request for public input.

Summary of Public Input. OMB received fewer public comments on the implementation issues than on the previous initial proposals. Public input on these issues included statements on the following topics: [37]

- The importance of establishing a specific time Federal agencies would need to come into compliance with the revised SPD 15, and generally supporting the inclusion of an implementation timeline in the revised SPD 15;
- Concerns about data consistency when data are collected using the 1997 revision versus the current revision, whether across different data sets or within the same data set when data are collected over time;
- The need for tools to support bridging, or combining data collected under different versions of SPD 15;
- Support for requiring agencies to transparently describe how data were collected or generated and how nonresponse or other missing data were assigned or allocated when data were not collected via self-report;
- Questions about tabulation under a revised SPD 15, including:
  - Will those of Hispanic or Latino origin continue to be treated differently in civil rights reporting? [38]
  - How will multiple race and ethnicity responses be tabulated?
  - What will be the best practices and flexibilities for tabulating detailed data?
- Concern about individuals that select multiple response categories being grouped into one ''multiple race or ethnicity'' category, resulting in respondents with very different racial and ethnic identities being placed into the same category and in less information being released about the population's diversity;
- The importance of guidance on flexibility and best practices on how to tabulate detailed categories based on the population or sample size; and
- The limitations of proxy or observational data and the importance of clearly acknowledging those limitations. Several expressed how these forms of data collection are inherently biased. Some comments requested training, guidance, or technical assistance for how and when to use these methods and how to analyze resulting data. Some noted observational data collection is not necessarily of lesser value in some circumstances than self-identification, but instead measures a different concept and provides answers to a different set of questions that may be of interest (*e.g.,* discrimination resulting from perceived race). Overall, the majority of public comments on the subject leaned toward prohibiting the collection of race and ethnicity by proxy.

Working Group's Final Recommendations. Based on public input and further discussions with Federal agencies, the Working Group developed five final recommendations related to implementation.[39] The first set includes two recommendations on planning and timing, and the second set includes three recommendations on how to improve collection and reporting practices for race and ethnicity data.

Recommendations on implementation and timing.

(a) Require an Action Plan on Race and Ethnicity Data within 12 months of the publication of a revised SPD 15. Encourage Federal agencies to use these action plans to make a unified plan to comply with SPD 15, identify potential risks, and inform stakeholders of these plans. OMB should encourage agencies to share this information publicly. Statistical agencies may still create their own action plan alongside the unified department plan to provide more detail on various data collection efforts and dissemination plans.

(b) Existing Federal agency-conducted or -sponsored data collection efforts that include data on race and ethnicity shall be made consistent with the revised SPD 15 within four years of its publication. New Federal data collections that include data on race and ethnicity will adhere to the revised SPD 15 immediately.

Recommendations for improving the collection and reporting practices for race and ethnicity data.

(c) When the collection of race and ethnicity is done through visual observation, require the use of the minimum reporting categories but do not require the collection of detailed race and ethnicity. Respondent self-identification should be facilitated to the greatest extent possible.

[36] 88 FR 5383.

[37] A comprehensive review of public input on this initial proposal can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[38] Currently most civil rights reporting in practice (not by SPD 15 guidance) is tabulated such that Hispanic or Latino responses supersede any race response. Hispanic or Latino responses are tabulated separately and race is only tabulated and reported for non-Hispanic or Latino respondents. Office of Management and Budget, supra note 8.

[39] Refer to the Working Group's final report and its Annex 3 to learn more about the Working Group's research and analysis that ultimately led to these recommendations, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

(d) When data are not self-reported, encourage agencies to transparently describe how the data were collected or generated, and how nonresponse or other missing data were assigned or allocated. Federal agencies and researchers should make it a practice to identify when data collections of race and ethnicity are intentionally designed to collect proxy responses, observational data, or employ a combination of self-identification, visual observation, and other collection methods.

(e) With respect to tabulation, require that the seven minimum race and ethnicity reporting categories be treated co-equally, by not using different tabulation approaches or rules for different categories in the same table. Additionally, require that tabulation procedures used by Federal agencies result in the production of as much information on race and ethnicity as possible, including data on people reporting more than one race and/or ethnicity. However, Federal agencies shall not present data on detailed categories and specific Multiracial and/or Multiethnic populations if doing so would compromise data quality or respondent privacy.

OMB Decisions.

(a) OMB accepts this recommendation to require an Action Plan on Race and Ethnicity Data with the following modifications: Based on input from Federal agencies, each agency's Action Plan on Race and Ethnicity Data is required within 18 months of publication of this Notice, rather than the recommended 12 months. This will provide more time for agencies to coordinate across programs and engage stakeholders and data providers to submit a more specific Action Plan to OMB. Agencies do not need to wait for their Action Plans to be complete to start implementing the revisions wherever possible. To improve transparency, agencies must make their Action Plans publicly available upon submission to OMB.

(b) OMB accepts this recommendation to create a deadline for implementation with the following modification: Based on input from Federal agencies, the deadline for compliance with this revised SPD 15 is five years after the publication of this Notice, rather than the recommended four years. Most programs will be able to, and should, implement revisions sooner than the five-year deadline for compliance. Certain programs that involve interconnected data across multiple agencies or offices, or that rely on data collected and provided by non-Federal entities, may take longer to implement than programs like statistical surveys, but all programs are required to bring their collections into compliance within the five-year implementation period. OIRA will use the PRA review process to ensure that agencies adopt these revisions in a timely manner.

(c) OMB accepts without modification this recommendation to exempt data collected through visual observation from requirements to collect detailed data. The revised SPD 15 further specifies that wherever possible, race and ethnicity data should be collected through self-report.

(d) OMB accepts this recommendation to encourage agencies to transparently describe race and ethnicity data with the following modifications: For statistical survey reporting, agencies are required, rather than encouraged, to transparently describe whether race and ethnicity data are self-reported or collected by proxy, along with any imputation or coding procedures. With respect to other agency products, agencies are strongly encouraged to provide this information whenever possible. OIRA will continue to review agency PRA requests to ensure that race and ethnicity data are collected by self-report whenever possible.

(e) OMB accepts this recommendation to require agencies to treat the race and ethnicity categories co-equally with the following clarifications: With respect to collection, the seven minimum race and ethnicity categories shall be treated co-equally, except if a program or collection effort focuses on a specific racial or ethnic group, as approved by OIRA. Collection forms may not indicate to respondents that they should interpret some categories as ethnicities and others as races, or otherwise indicate conceptual differences among the minimum categories. Similarly, with respect to tabulation and presentation, the seven minimum race and ethnicity categories shall also be treated co-equally, which means that when tabulating and presenting data, agencies may not use different tabulation approaches or rules for different categories within the same table. Again, an exception may be granted, if a program or collection effort focuses on a specific racial or ethnic group, as approved by OIRA.

6. Additional Topics

Section C, Part 5 of the January 2023 FRN[40] posed several additional questions for the public. This section presents public input on these topics, as well as any associated recommendations from the Working Group and OMB's decisions.

Order of Minimum Categories

Summary of Public Input. The 1997 revision of SPD 15 does not dictate the order in which the minimum categories are displayed. Agencies generally order alphabetically or by population size; however, both approaches have received criticism. The Working Group asked what order, alphabetical or by population size, is preferred and why; or what alternative approach would be recommended. The comments addressing this subject agreed on ordering alphabetically, as this seemed the easiest way to order the categories and would be the least likely to be perceived as motivated by non-statistical preferences.[41]

Working Group's Final Recommendation. The Working Group did not make a recommendation on this topic, citing insufficient research. Members of the Working Group raised concerns that alphabetical ordering could lead to measurement error if respondents scanning the question quickly see the term ''American'' in the AIAN category and mistakenly select that category to indicate American identity, even if they do not identify as American Indian or Alaska Native.

OMB Decision. OMB concurs with the Working Group's determination that there is not sufficient evidence at this time to justify requiring a specific ordering for presentation, and SPD 15 will continue to provide agencies flexibility on how to order the response categories on information collections so that future research can inform the optimal approach to ordering response options. Note that all examples in this revision to SPD 15 will be shown with alphabetically-ordered minimum response categories.

Terms for Minimum Categories

Summary of Public Input. The FRN asked for suggestions for different terms for any of the current minimum race and ethnicity categories. There were no prominent themes for such specific changes. Input from the public included requests to add Caribbean and Sub-Saharan African minimum response categories, separate from African American; retire the use of the term ''African American;'' broaden the AIAN category title to signal inclusion of all indigenous people of the Americas; remove ''color'' words in category titles

[40] 88 FR 5383.

[41] A comprehensive review of public input on this question can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

(*i.e.,* Black and White) and replace with regional terms; create South Asian and Southeast Asian minimum response categories; and add categories related to contextualized Hispanic or Latino heritage, such as Mestizo, Afro-Latino, or Trigueño.[42] A comprehensive review of public input on this question can be found in the Working Group's Annex 4.

Working Group's Final Recommendation. The Working Group recommends preserving the existing minimum category titles in SPD 15, but also recommends future research, stakeholder engagement, and consultation on legal requirements to explore whether the names of minimum categories should be revised and, if so, how.[43]

OMB Decision. OMB concurs with these recommendations and will maintain existing category titles. Continuity in the category titles supports more consistent and comparable data over time. Therefore, the only changes to the minimum category titles will be the addition of the MENA category and the removal of ''Other'' from the ''Native Hawaiian and Other Pacific Islander'' category title. With regard to concerns with the AIAN category title, OMB recognizes the need for further research and reiterates the importance of ensuring that major revisions to the question format, such as substantially changing a category title, are based on rigorous research and public input to avoid inadvertently affecting population estimates, creating breaks in series, or confusing respondents. OMB also notes that SPD 15 is not intended to measure Tribal enrollment or the status of Tribes. The revisions to the category definition are intended to improve estimates of the AIAN population in Federal statistics, and are not intended to in any way diminish or otherwise affect the political relationship between the sovereign Tribes and the Federal Government.

Collecting Data Related to Descent From Persons Who Were Enslaved in the United States

Summary of Public Input. The FRN asked, ''How can Federal surveys or forms collect data related to descent from enslaved peoples originally from the African continent? For example, when collecting and coding responses, what term best describes this population group (*e.g.,* is the preferred term 'American Descendants of Slavery,' 'American Freedmen,' or something else)? How should this group be defined? Should it be collected as a detailed group within the 'Black or African American' minimum category, or through a separate question or other approach?''

The majority of the public input on this subject expressed support for adding a category or question to identify descendants of persons enslaved in the United States. There was support for terms including: Foundational Black American, American Descendant of Slavery, American Freedman or Freedman, Black American, African-American, and Negro or American Negro; however, there was disagreement about which term is preferred. Commenters described the importance of collecting these data and the value for data users and policymakers, pointed to existing research that shows differences in outcome measures, like income and wealth, and stated that descendants of persons who were enslaved in the United States are ethnically distinct from African immigrants.

Other commenters, including civil rights groups, opposed the collection of these data. Commenters expressed concern about the difficulty of verifying that identification is accurate, the usefulness or necessity of the data, the exclusion of other groups of historically enslaved people, and the creation of confusion that could make the Black or African American community harder to count. Related, there was also concern about potential harm to the full and accurate count of the Black or African American population, particularly Black or African American immigrants. The comments noted the lack of in-depth research and engagement with the diverse Black or African American community on terminology, definition, and data collection and coding protocol, as well as implications on the counts of other Black or African American diasporic populations.[44]

Working Group's Final Recommendation. The Working Group did not recommend disaggregation of the Black or African American category by descent from persons who were enslaved in the United States. They identified the disaggregation of Black or African American population groups as a priority area for future research and noted that additional stakeholder engagement is also needed.[45]

OMB Decision. OMB concurs with this recommendation and the Working Group's determination that further research is needed. Individuals and civil rights groups disagreed on whether or how to implement this potential revision. We note that the revised SPD 15 does not prohibit agencies from asking additional questions related to race, ethnicity, ancestry, or other related concepts, including descent from persons who were enslaved in the United States. We also note that the revised SPD 15 maintains the long-standing position that the race and/or ethnicity categories are not to be used as determinants of eligibility for participation in any Federal program.

Additional Comments Not Covered Above

Finally, the Working Group and OMB welcomed other comments and suggestions on any other ways SPD 15 could be revised to produce more accurate and useful data.

Some comments suggested adding a box for people to choose not to identify. OMB maintains the current practice of not allowing agencies to provide a specific response option for ''prefer not to respond,'' in order to maximize the quality, usefulness, and consistency of Federal race and ethnicity data. We note that with very few exceptions, provision of race and ethnicity information is voluntary for respondents.

Other commenters asked OMB to revise the category definitions to include an exhaustive list of nationalities and their associations with the minimum categories for use in coding write-in responses. Aligned with the Working Group's recommendations on category definitions, OMB's revisions do not establish an exhaustive coding list that associates all possible nationalities with one or more of the minimum race and ethnicity categories. While the minimum category definitions and detailed categories in this revision to SPD 15 rely heavily on the concept of nationality, OMB recognizes that nationality is one of several components that contribute to racial and ethnic identity. The standards in SPD 15 are intended to facilitate individual identity to the greatest extent possible while still enabling the creation of consistent and comparable data. OMB specifies in this revision to SPD 15 that when coding write-in data, agencies

[42] A comprehensive review of public input on this question can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[43] Refer to the Working Group's final report and its Annexes 1 and 5 to learn more, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[44] A comprehensive review of public input on this question can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

[45] Refer to the Working Group's final report and its Annex 1 to learn more, available on the **Federal Register**, *https://www.federalregister.gov/,* by searching for ''OMB–2023–0001''.

must adopt practices that maximize comparability between data collected on forms and surveys with and without write-in fields to ensure the comparability of race and ethnicity data across Federal datasets.

Some commenters expressed that SPD 15 is not revised often enough to stay current with shifts in demography and identity. In response, OMB commits to undertaking regular reviews of SPD 15 as described in Section D of this notice.

Some commenters requested the addition of new minimum categories, such as a Mediterranean or Italian category, distinct from the White category. Other commenters also requested the addition of specific checkboxes for a variety of nationalities not covered in the initial proposals.

OMB's revisions to SPD 15 add only one new minimum category, Middle Eastern or North African, the addition of which is supported by many years of research, testing, and stakeholder engagement. OMB will continue to monitor SPD 15 for its effectiveness, and regular reviews will include consideration of potential new minimum categories.

Some commenters requested increasing the maximum characters in the American Indian or Alaska Native write-in field. OMB chose not specify in SPD 15 the length of the write-in fields or how these data are collected in order to allow agencies the flexibility to continue the use of paper forms when necessary and to adopt new data collection practices that may minimize burden, such as using drop-down menus. When collecting write-in data, agencies should seek to minimize burden to respondents and provide as much space as feasible to support complete and accurate responses.[46]

D. Topics for Future Research

The Working Group and OMB identified several areas that require further research before the next review of SPD 15.

1. What data processing procedures, such as coding, editing, and imputation practices, maximize the comparability of data collected across the Federal Government when using different combined question formats, for example between collections with and without write-in fields.

2. How to encourage respondents to select multiple race and/or ethnicity categories when appropriate by enhancing question design and inclusive language, for example by researching methods for ensuring complete and accurate estimates of people who identify as Afro-Latino.

3. How to collect high quality and useful data related to descent from persons who were enslaved in the United States, including research on terminology, question design, data quality, and willingness to provide these data.

4. The optimal order of presentation for minimum categories, including research on rates of data entry error, burden, and respondent preference.

5. Collecting race and ethnicity consistently across different languages and translations of the question.

6. Evaluating the detailed checkboxes as demographics shift over time for their ability to generate useful, high-quality data.

7. How respondents interpret each of the SPD 15 categories and definitions, and the combined race and/or ethnicity question in general, along with potential modifications to minimum category names.

8. How to better align the AIAN category title with its definition while preserving data quality, for example by exploring the use of a more inclusive title such as ''Indigenous peoples of the Americas.''

It is expected that the list of important research topics to examine before the next review will grow as agencies begin implementing these new standards over the coming years. OMB commits to establishing an Interagency Committee on Race and Ethnicity Statistical Standards, to be convened by the Chief Statistician of the United States, that will maintain and carry out a Government-wide research agenda and undertake regular reviews of SPD 15. These reviews will take place on a 10-year cycle and will include opportunity for public input. The review will result in a recommendation to the Chief Statistician of the United States as to whether or not OMB should undertake a revision of SPD 15. Notwithstanding this regular review cycle, OMB may decide at any time to initiate a review of SPD 15.

Richard L. Revesz,

Administrator, Office of Information and Regulatory Affairs.

Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity

This Statistical Policy Directive provides the standards for maintaining, collecting, and presenting race and ethnicity data for all Federal information collection and reporting purposes. The categories in these standards are understood to be socio-political constructs and are not an attempt to define race and ethnicity biologically or genetically. They are not to be used as determinants of eligibility for participation in any Federal program. The standards do not require any agency or program to collect race and ethnicity data; rather they provide a common language for uniformity and comparability in the collection and use of race and ethnicity data by Federal agencies.

The standards have seven minimum categories for data on race and ethnicity: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Middle Eastern or North African, Native Hawaiian or Pacific Islander, and White.

1. Categories and Definitions

The minimum categories for data on race and ethnicity for Federal statistics, program administrative reporting, and civil rights compliance reporting are defined as follows:

American Indian or Alaska Native. Individuals with origins in any of the original peoples of North, Central, and South America, including, for example, Navajo Nation, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, Aztec, and Maya.

Asian. Individuals with origins in any of the original peoples of Central or East Asia, Southeast Asia, or South Asia, including, for example, Chinese, Asian Indian, Filipino, Vietnamese, Korean, and Japanese.

Black or African American. Individuals with origins in any of the Black racial groups of Africa, including, for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, and Somali.

Hispanic or Latino. Includes individuals of Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, and other Central or South American or Spanish culture or origin.

Middle Eastern or North African. Individuals with origins in any of the original peoples of the Middle East or North Africa, including, for example, Lebanese, Iranian, Egyptian, Syrian, Iraqi, and Israeli.

Native Hawaiian or Pacific Islander. Individuals with origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands, including, for example, Native Hawaiian, Samoan, Chamorro, Tongan, Fijian, and Marshallese.

White. Individuals with origins in any of the original peoples of Europe,

[46] A comprehensive review of public input can be found in the Working Group's Annex 4, available on the **Federal Register**, *https://www.federalregister.gov/*, by searching for ''OMB–2023–0001''.

including, for example, English, German, Irish, Italian, Polish, and Scottish.

2. Question Format

Combined question: A combined race and ethnicity question is required for both self-response and proxy data collection. Respondents shall be offered a single combined race and ethnicity question that allows them to select one category or multiple categories. A single selection will be considered a complete response (*e.g.,* Hispanic or Latino respondents are not required to select an additional category).

Detailed responses: The revised SPD 15 requires the collection of detailed data on race and ethnicity beyond the minimum categories, unless an agency determines that the potential benefit of the detailed data would not justify the additional burden to the agency and the public or the additional risk to privacy or confidentiality, and therefore requests an exemption from OIRA. In those cases, Federal agencies must at least use the minimum categories and justify this determination in the agency's PRA information collection review package. In cases where the data collection is not subject to the information collection approval process, a direct request for a variance shall be made to OMB through the Office of Information and Regulatory Affairs (OIRA). Respondents must be offered the following detailed categories for the corresponding minimum categories:

Asian: Chinese, Asian Indian, Filipino, Vietnamese, Korean, and Japanese, Another group (for example, Pakistani, Hmong, Afghan, etc.)

Black or African American: African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, Another group (for example, Trinidadian and Tobagonian, Ghanian, Congolese, etc.)

Hispanic or Latino: Mexican, Puerto Rican, Salvadoran, Cuban, Dominican, Guatemalan, Another group (for example, Colombian, Honduran, Spaniard, etc.)

Middle Eastern or North African: Lebanese, Iranian, Egyptian, Syrian, Iraqi, Israeli, Another group (for example, Moroccan, Yemeni, Kurdish, etc.)

Native Hawaiian or Pacific Islander: Native Hawaiian, Samoan, Chamorro, Tongan, Fijian, Marshallese, Another group (for example, Chuukese, Palauan, Tahitian, etc.)

White: English, German, Irish, Italian, Polish, Scottish, Another group (for example, French, Swedish, Norwegian, etc.)

Whenever possible, the ''Another group'' detail category checkboxes should be replaced with write-in fields that allows respondents to self-identify as shown in *Figure 1* below. Providing a write-in field is especially critical for the American Indian or Alaska Native category, which does not have required detailed categories under these standards. The instructions for the write-in boxes should read ''*Enter, for example,*'' followed by the examples listed in parentheses above. For the American Indian or Alaska Native category, the instructions for the write-in option should read: ''*Enter, for example, Navajo Nation, Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, Aztec, Maya, etc.*''

Instead of the detailed categories listed above and shown in *Figure 1,* agencies may use the detailed categories employed by the U.S. Census Bureau's most recently fielded American Community Survey. Any disaggregated data collected in addition to the detailed categories presented here (for example, a drop-down list for the American Indian or Alaska Native category) must be organized in such a way that the additional categories can be aggregated into the minimum categories. Any other variation to the detailed categories must be specifically authorized by the Office of Management and Budget (OMB) through the Paperwork Reduction Act (PRA) information collection approval process. In those cases where the data collection is not subject to the information collection approval process, a direct request for a variance shall be made to OMB through the Office of Information and Regulatory Affairs (OIRA).

Question instruction. Respondents shall be offered the option of selecting one or more racial and ethnic designations. The question instructions will vary depending on whether there is a write-in field or if there are detailed categories. For questions with detailed categories and no write-in fields, the question instructions should read: ''*What is your race and/or ethnicity? Select all that apply.*'' When write-in fields are provided, the instructions should read: ''*What is your race and/or ethnicity? Select all that apply and enter additional details in the spaces below.*'' When collecting only the minimum categories, the question instructions should read ''*What is your race and/or ethnicity? Select all that apply.*''

Examples. The following three figures provide illustrative examples of question formats that comply with SPD 15. The standards do not specify the order that responses must be presented, but agencies typically order the responses alphabetically, as shown, or by population size. SPD 15 envisions that whenever possible agencies will collect race and ethnicity data with a question format that includes the required minimum categories disaggregated by the required detailed categories as illustrated in Figure 1.

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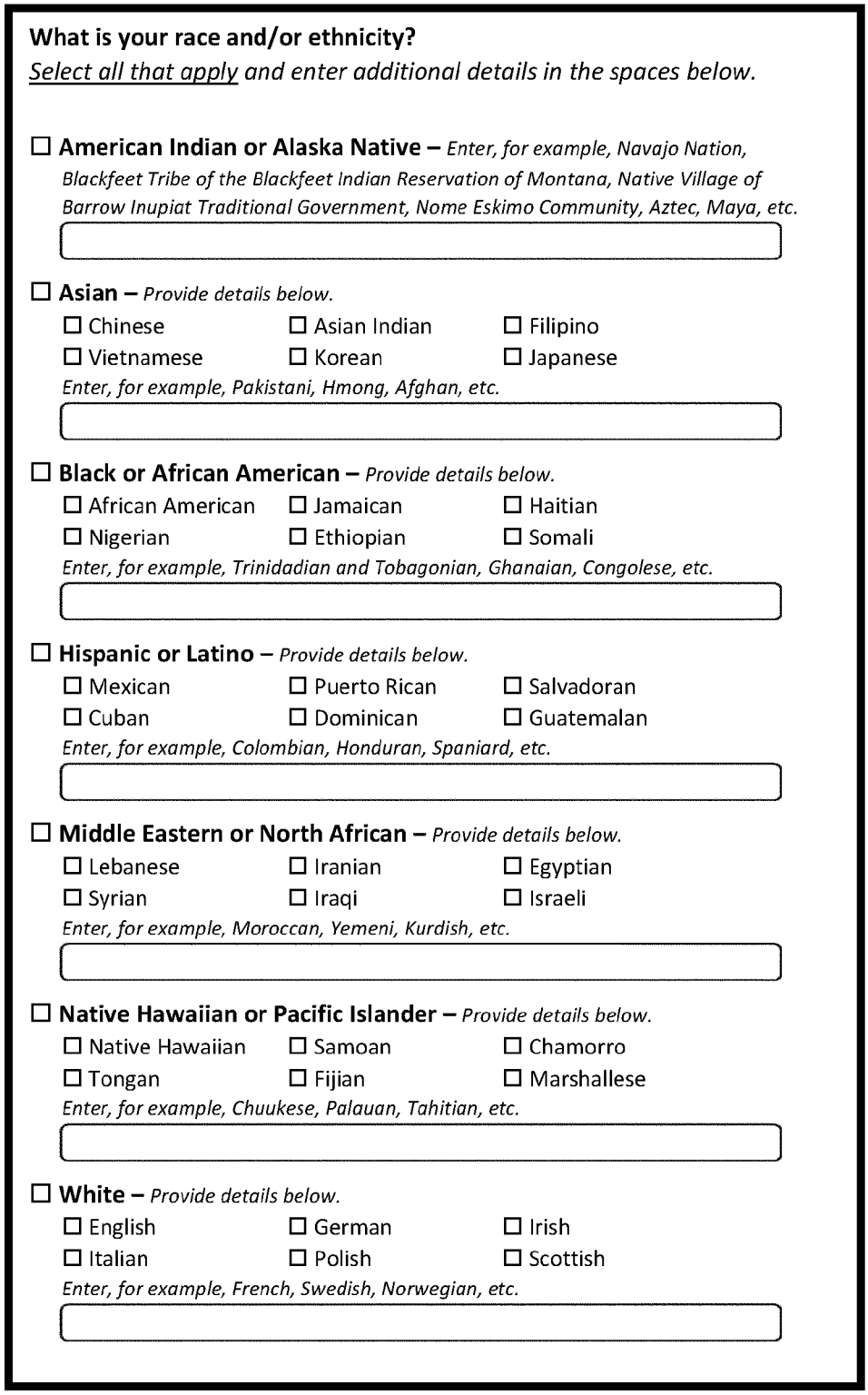
Figure 1. Race and Ethnicity Question with Minimum Categories, Multiple Detailed Checkboxes, and Write-In Response Areas with Example Groups



When an agency receives an OIRA exemption from collecting detailed data, it may use a format that includes only the minimum categories, as shown in Figures 2 and 3.

Figure 2. Race and Ethnicity Question with Minimum Categories Only and Examples

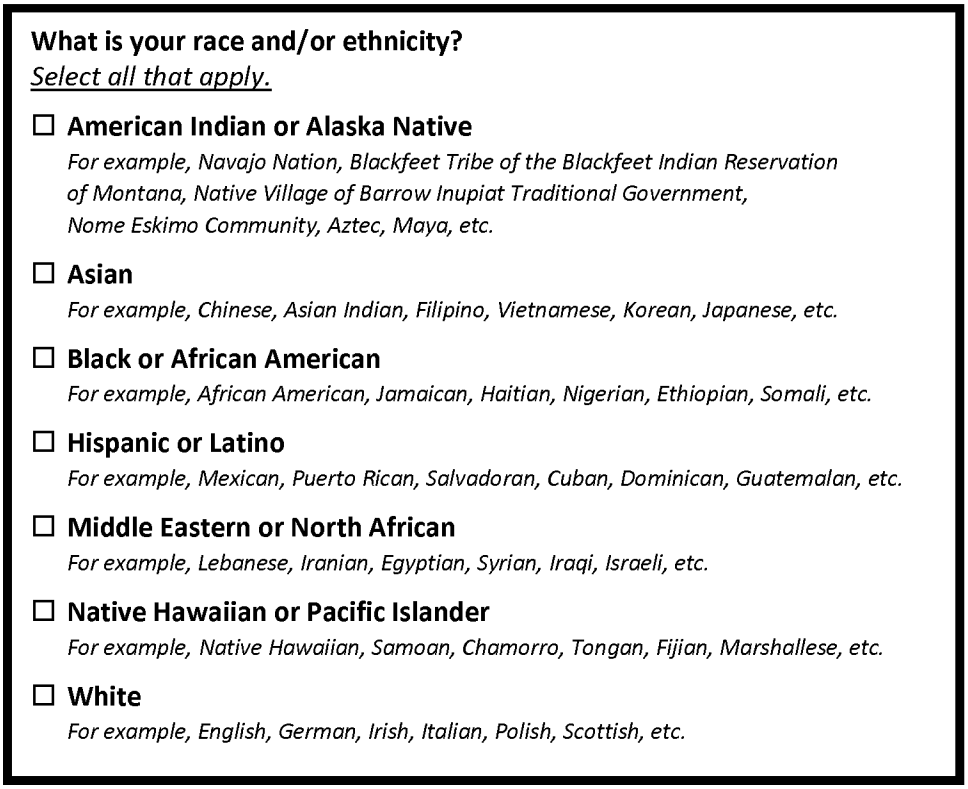
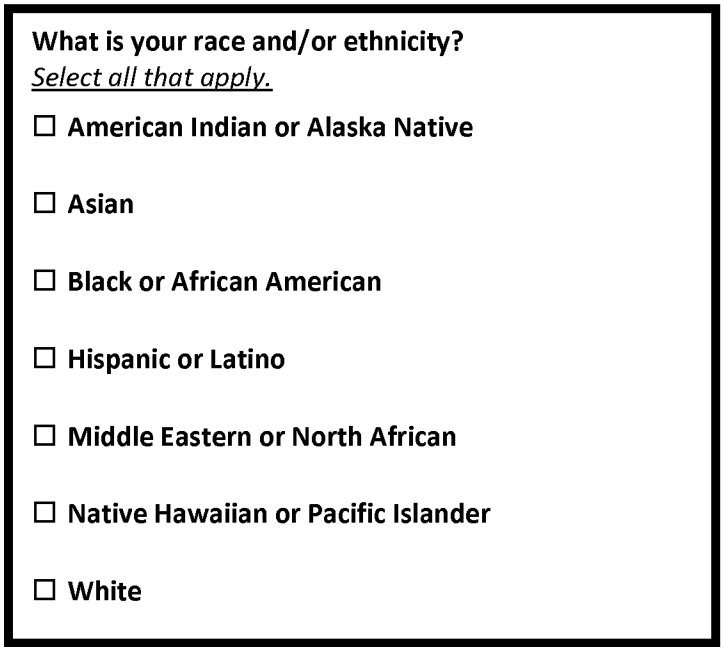


Figure 3. Race and Ethnicity Question with Minimum Categories Only



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When using the minimum categories only, the quality of the data and consistency with other datasets may be improved by providing the respondent with examples as shown in Figure 2. Agencies should provide these examples when feasible over the example in Figure 3 without examples.

3. Data Collection and Editing Procedures

With respect to collection, the seven minimum race and ethnicity categories shall be treated co-equally except if a program or collection effort focuses on a specific racial or ethnic group, and only as approved by OIRA. Collection forms may not indicate to respondents that they should interpret some categories as ethnicities and others as races, or otherwise indicate conceptual differences among the minimum categories.

The *mode* of data collection may offer additional options for collecting detailed data. In electronic modes of collection, for example, agencies may use multiple screens to collect detailed data. The minimum reporting categories may be collected on an initial screen and detailed data for each minimum reporting category the respondent selected may be collected on follow up screens, whether through checkboxes, drop down menus, write-in areas, or another method.

If detailed race and ethnicity data are collected in an interviewer-administered setting, the minimum categories should be asked first, treating each category as a yes/no question, followed by the detailed categories associated with the selected minimum categories.

The *method* of data collection has implications for the quality and fitness for use of the resulting data. Wherever possible, race and/or ethnicity data should be collected through *self-report,* where the respondents directly provide their own race and/or ethnicity. In cases where self-report is not possible, data may be collected by *proxy reporting,* where a person knowledgeable of another's race and/or ethnicity responds on their behalf; by *record matching,* where existing records on an individual that contain their race and/or ethnicity are used to supply the information; or by *observer identification,* where an observer uses their best judgement of the most appropriate race and/or ethnicity categories in which to report an individual.

When data are collected through visual observation, agencies are not required to collect detailed categories and are encouraged to instead use the minimum categories. For statistical survey reporting, agencies must maintain records on the mode and method of data collection, and how nonresponse or other missing data were assigned or allocated, and must make that information available to data users to allow them to evaluate the utility, objectivity, and integrity of the data. Agencies should also maintain and provide this information for administrative, grant, and compliance-related data collections whenever feasible. Agencies should use the terminology in this section when describing the method of collection and should make it a practice to describe the method of data collection in any reports on data collection design or methods.

When coding write-in data, imputing missing data, or otherwise editing responses, agencies must adopt practices that maximize comparability between data collected on forms and surveys with and without write-in fields. Doing so will improve the comparability of race and ethnicity data across Federal datasets. For statistical survey reporting, agencies must maintain records on data processing procedures (such as coding, editing, and imputation practices), and must make that information available to data users to allow them to evaluate the utility, objectivity, and integrity of the data. Agencies should also maintain and provide this information for administrative, grant, and compliance related data collections whenever feasible.

4. Presentation of Data on Race and Ethnicity

The tabulation procedures used by Federal agencies must result in the production of as much information on race and/or ethnicity as possible, including data on people reporting multiple categories. However, Federal agencies must not release race and ethnicity data if doing so would violate agency or Federal policies designed to ensure data quality or protect respondent privacy or confidentiality. When data are presented, Federal agencies are encouraged to use one or more of the three approaches below.

Approach 1. The *alone or in combination* approach combines all individuals belonging to a particular racial or ethnic group (whether alone or in combination with another racial or ethnic group). For example, a respondent who reported being both White and Black or African American would fall into both the ''White alone or in combination'' category and the ''Black or African American alone or in combination'' category. This practice has been in place since the 1997 revision of SPD 15 and is useful if the goal is capturing all people who might face a given life experience (*e.g.,* increased risk of a disease or discrimination). Percentages across the categories sum to greater than 100 percent because the response categories are not mutually exclusive in this approach. The following is an example of the tabulation categories for this approach:

- American Indian or Alaska Native alone or in combination
- Asian alone or in combination
- Black or African American alone or in combination
- Hispanic or Latino alone or in combination
- Middle Eastern or North African alone or in combination
- Native Hawaiian or Pacific Islander alone or in combination
- White alone or in combination

Approach 2. The *most frequent multiple responses* approach reports as many possible race and ethnicity combinations as possible. For example, an agency could report the seven minimum race and ethnicity categories alone, as well as race and ethnicity combinations meeting a specific population threshold or combinations of particular interest, or all observed combinations of multiple race and ethnicity groups. The percentages will sum to 100 percent because the response categories are mutually exclusive. The following is an example of possible tabulation categories for this approach:

- American Indian or Alaska Native alone
- Asian alone
- Black or African American alone
- Hispanic or Latino alone
- Middle Eastern or North African alone
- Native Hawaiian or Pacific Islander alone
- White alone
- American Indian or Alaska Native *and* Hispanic or Latino
- American Indian or Alaska Native *and* White
- Asian *and* Native Hawaiian or Pacific Islander
- Asian *and* White
- Black or African American *and* Middle Eastern or North African
- Black or African American *and* White
- Hispanic or Latino *and* Black or African American
- Hispanic or Latino *and* White
- Middle Eastern or North African *and* Asian
- Middle Eastern or North African *and* White
- Native Hawaiian or Pacific Islander *and* Black or African American
- Native Hawaiian or Pacific Islander *and* White
- All additional Multiracial and/or Multiethnic groups

Approach 3. The *combined Multiracial and/or Multiethnic* approach presents data for those reporting one of the seven race and/or ethnicity

categories alone, and then combines all other respondents reporting multiple race and/or ethnicity categories into an aggregated Multiracial and/or Multiethnic category. This approach will often obscure the specific racial and ethnic diversity of the population (*e.g.,* over half of the population who identify as American Indian or Alaska Native and Native Hawaiian or Pacific Islander may be assigned to the Multiracial and/or Multiethnic group). Therefore, Federal agencies should use this approach in conjunction with another approach (like Approaches 1 or 2) to comply with the requirement to report as much information on race and ethnicity as possible, including data for respondents who reported more than one race and/or ethnicity category. The percentages in this approach will sum to 100 percent because the response categories are mutually exclusive. The following illustrates the tabulation categories used for this approach:

- American Indian or Alaska Native alone
- Asian alone
- Black or African American alone
- Hispanic or Latino alone
- Middle Eastern or North African alone
- Native Hawaiian or Pacific Islander alone
- White alone
- Multiracial and/or Multiethnic

With respect to tabulation and presentation, regardless of approach, the seven minimum race and ethnicity categories shall be treated co-equally except if a program or collection effort focuses on a specific racial or ethnic group, and as approved by OIRA. When tabulating and presenting data, agencies must use a consistent approach across all categories within a single table. If categories must be combined in order to reach sample size thresholds for reporting, those combinations should be labeled with the list of combined categories rather than with ''other.''

5. Use of the Standards for Record Keeping and Reporting

a. Statistical Reporting

These standards shall be used for all Federally sponsored statistical data collections that include data on race and ethnicity. Any variation must be specifically authorized by OIRA through the PRA information collection approval process. In those cases where the data collection is not subject to the information collection clearance process, a direct request for a variance must be made to OIRA.

b. General Program Administrative and Grant Reporting

These standards shall be used for all Federal administrative reporting or record keeping requirements that include data on race and ethnicity. Agencies that cannot follow these standards must request a variance from OIRA. Variances will be considered if the agency can demonstrate that it is not reasonable for the primary reporter to determine race and ethnicity in terms of the specified minimum categories, or that the specific program is directed to only one or a limited number of races and ethnicities.

c. Civil Rights and Other Compliance Reporting

These standards must be used by all Federal agencies for civil rights and other compliance reporting from the public and private sectors and all levels of government. Any variation requiring less detailed data or data which cannot be aggregated into the minimum categories must be specifically approved by OIRA.

6. Effective Date

The provisions of these standards are effective March 28, 2024 for all new record keeping or reporting requirements that include race and ethnicity data. All existing record keeping or reporting requirements should be made consistent with these standards through a non-substantive change request as soon as possible, or at the time they are submitted for extension or revision to OIRA under the PRA, but not later than March 28, 2029.

Within 18 months of publication of these standards, the Chief Financial Officers Act Agencies and the U.S. Equal Employment Opportunity Commission[47] must submit to OMB, through their agency Statistical Officials and in coordination with their agency's Chief Data Officer, Evaluation Officer,[48] Senior Agency Officials for Privacy, and other agency officials as appropriate, an Action Plan on Race and Ethnicity Data describing how they intend to bring their agency collections and publications into compliance with these standards by March 28, 2029. Agencies must make these plans available to the public through their websites at the time of submission to OMB.

[47] The U.S. Equal Employment Opportunity Commission does not currently have a Statistical Official and should submit their Action Plan through their Chief Data Officer.

[48] These three agency officials make up the Data Governance Bodies established under OMB M–19–23, *Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance* (July 10, 2019), *available at https://www.whitehouse.gov/wp-content/uploads/2019/07/m-19-23.pdf.*

[FR Doc. 2024–06469 Filed 3–28–24; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF MANAGEMENT AND BUDGET

Request for Information: Responsible Procurement of Artificial Intelligence in Government

AGENCY: Office of Management and Budget.

ACTION: Request for information: responsible procurement of artificial intelligence in government.

SUMMARY: This request for information on the responsible procurement of artificial intelligence is being issued concurrently with the release of the OMB Memorandum titled *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence* (the ''AI M-memo''). Executive Order 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence,* directed OMB within 180 days of the issuance of the AI M-memo to develop an initial means to ensure that agency contracts for the acquisition of AI systems and services align with the guidance provided in the AI M-memo and advance the other aims identified in the Advancing American AI Act (''AI Act'').

DATES: Responses to this request for information will be accepted for consideration until April 29, 2024.

ADDRESSES: Responses must be submitted electronically through *regulations.gov.* Mailed paper submissions will not be accepted, and electronic submissions received after the deadline may not be considered.

Instructions: Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on how to use *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ'' (*https://www.regulations.gov/faq*).

Privacy Act Statement: OMB is issuing this request for information (RFI) pursuant to Executive Order 14110.[1] Submission of comments in response to this RFI is voluntary. Comments may be used to inform sound decision-making on topics related to

[1] E.O. 14110, Executive Order on Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.

this RFI. Please note that submissions received in response to this notice may be posted in the Federal eRulemaking Portal at *www.regulations.gov* or otherwise released in their entirety, including any personal and business confidential information provided. Do not include in your submissions any information of a confidential nature, such as personal or proprietary information, or any information you would not like to be made publicly available. Comments and commenter information are maintained under the OMB Public Input System of Records, OMB/INPUT/01. The system of records notice accessible at 88 FR 20913 (*https://www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records*) includes a list of routine uses associated with the collection of this information.

Comments containing references, studies, research, and other empirical data that are not widely published should include electronic links to the referenced materials, if they are available online.

Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response. A response to this RFI will not be viewed as a binding commitment to develop or pursue the project or ideas discussed.

FOR FURTHER INFORMATION CONTACT: Please direct questions regarding this Notice to Samantha Hubner at *OFCIO_AI@OMB.eop.gov* with ''AI Procurement RFI'' in the subject line, or by phone at 202–395–0379.

SUPPLEMENTARY INFORMATION: Consistent with Section 7224(d)(1) of the AI Act, this ''initial means'' (see **SUMMARY** section) will at a minimum:

—Address protection of privacy, civil rights, and civil liberties;
—Address the ownership and security of data and other information created, used, processed, stored, maintained, disseminated, disclosed, or disposed of by a contractor or subcontractor on behalf of the Federal Government;
—Include considerations for securing the training data, algorithms, and other components of any artificial intelligence system against misuse, unauthorized alteration, degradation, or rendering inoperable; and
—Address any other issue or concern determined to be relevant by the Director to ensure appropriate use and protection of privacy and Government data and other information.[2]

The Administration has undertaken numerous efforts to advance responsible AI innovation and secure protections for people's rights and safety.

OMB has issued this RFI to help inform its development of an initial means to ensure the responsible procurement of AI by Federal agencies. OMB is specifically asking for information on the questions posed below. However, this list is not intended to limit the scope of topics that may be addressed by submissions. Commenters are invited to provide feedback on any topic believed to have implications for the procurement of AI by Federal agencies.

When responding to one or more of the questions below, please note in the text of your response the number of the question to which you are responding. Commenters should include a page number on each page of their submissions. Commenters are not required to respond to all questions, but OMB asks that comments be limited to no more than eight pages in length.

Strengthening the AI Marketplace

1. How may standard practices and strategies of Federal procurement, such as Statements of Objectives, Quality Assurance Surveillance Plans, modular contracts, use of contract incentives, and teaming agreements,[3] as well as innovative procurement practices, such as those in the Periodic Table of Acquisition Innovations,[4] be best used to reflect emerging practices in AI procurement? Are there additional materials or resources that OMB could provide to vendors or agencies to improve alignment between agency missions and technical requirements?

2. How can OMB promote robust competition, attract new entrants, including small businesses, into the Federal marketplace, and avoid vendor lock-in across specific elements of the technology sector, including data collectors and labelers, model developers, infrastructure providers, and AI service providers? Are there ways OMB can address practices that limit competition, such as inappropriate tying, egress fees, and self-preferencing?

3. Should the Federal Government standardize assessments for the benefits and trade-offs between in-house AI development, contracted AI development, licensing of AI-enabled software, and use of AI-enabled services? If so, how?

4. How might metrics be developed and communicated to enable performance-based procurement of AI? What questions should agencies be asking vendors to determine whether AI is already being used in performance-based services contracts?

Managing the Performance and Risks of AI

5. What access to documentation, data, code, models, software, and other technical components might vendors provide to agencies to demonstrate compliance with the requirements established in the AI M-memo? What contract language would best effectuate this access, and is this best envisioned as a standard clause, or requirements-specific elements in a statement of work?

6. Which elements of testing, evaluation, and impact assessments are best conducted by the vendor, and which responsibilities should remain with the agencies?

7. What if any terms should agencies include in contracts to protect the Federal Government's rights and access to its data, while maintaining protection of a vendor's intellectual property?

8. What if any terms, including terms governing information-sharing among agencies, vendors, and the public, should be included in contracts for AI systems or services to implement the AI M-memo's provisions regarding notice and appeal (sections 5(c)(v)(D) and (E))?

9. How might agencies structure their procurements to reduce the risk that an AI system or service they acquire may produce harmful or illegal content, such as fraudulent or deceptive content, or content that includes child sex abuse material or non-consensual intimate imagery?

10. How might OMB ensure that agencies procure AI systems or services in a way that advances equitable outcomes and mitigates risks to privacy, civil rights, and civil liberties?

David A. Myklegard,

Deputy Federal Chief Information Officer.

Christine J. Harada,

Senior Advisor, Office of Federal Procurement Policy, Performing, by delegation, the duties of the Administrator for Federal Procurement Policy.

[FR Doc. 2024–06547 Filed 3–28–24; 8:45 am]

BILLING CODE 3110–01–P

[2] AI Act, Section 7224 (d) *https://uscode.house.gov/view.xhtml?req=(title:40%20section:11301%20edition:prelim).*

[3] October 2023, Report on Recommendations on Procurement from the National Artificial Intelligence Advisor Committee (NAIAC).

[4] *https://acquisitiongateway.gov/periodic-table.*

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 24–02]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Economic Advisory Council was established as a discretionary advisory committee on October 5, 2018. Its charter was most recently renewed on September 30, 2022, for two additional years. The MCC Economic Advisory Council serves MCC solely in an advisory capacity and provides advice and guidance to MCC economists, evaluators, leadership of the Department of Policy and Evaluation, and senior MCC leadership regarding relevant trends in development economics, applied economic and evaluation methods, poverty analytics, as well as modeling, measuring, and evaluating development interventions. In doing so, the MCC Economic Advisory Council helps sharpen MCC's analytical methods and capacity in support of the agency's economic development goals. It also serves as a sounding board and reference group for assessing and advising on strategic policy innovations and methodological directions in MCC.

DATES: Friday, April 12, 2024, from 10 a.m.–12:30 p.m. EDT.

ADDRESSES: The meeting will be held both in-person at 1099 14th Street NW, Suite 700, Washington, DC 20005 and virtually via WebEx.

FOR FURTHER INFORMATION CONTACT: Mesbah Motamed, 202.521.7874, *MCCEACouncil@mcc.gov* or visit *www.mcc.gov/about/org-unit/economic-advisory-council.*

SUPPLEMENTARY INFORMATION:

Agenda. During this meeting of the MCC Economic Advisory Council, members will receive an overview of MCC's work to fulfill its poverty reduction through economic growth mission and the role of the MCC Economic Advisory Council. The MCC Economic Advisory Council will also discuss issues related to MCC's ongoing program development and implementation, including work related to MCC-funded programs supporting ''last mile'' connections.

Public Participation: The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to participate, please submit your name and affiliation no later than Friday, April 5, 2024, to *MCCEACouncil@mcc.gov* to receive instructions for virtual participation and to be placed on an attendee list.

(Authority: Federal Advisory Committee Act, 5 U.S.C. App.)

Dated: March 25, 2024.

Peter E. Jaffe,

Vice President, General Counsel, and Corporate Secretary.

[FR Doc. 2024–06673 Filed 3–28–24; 8:45 am]

BILLING CODE 9211–03–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 24–01]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Advisory Council was established as a discretionary advisory committee on July 14, 2016. Its charter was most recently renewed for a fourth two-year term on July 7, 2022. The MCC Advisory Council serves MCC solely in an advisory capacity and provides insights regarding innovations in infrastructure, technology, and sustainability; perceived risks and opportunities in MCC partner countries; new financing mechanisms for developing country contexts; and shared value approaches. The MCC Advisory Council provides a platform for systematic engagement with the private sector and other external stakeholders and contributes to MCC's mission—to reduce poverty through sustainable economic growth.

DATES: Thursday, April 25, 2024, from 8:30 a.m.–12:00 p.m. EDT.

ADDRESSES: The meeting will be held in a hybrid format, both in-person at 1099 14th Street NW, Suite 700, Washington, DC 20005 and via conference call.

FOR FURTHER INFORMATION CONTACT: Email *MCCAdvisoryCouncil@mcc.gov,* contact Bahgi Berhane at (202) 772–6362, or visit *https://www.mcc.gov/about/org-unit/advisory-council* for more information.

SUPPLEMENTARY INFORMATION:

Agenda. During the Spring 2024 meeting of the MCC Advisory Council, members will engage with MCC leadership. Additionally, Advisory Council members will discuss highlights from the Blended Finance/Energy and Climate subcommittee meetings and provide advice on the compact development process related to MCC's investment strategy in The Gambia.

Public Participation. The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to attend, please submit your name and affiliation no later than Friday, April 19, 2024, to *MCCAdvisoryCouncil@mcc.gov* to receive instructions on how to attend.

(Authority: Federal Advisory Committee Act, 5 U.S.C. App.)

Dated: March 25, 2024.

Peter E. Jaffe,

Vice President, General Counsel, and Corporate Secretary.

[FR Doc. 2024–06675 Filed 3–28–24; 8:45 am]

BILLING CODE 9211–03–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of April 1, 8, 15, 22, 29, and May 6, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of April 1, 2024

There are no meetings scheduled for the week of April 1, 2024.

Week of April 8, 2024—Tentative

Tuesday, April 9, 2024

10:00 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Celimar Valentin-Rodriguez: 301–415–7124)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 15, 2024—Tentative

There are no meetings scheduled for the week of April 15, 2024.

Week of April 22, 2024—Tentative

Tuesday, April 23, 2024

9:00 a.m. Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Haile Lindsay: 301–415–0616)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of April 29, 2024—Tentative

There are no meetings scheduled for the week of April 29, 2024.

Week of May 6, 2024—Tentative

There are no meetings scheduled for the week of May 6, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 27, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–06864 Filed 3–27–24; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–238; NRC–2024–0055]

United States Maritime Administration; Nuclear Ship Savannah; License Amendment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: License termination plan proposed no significant hazards consideration determination; opportunity to comment; opportunity to request a hearing and to petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NS–1, issued to the United States Maritime Administration (MARAD or the licensee) for the Nuclear Ship Savannah (NS Savannah). The proposed amendment would approve the License Termination Plan (LTP) and add License Condition 2.C.(4) authorizing implementation of the LTP and establishes the criteria for determining when changes to the LTP require prior NRC approval.

DATES: Submit comments by April 29, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Requests for a hearing or petition for leave to intervene must be filed by May 28, 2024.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0055. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tanya E. Hood, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1387; email: *Tanya.Hood@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2024–0055 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0055.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The license amendment request is available in ADAMS under Accession No. ML23298A041.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0055 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating

License No. NS–1 regarding the NS Savannah, located in Baltimore City, Maryland. On October 23, 2023, the NRC received a license amendment request to add a license condition to include the requirements of an LTP for the NS Savannah. The LTP provides details about the known radiological information for the ship, the planned demolition and decommissioning tasks to be completed, and the final radiological surveys and data that must be obtained for termination of the NRC's license for NS Savannah.

Before issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in section 50.92 of title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature and does not involve modification of any plant equipment or affect basic plant operation. The license termination submittal requests the NRC approve a proposed license change document, the LTP, and revisions to it. The document is a detailed plan of how MARAD will satisfy the criteria to allow NRC to terminate the NSS [NS Savannah] license. The NSS reactor is not operational, all reactor fuel has been removed from the site since 1971 and the level of radioactivity in the NSS has significantly decreased from the levels that existed when the 1976 Possession-only License was issued. All safety-related systems are deactivated, disabled, drained and perform no active function. No aspect of the proposed change is an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change is administrative in nature and does not involve physical alteration of plant equipment that was not previously allowed by the License or Technical Specifications. The proposed change does not change the method by which any safety-related system performs its function. All safety-related systems are deactivated, disabled, drained and perform no active function. No new or different types of equipment will be installed. The reactor will remain permanently shutdown and defueled. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change is administrative in nature. NRC approval of the proposed change will have no effect on margins of safety relevant to the ship's defueled and partially dismantled primary and auxiliary reactor systems. As such, no change is being made to safety analysis assumptions, safety limits or safety system settings that would adversely affect plant safety as a result of the proposed change. The proposed change only involves requesting NRC approval of the LTP and revisions to it. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves no significant hazards consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final no significant hazards consideration determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult 10 CFR 2.309. If a petition is filed, the presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place

after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

IV. Electronic Submissions and E-Filing

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated October 23, 2023 (ADAMS Accession No. ML23298A041).

Contact for licensee: Erhard W. Koehler, Senior Technical Advisor, 202–680–2066 or email at *Marad.History@dot.gov.* You may send mail to N.S. Savannah/Pier 13 Canton Marine Terminal, 4601 Newgate Avenue, Baltimore, MD 21224, ATTN: Erhard Koehler.

NRC Branch Chief: Shaun M. Anderson.

Dated: March 25, 2024.

For the Nuclear Regulatory Commission.

Shaun M. Anderson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2024–06665 Filed 3–28–24; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Virtual Public Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act, notice is hereby given that a virtual meeting of the Federal Prevailing Rate Advisory Committee will be held on Thursday, April 18, 2024. There will be no in-person gathering for this meeting.

DATES: The virtual meeting will be held on April 18, 2024, beginning at 10 a.m. (ET).

ADDRESSES: The meeting will convene virtually.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, 202–606–2858, or email *pay policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public. Reports for calendar years 2008 to 2022 are posted at *http://www.opm.gov/fprac.* Previous reports are also available, upon written request to the Committee.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee at Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 7H31, 1900 E Street NW, Washington, DC 20415, (202) 606–2858.

This meeting is open to the public, with an audio option for listening. This notice sets forth the participation guidelines for the meeting.

Meeting Agenda. The committee meets to discuss various agenda items related to the determination of prevailing wage rates for the Federal Wage System. The committee's agenda is approved one week prior to the public meeting and will be available upon request at that time.

Public Participation: The April 18, 2024, meeting of the Federal Prevailing Rate Advisory Committee is open to the public through advance registration. Public participation is available for the meeting. All individuals who plan to attend the virtual public meeting to listen must register by sending an email to *paypolicy@opm.gov* with the subject line ''April 18, 2024'' no later than Tuesday, April 16, 2024.

The following information must be provided when registering:

- Name.
- Agency and duty station.
- Email address.
- Your topic of interest.

Members of the press, in addition to registering for this event, must also RSVP to *media@opm.gov* by April 16, 2024.

A confirmation email will be sent upon receipt of the registration. Audio teleconference information for participation will be sent to registrants the morning of the virtual meeting.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–06739 Filed 3–28–24; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity, RI 30–9, 3206–0138

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, OPM is proposing an extension to a currently approved information collection, OMB Control Number, 3206–0138: RI 30–9—Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity.

DATES: Comments are encouraged and will be accepted until April 29, 2024.

ADDRESSES: Written comments and recommendations for this proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Office of Personnel Management'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to this information collection activity, please contact: Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW, Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or via electronic mail at *RSPublicationsTeam@opm.gov* or by fax at (202) 606–0910 or via telephone at (202) 936–0401.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the public with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Agency assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Agency's information collection requirements and provide the requested data in the desired format. This information collection (OMB No. 3206–0138) was previously published in the **Federal Register** on May 3, 2023, at 88 FR 27926, allowing for a 60-day public comment period. No comments were received for this collection.

The purpose of this notice is to allow an additional 30 days for public comments. OPM is soliciting comments on the proposed information collection request (ICR) that is described below. OMB is especially interested in public comment addressing the following issues: (1) whether this collection is necessary to the proper functions of the Agency; (2) whether this information will be processed and used in a timely manner; (3) the accuracy of the burden estimate; (4) ways the Agency can enhance the quality, utility, and clarity of the information to be collected; and (5) ways the Agency can minimize the burden of this collection on the respondents, including through the use of information technology. Written comments received in response to this notice will be considered public records.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Reinstatement of Disability Annuity Previously Terminated Because of Restoration to Earning Capacity.

OMB Number: 3206–0138.

Affected Public: Individuals or Households.

Number of Respondents: 200.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 200.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

[FR Doc. 2024–06674 Filed 3–28–24; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–212 and CP2024–218; MC2024–213 and CP2024–219]

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:* April 2, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *https://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–212 and CP2024–218; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 51 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 25, 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:* April 2, 2024.

2. *Docket No(s).:* MC2024–213 and CP2024–219; *Filing Title:* USPS Request to Add Priority Mail Express Contract 100 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 25, 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:* April 2, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–06709 Filed 3–28–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20166 and #20167; PENNSYLVANIA Disaster Number PA–20002]

Administrative Declaration Amendment of a Disaster for the Commonwealth of Pennsylvania

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 01/25/2024.

Incident: Severe Storms and Flooding.

Incident Period: 09/09/2023.

DATES: Issued on 03/25/2024.

Physical Loan Application Deadline Date: 04/24/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 10/25/2024.

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: The notice of the Administrative disaster declaration for the Commonwealth of Pennsylvania, dated 01/25/2024, is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 04/24/2024.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–06667 Filed 3–28–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking

approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before April 29, 2024.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/*PRAMain. Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: Small Business Administration Surety Bond Guarantee Program was created to encourage surety companies to provide bonding for small contractors. The information collected on the form from surety companies will be used to update the status of successfully completed contracts and to provide a final accounting of contractor and surety fees due to SBA.

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control 3245–0395.

Title: Quarterly Contract Completion Report.

Description of Respondents: Surety companies.

SBA Form Number: 2461.

Estimated Number of Respondents: 41.

Estimated Annual Responses: 164.

Estimated Annual Hour Burden: 164.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–06677 Filed 3–28–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #0164 and #0165; South Carolina Disaster Number SC–20003]

Administrative Declaration of a Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of South Carolina dated 03/22/2024.

Incident: Tornado.

Incident Period: 01/09/2024.

DATES: Issued on 03/22/2024.

Physical Loan Application Deadline Date: 05/21/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2024.

ADDRESSES: *Visit the MySBA Loan Portal at https://lending.sba.gov* to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Vanessa Morgan, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal *https://lending.sba.gov* or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at *disastercustomerservice@sba.gov* or by phone at 1–800–659–2955 for further assistance.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Bamberg.

Contiguous Counties: South Carolina: Allendale, Barnwell, Colleton, Hampton, Orangeburg.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.375
Homeowners without Credit Available Elsewhere	2.688
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
For Economic Injury:	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 20164C and for economic injury is 201650.

The State which received an EIDL Declaration is South Carolina.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2024–06671 Filed 3–28–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. Docket No. FD 36652]

Green Eagle Railroad—Construction and Operation Exemption—Line of Railroad in Maverick County, Texas

AGENCY: Surface Transportation Board.

ACTION: Notice of intent (NOI) to prepare an environmental impact statement (EIS); notice of initiation of the scoping process; request for comments on scope of EIS, and notice of public scoping meetings.

SUMMARY: On December 14, 2023, Green Eagle Railroad, LLC (GER), a subsidiary of Puerto Verde Holdings (PVH), filed a petition with the Surface Transportation Board (Board) for authority to construct and operate approximately 1.3 miles of new common carrier rail line (the Line) in Maverick County, Texas. The Line would extend from the United States/Mexico border to the existing Union Pacific Railroad (UP) connection at approximate UP milepost 31. The Line would be part of a larger project proposed by PVH, the Puerto Verde Global Trade Bridge (PVGTB Project), consisting of a new trade corridor for freight rail and commercial motor vehicles between Piedras Negras, Coahuila, Mexico, and Eagle Pass, Texas, United States. The Board's Office of Environmental Analysis (OEA) determined that the construction and operation of the Line has the potential to result in significant environmental

impacts; therefore, the preparation of an EIS is appropriate pursuant to the National Environmental Policy Act (NEPA). In addition to the Line, the PVGTB Project in the United States includes an approximately 1.3-mile roadway and other infrastructure as described below. Only the Line requires licensing authority from the Board. The Line and the roadway would cross the Rio Grande River via two new bridges. Separately from the Board's final decision on GER's petition, the proposed bridges would require permits from the U.S. Coast Guard (USCG) and the U.S. Army Corps of Engineers (USACE). USCG will participate as a Cooperating Agency in the EIS process.

DATES: Comments on the scope of the EIS are due by April 29, 2024. In addition to receiving written comments on the scope of the EIS, OEA will host three public scoping meetings: two in-person public meetings on April 16, 2024, and a virtual public meeting on April 23, 2024. See below for additional details.

ADDRESSES: Interested parties are encouraged to file scoping comments electronically through the Board's website at *www.stb.gov* by clicking on the ''File an Environmental Comment'' link. Scoping comments submitted by mail should be addressed to: Andrea Poole, Surface Transportation Board, c/o VHB, Attention: Environmental Filing, Docket No. FD 36652, 1001 G Street NW, Suite 1125, Washington, DC 20001. Please refer to Docket No. FD 36652 in all correspondence, including E-filings, addressed to the Board.

FOR FURTHER INFORMATION CONTACT: Andrea Poole, Office of Environmental Analysis, Surface Transportation Board, c/o VHB, 1001 G Street NW, Suite 1125, Washington, DC 20001; send an email to *contact@greeneaglerreis.com;* or call either (202) 493–0624 or (888) 319–2337. If you require an accommodation under the Americans with Disabilities Act in order to submit a comment, please call (202) 245–0245. For information about the environmental review process for the Line and the EIS, you may visit the Board-sponsored Project website at *www.greeneaglerreis.com* or the Board's website at *www.stb.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Need for the Proposed Action

Board authority is required for the construction and operation of a new common carrier railroad line such as this (49 U.S.C. 10901; 49 U.S.C. 10502). The proposed federal action here is the Board's decision to authorize with appropriate conditions or to deny GER's request for authority to construct and operate the Line. The Line is not a federal government-proposed or sponsored project. Thus, the project's purpose and need should be informed by both the private applicant's goals and the Board's enabling statute—the Interstate Commerce Act as amended by the ICC Termination Act, Public Law 104–188, 109 Stat. 803 (1996).

GER's purpose for constructing and operating the Line is to develop an economically viable solution to meet the need for border infrastructure improvements at Eagle Pass that increases safety and facilitates binational trade between the United States and Mexico. According to GER, the Line would resolve rail and truck congestion, reduce cross border wait times and route rail traffic around the urban center of Eagle Pass.

Proposed Action

The Line would be a secure, double-tracked rail corridor with no roadway/rail at-grade crossings extending from the interchange point with UP at approximate UP milepost 31 on the Eagle Pass Subdivision near UP's Clark's Park yard for approximately 1.3 miles southwest to the United States/Mexico border. The Line would cross the Rio Grande River on a newly constructed bridge. The Line would be fully fenced, monitored, and patrolled by security personnel. In addition to the Line, which requires Board authority, the PVGTB Project would include a new commercial motor vehicle roadway that would cross the Rio Grande on a new bridge; a control tower; and inspection facilities for both the Line and the roadway. U.S. Customs and Border Protection (CBP) would operate the inspection facilities. PVH would either lease the facilities to CBP; transfer ownership of the facilities to the General Services Administration (GSA); or operate the inspection facilities as a privately owned Central Examination Station as outlined in 19 CFR part 118. A variety of commodities would move to and from Mexico over the Line and roadway. Trains operating on the Line would consist of approximately 150 cars with two locomotives on the front end and one on the rear end, for an approximate train length of 9,300 feet. Parts of the PVGTB Project other than the Line are outside the jurisdiction of the Board but will be considered as appropriate when evaluating environmental impacts of the Line in the EIS.

Alternatives

The preliminary alternatives being considered by OEA include authorizing the Line (Proposed Action) and the No-Action alternative. OEA reviewed alternative routes for the Line that GER had evaluated. Compared to the Proposed Action, these routes appear to raise substantial operational feasibility issues and would have greater environmental impacts than the Proposed Action, including a greater number of residences and structures displaced, more stream crossings, potential for several roadway/rail at-grade road crossings, and impacts to a park. Therefore, OEA intends to analyze only the Proposed Action and the No-Action alternative in the EIS. OEA welcomes oral and written comments on alternatives during scoping.

EIS and Board Process

The first stage of the EIS process is scoping. Scoping is an open process for determining the range of issues that should be examined and assessed in the EIS. Following scoping, OEA will prepare a Draft EIS that analyzes the construction and operation of the Line, including those issues raised during the scoping period, as appropriate. The Draft EIS will identify and analyze reasonable alternatives and set forth OEA's preliminary recommendations for environmental mitigation measures. The Draft EIS will be made available for public and agency review and comment for 45 days. OEA will then prepare and issue a Final EIS that addresses the substantive comments on the Draft EIS and sets forth OEA's final recommended environmental mitigation. The Board will consider the Draft EIS, the Final EIS, public comments, and any final environmental mitigation proposed by OEA, as well as the transportation merits, in reaching its decision on GER's request for authority to construct and operate the Line.

The scope of the issues that will be analyzed in the Draft EIS may include potential impacts related to:

- Transportation
- Air quality and climate change
- Noise and vibration
- Biological resources
- Water resources
- Visual resources
- Cultural resources
- Land use
- Geology and soils
- Energy resources
- Socioeconomics
- Environmental justice
- Cumulative impacts
- Transboundary impacts, as appropriate

Anticipated Permits and Other Authorizations

Based on information provided by GER and PVH and through OEA's ongoing discussions with federal and state agencies, OEA anticipates the following permits and authorizations would be required to construct and operate the Line and the PVGTB Project:

- Clean Water Action section 401 certification and section 402 and 404 permits
- Rivers and Harbors Act section 9 and 10 permits
- Endangered Species Act section 7 compliance
- National Historic Preservation Act section 106 compliance
- International Boundary and Water Commission authorization for work in the bed and bank of the international stretch of the Rio Grande
- Presidential Permit
- Texas General Land Office (GLO) easement authorization for the bed of the Rio Grande to the international boundary line
- Maverick County development permits, including a floodplain development permit

Schedule for the Decision-Making Process

Following issuance of the NOI, OEA will coordinate with USCG to develop the Draft EIS. Formal consultation under the Endangered Species Act (16 U.S.C. 1531–1544), if required, and compliance with Section 106 of the National Historic Preservation Act (54 U.S.C. 306108), may affect some of the anticipated timeframes. A preliminary schedule for this proceeding is set forth below:

- Scoping: Second Quarter 2024
- Draft EIS and Public and Agency Comment Period: Second Quarter 2025
- Final EIS: Fourth Quarter 2025
- Board's final decision and all required permits from other agencies: Prior to construction

Request for Comments

In addition to announcing that the Board will prepare an EIS for this proposed action, through this NOI, OEA is soliciting written comments on the scope of the EIS, identification of potential alternatives, and information and analyses relevant to the EIS. As part of the scoping process, OEA will hold public meetings to gather input from the public (see dates and locations below). After the close of the scoping comment period on April 29, 2024, OEA will review and address all comments as part of the environmental review process.

Scoping Meeting Dates: OEA will hold three public scoping meetings on the following dates (times in Central Standard Time).

- Tuesday, April 16, 2024, 11:30 a.m. to 1:30 p.m. in person at the Eagle Pass International Center for Trade, 3295 Bob Rogers Drive, Eagle Pass, TX 78852
- Tuesday, April 16, 2024, 6 to 8 p.m. in person at the same location
- Tuesday, April 23, 2024, 6 to 8 p.m. online (for information on how to access the online meeting, visit *www.greeneaglerreis.com*).

The public meetings will consist of an open house session followed by a public comment session. At the public comment session, OEA will give a brief presentation and then members of the public will have the opportunity to speak. Each participant will be given three minutes in which to provide comments. Oral comments will be recorded. Persons wishing to make an oral comment are encouraged, but not required, to pre-register. To pre-register or for more information on how to attend the public scoping meetings, please visit the public involvement page on the Board-sponsored Project website (*www.greeneaglerreis.com*). OEA will consider all comments equally regardless of how the comments are received. It is not necessary to attend a public scoping meeting to provide scoping comments. OEA will be accepting comments through the scoping comment period, which ends on April 29, 2024.

Submitting Comments: Interested parties are encouraged to file their scoping comments electronically through the Board's website at *www.stb.gov* by clicking on the ''File an Environmental Comment'' link. Please refer to Docket No. FD 36652 in all correspondence, including E-filings, addressed to the Board. Scoping comments may also be submitted by mail to: Andrea Poole, Surface Transportation Board, c/o VHB, Attention: Environmental Filing, Docket No. FD 36652, 1001 G Street NW, Suite 1125, Washington, DC 20001. All comments received will become part of the public record and will be available on the Board's website.

By the Board, Danielle Gosselin, Director, Office of Environmental Analysis.

Eden Besera,

Clearance Clerk.

[FR Doc. 2024–06688 Filed 3–28–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Funding Opportunity for the FY 2023–FY 2024 Consolidated Rail Infrastructure and Safety Improvements Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of funding opportunity (NOFO or notice).

SUMMARY: This notice details the application requirements and procedures to obtain grant funding for eligible projects under the Consolidated Rail Infrastructure and Safety Improvements Program for Fiscal Years 2023 and 2024. This notice solicits applications for program funds made available by the Consolidated Appropriations Act, 2023, Consolidated Appropriations Act, 2024, and the Infrastructure Investment and Jobs Act. This notice also solicits applications for projects under the Magnetic Levitation Technology Deployment Program, funded by the Consolidated Appropriations Act, 2021. The opportunity described in this notice is made available under Assistance Listings Number 20.325, ''Consolidated Rail Infrastructure and Safety Improvements,'' and Assistance Listings Number 20.318, ''Maglev Project Selection—SAFETEA–LU.''

DATES: Applications for funding under this solicitation are due no later than 11:59 p.m. EST, May 28, 2024. Applications that are incomplete or received after 11:59 p.m. EST, on May 28, 2024 will not be considered for funding. See section D of this notice for additional information on the application process.

ADDRESSES: Applications must be submitted via *www.Grants.gov*. Only applicants who comply with all submission requirements described in this notice and submit applications through *www.Grants.gov* will be eligible for award. For any supporting application materials that an applicant is unable to submit via *www.Grants.gov* (such as oversized engineering drawings), an applicant may submit an original and two (2) copies to Ms. Deborah Kobrin, Office of Rail Program Development, Federal Railroad Administration, 1200 New Jersey Avenue SE, Room W38–212, Washington, DC 20590. However, due to delays caused by enhanced screening of mail delivered via the U.S. Postal Service, applicants are advised to use other means of conveyance (such as

courier service) to ensure timely receipt of materials before the application deadline.

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, please contact the FRA NOFO Support program staff via email at *FRA-NOFO-Support@dot.gov*. If additional assistance is needed, you may contact Ms. Deborah Kobrin, Supervisory Transportation Specialist, at email: *Deborah.kobrin@dot.gov* or telephone: 202–420–1281; Ms. Jenny Zeng, Transportation Industry Analyst, at email: *Jenny.Zeng@dot.gov* or telephone: 857–330–2481; in FRA's Office of Rail Program Development.

SUPPLEMENTARY INFORMATION:

Notice to applicants: FRA recommends that applicants read this notice in its entirety prior to preparing application materials. Definitions of key terms used throughout the NOFO are provided in section A(2) below. These key terms are capitalized throughout the NOFO. There are several administrative and specific eligibility requirements described herein with which applicants must comply. Additionally, applicants should note that the required Project Narrative component of the application package may not exceed 25 pages in length.

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SUMMARY OVERVIEW OF KEY INFORMATION—CONSOLIDATED RAIL INFRASTRUCTURE AND SAFETY IMPROVEMENTS PROGRAM (CRISI)

Issuing Agency	Federal Railroad Administration, U.S. Department of Transportation
Program Overview	The purpose of the CRISI Program is to invest in a wide range of projects within the United States to improve railroad safety, efficiency, and reliability; mitigate congestion at both intercity passenger rail and freight rail chokepoints to support more efficient travel and goods movement; enhance multi-modal connections; and lead to new or substantially improved Intercity Passenger Rail Transportation corridors.
Eligible Applicants	• A State (including the District of Columbia). • A group of States. • An Interstate Compact. • A public agency or publicly chartered authority established by 1 or more states. • A political subdivision of a State. • Amtrak or another rail carrier that provides intercity rail passenger transportation (as rail carrier and intercity rail passenger transportation are defined in 49 U.S.C. 24102). • A Class II railroad or Class III Railroad, including any holding company of a Class II or Class III railroad (as those terms are defined in 49 U.S.C. 20102). • An association representing one or more railroads described in paragraph (g). • A federally recognized Indian Tribe. • Any rail carrier or rail equipment manufacturer in partnership with at least one of the entities described in paragraphs (a) through (e). • The Transportation Research Board and any entity with which it contracts in the development of rail-related research, including cooperative research programs. • A University transportation center engaged in rail-related research. • A non-profit labor organization representing a class or craft of employees of rail carriers or rail carrier contractors.
Eligible Project Types	• Deployment of railroad safety technology, including positive train control and rail integrity inspection systems. • A capital project as defined in 49 U.S.C. 22901(2), except that a project shall not be required to be in a State rail plan developed under 49 U.S.C. chapter 227. • A capital project identified by the Secretary as being necessary to address congestion or safety challenges affecting rail service. • A capital project identified by the Secretary as being necessary to reduce congestion and facilitate ridership growth in intercity passenger rail transportation along heavily traveled rail corridors. • A highway-rail grade crossing improvement project. • A rail line relocation or improvement project. • A capital project to improve short-line or regional railroad infrastructure. • The preparation of regional rail and corridor service development plans and corresponding environmental analyses. • Any project that the Secretary considers necessary to enhance multimodal connections or facilitate service integration between rail service and other modes. • The development and implementation of a safety program or institute designed to improve rail safety. • The development and implementation of measures to prevent trespassing and reduce associated injuries and fatalities. • Any research that the Secretary considers necessary to advance any particular aspect of rail-related capital, operations, or safety improvements. • Workforce development and training activities. • Research, development, and testing to advance and facilitate innovative rail projects. • The preparation of emergency plans for communities through which hazardous materials are transported by rail. • Rehabilitating, remanufacturing, procuring, or overhauling locomotives, provided that such activities result in a significant reduction of emissions. xvii. Deployment of Magnetic Levitation Transportation Projects.
Funding	The total funding available for awards under this NOFO is up to $2,478,391,050.
Deadline	Deadline: May 28, 2024.

A. Program Description

1. Overview

The Consolidated Rail Infrastructure and Safety Improvements (CRISI) Program is authorized under 49 U.S.C. 22907. The purpose of the CRISI Program is to invest in a wide range of projects within the United States to improve railroad safety, efficiency, and reliability; mitigate congestion at both intercity passenger rail and freight rail chokepoints to support more efficient travel and goods movement; enhance multi-modal connections; and lead to new or substantially improved Intercity Passenger Rail Transportation corridors. This program invests in railroad infrastructure projects that improve safety, support economic vitality (including through opportunities for small businesses), create good-paying jobs with the free and fair choice to join a union, increase capacity and supply chain resilience, apply innovative technology, and explicitly address climate change, gender equity and racial equity. The purpose of this notice is to solicit applications for the competitive CRISI Program provided in Consolidated Appropriations Act, 2023, division L, title I, Public Law 117–328 (2023 Appropriation), Consolidated Appropriations Act, 2024, division F, title I, Public Law 118–42 (2024 Appropriation) and the 2023 and 2024 advance appropriation in the Infrastructure Investment and Jobs Act, division J, title II, Public Law 117–58 (2021).

In addition to the funding made available for the CRISI Program, this NOFO includes funds for eligible projects under the Magnetic Levitation Technology Deployment Program (Maglev Grants Program) and solicits applications for eligible project costs for the deployment of magnetic levitation transportation projects. The Maglev Grants Program is authorized under and funded in the Consolidated Appropriations Act, 2021, division L, title I, Public Law 116–260 (2021 Appropriation), consistent with the language in section 1307(a) through (c) of Public Law 109–59 (SAFETEA–LU), as amended by section 102 of Public Law 110–244 (Technical Corrections Act) (23 U.S.C. 322 note). Applications for Maglev Grants Program funding that also seek funding under the CRISI Program will be evaluated consistent with the selection criteria for the Maglev Grants Program.

This NOFO integrates FRA's Guidance on Development and Implementation of Railroad Capital Projects (88 FR 2163, Jan. 12, 2023) (FRA's Capital Projects Guidance) which assists project sponsors in developing effective and complete capital projects by defining the project development process and describing implementation tools, processes, and documentation that may be required for a grant. FRA's Capital Projects Guidance can be found here: *https://railroads.dot.gov/elibrary/fra-guidance-development-and-implementation-railroad-capital-project*.

In December 2023, FRA updated its standard grant agreement terms and conditions. The new FRA grant agreement consists of three parts: Attachment 1: Standard Terms and Conditions, Attachment 2: Project-Specific Terms and Conditions, and Terms and Conditions Exhibits. The updated agreements are available at: *https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements*.

The Department seeks to fund projects that advance the Administration Priorities of safety, equity, climate and sustainability, workforce development, job quality, and wealth creation as described in the U.S. Department of Transportation (DOT) Strategic Plan,[1] and in executive orders, which are described in section E.

2. Definitions of Key Terms

Terms defined in this section are capitalized throughout this notice.

a. ''Benefit-Cost Analysis'' (''BCA'') is a systematic, data-driven, and transparent analysis comparing monetized project benefits and costs, using a no-build baseline and properly discounted present values, including concise documentation of the assumptions and methodology used to produce the analysis; a description of the baseline, data sources used to project outcomes, and values of key input parameters; basis of modeling including spreadsheets, technical memos, etc.; and presentation of the calculations in sufficient detail and transparency to allow the analysis to be reproduced and for sensitivity of results evaluated by FRA. All project submissions to the CRISI program require a Benefit-Cost Analysis. Please refer to the updated Benefit-Cost Analysis Guidance for Discretionary Grant Programs (2024) prior to preparing a BCA at *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance-discretionary-grant-programs-0*. In addition, please also refer to the BCA FAQs on FRA's website for rail specific examples of how to apply the BCA Guidance for Discretionary Grant Programs to CRISI applications.[2]

b. ''Capital Project'' means a project for acquiring, constructing, improving, or inspecting rail equipment, track and track structures, or a rail facility, including expenses incidental to the acquisition or construction including pre-construction activities (such as designing, engineering, location surveying, mapping, acquiring rights-of-way) and related relocation costs,[3] environmental studies, and all work necessary for FRA to consider the effects of the proposed project under the National Environmental Policy Act; highway-rail grade crossing improvements; communication and signalization improvements; and rehabilitating, remanufacturing, or overhauling rail rolling stock and rail facilities.[4]

c. ''Commuter Rail Passenger Transportation'' means short-haul rail passenger transportation in metropolitan and suburban areas usually having reduced fare, multiple rides, and commuter tickets, and morning and evening peak period operations, consistent with 49 U.S.C. 24102(3). The term does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

d. ''Construction'' means the Lifecycle Stage of a Capital Project during which the Capital Project is completely built, installed and placed into use. Construction activities include, but are not limited to, physical construction and installation of the Capital Project, including testing of equipment, workforce training, and start-up testing. Construction activities occur after a project has completed Final Design.

e. ''Deployment of Magnetic Levitation Transportation Projects'' means, for purposes of this NOFO, transportation systems employing magnetic levitation that would be capable of safe use by the public at a speed in excess of 240 miles per hour.[5]

[1] Additional information about the USDOT Strategic Plan, Research, Development and Technology Strategic Plan can be found here: *https://www.transportation.gov/dot-strategic-plan*.

[2] Additional information about the BCA FAQs can be found here: *https://railroads.dot.gov/rail-network-development/planning/project-planning/benefit-cost-analysis-guidance*.

[3] FRA will consider right-of-way acquisition only for applications which seek Construction funding.

[4] For any project that includes purchasing Intercity Passenger Rail rolling stock, applicants are encouraged to use a standardized approach to the procurement of passenger rail equipment, such as the specifications developed by the Next Generation Corridor Equipment Pool Committee or a similar uniform process.

[5] This definition only applies to projects eligible under the Maglev Grants Program. These projects may also be eligible for funding under the CRISI program consistent with 49 U.S.C. 22907(c).

f. ''Final Design'' or ''FD'' means the Lifecycle Stage of a Capital Project during which the Capital Project design is advanced to be ready for Construction. This is when the agreements necessary to construct and operate the Capital Project are secured, acquisition of right-of-way is completed, and final engineering plans and specifications necessary for construction of the project are produced. Final Design activities occur after a Capital Project has completed Project Development, and before a Capital Project can advance to Construction. Final Design is described in FRA's Capital Projects Guidance.

g. ''Intercity Rail Passenger Transportation'' means rail passenger transportation, except commuter rail passenger transportation. see 49 U.S.C. 22901(3), and in this NOFO, it has the same meaning as ''Intercity Passenger Rail Service'' and ''Intercity Passenger Rail Transportation''.

h. ''Lifecycle Stage'' means each of the consecutive stages of a Capital Project as it is developed and implemented that include Systems Planning, Project Planning, Project Development, Final Design, Construction, and Operation. Each sequential stage involves specific activities. Lifecycle Stages are described in FRA's Capital Projects Guidance.

i. ''Major Project'' means a Capital Project with a capital cost estimate equal to or greater than $500 million and with at least $100 million in federal assistance under the CRISI Program. Major Project is described in FRA's Capital Project Guidance.

j. ''National Environmental Policy Act'' or ''NEPA'' (42 U.S.C. 4321 *et seq.*) is a Federal law that requires Federal agencies to analyze and document the environmental impacts of a proposed action in consultation with appropriate Federal, Tribal, state, and local authorities, and with the public. Environmental review under NEPA consists of an Environmental Impact Statement (EIS), Environmental Assessment (EA) or Categorical Exclusion (CE). The NEPA class of action depends on the potential environmental impacts of the proposed action. For purposes of this NOFO, NEPA also includes all related Federal laws and regulations including the Clean Air Act, section 4(f) of the Department of Transportation Act, section 7 of the Endangered Species Act, and section 106 of the National Historic Preservation Act. Additional information regarding FRA's environmental processes and requirements is located at *https://railroads.dot.gov/rail-network-development/environment/environment.* NEPA consultation and documentation are considered part of the Project Development Lifecycle Stage, as described in FRA's Capital Projects Guidance.

k. ''Positive Train Control System'' (''PTC'') is defined by 49 CFR 270.5 to mean a system designed to prevent train-to-train collisions, overspeed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position, as described in 49 CFR part 236, subpart I.

l. ''Preliminary Engineering'' or ''PE'' means engineering design to define a Capital Project, including identification of all environmental impacts and design of all critical project elements at a level sufficient to ensure reliable cost estimates and schedules. The PE development process starts with specific project design alternatives that allow for the assessment of a range of rail improvements, specific alignments, and project designs. PE is considered part of the Project Development Lifecycle Stage, as described in FRA's Capital Projects Guidance.

m. ''Project Development'' means the Lifecycle Stage of a Capital Project during which the project sponsor conducts design, environmental, and other studies to ensure the Capital Project is ready for implementation. Project Development activities occur after a project sponsor has completed Project Planning, and before a Capital Project can advance to Final Design. Project Development is described in FRA's Capital Projects Guidance.

n. ''Project Management Plan'' means, under this NOFO, a document that describes how the Capital Project will be implemented, monitored, and controlled to help the project sponsor effectively, efficiently, and safely deliver the project on time, within budget, and at the highest appropriate quality. Project Management Plan is described in FRA's Capital Projects Guidance.

o. ''Project Planning'' is the first Lifecycle Stage of a Capital Project during which the project sponsor identifies Capital Project concepts to adequately address transportation needs and opportunities identifies and compares costs, benefits, and impacts of project options; identifies the impacted environmental resources and engages with interested parties, agencies, and infrastructure owners. Project Planning activities are completed before a Capital Project advances to Project Development. Project Planning is described in FRA's Capital Projects Guidance and consistent with the 2023 Appropriation.

p. ''Rural Area'' means any area that is not within an area designated as an urban area with at least 50,000 in population by the most recent decennial Census.

q. ''Rural Project'' means a project in which all or the majority of the project (determined by the geographic location or locations where the majority of the project funds will be spent) is located in a Rural Area.

r. ''Significant Reduction of Emissions'' as used in this NOFO, results from rehabilitating, remanufacturing, procuring, or overhauling: (1) a Non-Tiered, Tier 0, or Tier 1 locomotive to at least the Tier 2 level; (2) a Tier 2 or Tier 3 locomotive to at least a Tier 4 level; or (3) any locomotive to an all-electric, renewable diesel, battery-powered, or other renewable energy locomotive. Non-tiered, Tier 0 and Tier 1 locomotives must be retired if replaced. Emission standards and Tier designations for line-haul and switch locomotives are set by the U.S. Environmental Protection Agency, 40 CFR part 1033, subpart B.

s. ''Systems Planning'' means the first Lifecycle Stage when planning activities that support the development of a railroad capital plan, a state or regional rail plan, or a corridor service development plan that may identify a Capital Project, are completed. System Planning is described in FRA's Capital Projects Guidance.

t. ''Relocation'' means moving a rail line vertically or laterally to a new location. Vertical Relocation refers to raising above the current ground level or sinking below the current ground level of a rail line. Lateral Relocation refers to moving a rail line horizontally to a new location.

B. Federal Award Information

1. Available Award Amount & Special Funding Set-Asides

The total funding available for awards under this NOFO is up to $2,478,391,050, made available by the 2023 Appropriation, 2024 Appropriation, 2023 and 2024 advance appropriations provided in IIJA, and remaining unawarded 2022 CRISI balances.[6] The total funding also

[6] In addition to the $2,478,391,050 in CRISI funding made available in this NOFO, $80,727,922 in CRISI funds will be separately made available for Special Transportation Circumstances grants, $129,383,997 in CRISI funds will be set aside for the purposes, and in amounts, specified for Community Project Funding/Congressionally Directed Spending in the table entitled ''Community Project Funding/Congressionally Directed Spending'' included in the joint explanatory statement, and $55,179,159 in CRISI

Continued

includes $2,000,000 in FY 2021 funding for the Maglev Grant Program, as detailed in this section. Should additional CRISI Program funds become available after the release of this NOFO, FRA may elect to award such additional funds to applications received under this NOFO. Any awards made under this NOFO are subject to the availability of appropriated funds.

Further, of the available award amount listed above, certain funding amounts are set aside for the following purposes under this NOFO:

a. Rural Set-Aside—At least $657,393,500, or 25 percent of the total amount appropriated of the CRISI Program funds, will be made available for projects located in Rural Areas as required in 49 U.S.C. 22907(g). FRA will consider a project to be in a Rural Area if all or the majority of the project (determined by the geographic location or locations where the majority of the project funds will be spent) is located in a Rural Area.

b. Intercity Passenger Rail Set-Aside—At least $150,000,000 will be made available for Capital Projects as defined by 49 U.S.C. 22901(2) that support the development of new Intercity Passenger Rail Service routes including alignments for existing routes, as described in 49 U.S.C. 22907(c)(2) and as required in the 2023 Appropriation.

c. Trespassing Measures Set-Aside—At least $32,724,132 [7] will be made available for the development and implementation of measures to prevent trespassing and reduce associated injuries and fatalities, as described in 49 U.S.C. 22907(c)(11) [8] and as required in the 2023 Appropriation.

d. Magnetic Levitation Deployment Projects Set-Aside—$2,000,000 in 2021 Appropriation funding will be made available for the Deployment of Magnetic Levitation Transportation Projects. In addition, $5,000,000 will be made available from the 2023 Appropriation for preconstruction planning activities and capital costs related to the deployment of magnetic levitation transportation projects.

e. Workforce Development Set-Aside—At least $5,000,000 will be made available for workforce development and training activities, as described in 49 U.S.C. 22907(c)(13) and as required by the 2023 Appropriation.

funds will be set aside for award and program oversight conducted by FRA.

[7] This amount includes $25,000,000 in Fiscal Year 2023 Annual Appropriation and $7,724,132 in carryover funding from Fiscal Year 2022.

[8] FRA will give preference to projects that are located in the top 25 counties with the most pedestrian trespasser casualties.

2. Award Size

FRA anticipates making multiple awards with the available funding. FRA may not be able to award grants to all eligible applications even if they meet or exceed the stated evaluation criteria (see section E, Application Review Information). FRA strongly encourages applicants to seek funding for the appropriate Lifecycle Stage of a Capital Project, consistent with the application tracks in section C(3)(c) below. Where an application includes multiple Lifecycle Stages of a Capital Project, FRA may decide to only award funds for what it determines is the appropriate Lifecycle Stage.

In addition, projects may require more funding than is available. FRA encourages applicants to propose a project that has operational independence, or a component of such project, which can be completed and implemented with funding under this NOFO as a part of the total project cost together with other, non-Federal sources. (See section C(3)(c) for more information). While there is no predetermined minimum or maximum dollar threshold for individual awards, FRA encourages applications that request funding in excess of $1,000,000.

Applicants are not limited in the number of projects for which they seek funding. Applicants submitting more than one application are requested to submit a priority ranking of their submitted applications that is consistent with each application package submitted.

3. Award Type

FRA will make awards for projects selected under this notice through grant agreements and/or cooperative agreements. Grant agreements are used when FRA does not expect to have substantial Federal involvement in carrying out the funded activity. Cooperative agreements allow for substantial Federal involvement in carrying out the agreed upon investment, including technical assistance, review of interim work products, and increased program oversight. The term ''grant'' is used throughout this document and is intended to reference funding awarded through a grant agreement or a cooperative agreement.

The funding provided under this NOFO will be made available to grantees on a reimbursable basis. Applicants must certify that their expenditures are allowable, allocable, reasonable, and necessary to the approved project before seeking reimbursement from FRA. Additionally, the grantee is expected to expend matching funds at the required percentage concurrent with Federal funds throughout the life of the project.

The new FRA grant agreement consists of three parts: Attachment 1: Standard Terms and Conditions, Attachment 2: Project-Specific Terms and Conditions, and Terms and Conditions Exhibits. The grant agreement templates are available at: *https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements.* These templates are subject to revision.

4. Concurrent Applications

DOT and FRA may concurrently solicit applications for transportation infrastructure projects for several financial assistance programs. Applicants may submit applications requesting funding for a particular project to one or more of these programs. In the application for funding under this NOFO, applicants must indicate the other program(s) to which they submitted an application for funding the entire project or certain components, as well as highlight new or revised information in the application responsive to this NOFO that differs from the previously submitted application(s).

C. Eligibility Information

This section of the notice explains applicant eligibility, cost sharing and matching requirements, project eligibility, and project component operational independence. Applications that do not meet the requirements in this section are ineligible for funding. Instructions for submitting eligibility information to FRA are detailed in section D of this NOFO.

1. Eligible Applicants

The following entities are eligible applicants for all CRISI projects under this notice: [9]

a. A State (including the District of Columbia).

b. A group of States.

c. An Interstate Compact.

d. A public agency or publicly chartered authority established by one or more States.

e. A political subdivision of a State.

f. Amtrak or another rail carrier that provides intercity rail passenger transportation (as rail carrier and intercity rail passenger transportation are defined in 49 U.S.C. 24102).

g. A Class II railroad or Class III railroad, including any holding

[9] For applications seeking funding under the Maglev Grant Program, only a State, States, or an authority designated by one or more States are eligible to receive funding under this NOFO.

company of a Class II or Class III railroad (as those terms are defined in 49 U.S.C. 20102).[10]

h. An association representing one or more railroads described in paragraph (g).

i. A federally recognized Indian Tribe.

j. Any rail carrier or rail equipment manufacturer in partnership with at least one of the entities described in paragraphs (a) through (e).

k. The Transportation Research Board and any entity with which it contracts in the development of rail-related research, including cooperative research programs.

l. A University transportation center engaged in rail-related research.

m. A non-profit labor organization representing a class or craft of employees of rail carriers or rail carrier contractors.

Amounts awarded from the 2023 and 2024 Appropriation for otherwise eligible projects that implement or sustain Positive Train Control Systems are not subject to the limitation in 49 U.S.C. 22905(f) and may therefore be awarded for commuter rail passenger transportation projects. FRA may transfer such projects to the appropriate agency to administer.

The applicant serves as the primary point of contact for the application, and if selected, as the recipient of the grant award. An application may identify entities that are not eligible applicants as project partners.

2. Cost Sharing and Matching

The Federal share of total costs for CRISI Program projects funded under this NOFO shall not exceed 80 percent. The estimated total cost of a project must be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment and/or facilities. Additionally, in preparing estimates of total project costs, applicants are encouraged to use FRA's cost estimate guidance documentation, ''Capital Cost Estimating: Guidance for Project Sponsors,'' which is available at: *https://www.fra.dot.gov/Page/P0926.* Project sponsors should account for the impact of factors such as inflation as the applicant prepares their scope, schedule, and budget.

The minimum 20 percent non-Federal share may be comprised of public sector (*e.g.,* State or local) or private sector funding. FRA will not consider any Federal financial assistance, or any non-Federal funds already expended (or otherwise encumbered) toward the matching requirement, unless such sources are compliant with 2 CFR part 200. In-kind contributions, including the donation of services, materials, and equipment, may be credited as a project cost in a uniform manner consistent with 2 CFR 200.306. In addition, applicants may count costs incurred for Preliminary Engineering associated with highway-rail grade crossing improvement projects and trespassing prevention projects as described in 49 U.S.C. 22907(c)(5) and (11), respectively, as part of the total project costs. Such costs are eligible as non-Federal share or for reimbursement, even if they were incurred before project selection for award, consistent with 49 U.S.C. 22907(h)(4).[11] Such costs must have been incurred no earlier than November 15, 2021, and must be otherwise compliant with 2 CFR part 200 and the requirements of this CRISI Program.

If Amtrak or another rail carrier is an applicant under this CRISI Program, Amtrak or such other rail carrier, as applicable, may use ticket and other revenues generated from its operations and other sources to satisfy the non-Federal share requirements.

Funding under this NOFO may not be used for costs that are included in or used to meet cost sharing or matching requirements of any other Federally financed award or program. If the applicant is seeking additional funding for a project that has already received Federal financial assistance, costs associated with the scope of work for the existing Federal award are not eligible for funding under this NOFO. Only new scope elements/activities (*e.g.,* new deliverables) are eligible for funding under this NOFO.

Before applying, applicants should carefully review the principles for cost sharing or matching in 2 CFR 200.306. See section D(2)(a)(iii) for required application information on non-Federal match and section E for further discussion of FRA's consideration of matching funds in the review and selection process. FRA will approve pre-award costs incurred after announcement of awards consistent with 2 CFR 200.458, as applicable. See section D(6). Cost sharing or matching may be used only for eligible expenses for authorized Federal award purposes.

All contracts for projects financed with Federal funds will be subject to applicable Federal requirements. Applicants that have entered into contracts for a proposed project prior to award must ensure that applicable Federal requirements are included in the contract in the event the project is selected and Federal funds are obligated.

3. Eligible Projects

a. The Following Are Eligible Under This NOFO

i. Deployment of railroad safety technology, including positive train control (PTC) and rail integrity inspection systems. PTC examples include: back office systems; wayside, communications and onboard hardware equipment; software; equipment installation; spectrum; any component, testing and training for the implementation of PTC systems; and interoperability. Maintenance and operating expenses incurred after a PTC system is placed in revenue service are ineligible. Railroad safety technology and rail integrity inspection system examples include: broken rail detection and warning systems; track intrusion systems; and hot box detectors, wheel impact load detectors, and other safety improvements.[12]

ii. A capital project as defined in 49 U.S.C. 22901(2), except that a project shall not be required to be included in a State rail plan developed under 49 U.S.C. chapter 227.

iii. A capital project identified by the Secretary as being necessary to address congestion or safety challenges affecting rail service.[13]

iv. A capital project identified by the Secretary as being necessary to reduce congestion and facilitate ridership growth in intercity passenger rail transportation along heavily traveled rail corridors.[14]

v. A highway-rail grade crossing improvement project, including installation, repair, or improvement of grade separations, railroad crossing signals, gates, and related technologies, highway traffic signalization, highway

[10] Consistent with 49 U.S.C. 20102, a Class II and Class III railroad is defined as an entity that is a railroad carrier (under 49 U.S.C. 20102(3)) with an annual carrier operating revenue that meets the threshold amount for Class II and Class III carriers, as determined by the Surface Transportation Board in 49 CFR 1201.1–1.

[11] FRA interprets the language in 49 U.S.C. 22907(h)(4) to permit FRA to reimburse grantees for Preliminary Engineering costs on Highway-rail grade crossing projects incurred before the date of project selection, if the costs would be permitted as part of total project costs if incurred after the date of project selection and are consistent with 2 CFR part 200.

[12] Only costs for FD and Construction stages and forward are eligible within this eligibility category.

[13] FRA interprets ''capital project'' in this section to mean a Capital Project as defined in this NOFO. For example, a track improvement project that also addresses congestion or safety issues.

[14] FRA interprets ''capital project'' in this section to mean a Capital Project as defined in this NOFO. For example, an intercity passenger rail track project on a heavily trafficked corridor.

lighting and crossing approach signage, roadway improvements such as medians or other barriers, railroad crossing panels and surfaces, and safety engineering improvements to reduce risk in quiet zones or potential quiet zones.

vi. A rail line relocation or improvement project.

vii. A capital project to improve short-line or regional railroad infrastructure.

viii. The preparation of regional rail and corridor service development plans and corresponding environmental analyses.[15]

ix. Any project that the Secretary considers necessary to enhance multimodal connections or facilitate service integration between rail service and other modes, including between intercity rail passenger transportation and intercity bus service or commercial air service.[16]

x. The development and implementation of a safety program or institute designed to improve rail safety.

xi. The development and implementation of measures to prevent trespassing and reduce associated injuries and fatalities. Examples include: trespass-related Capital Projects (such as physical barriers, fencing, or equipment), trespassing enforcement activities, and outreach campaigns resulting in trespasser deterrence and prevention.

xii. Any research that the Secretary considers necessary to advance any particular aspect of rail-related capital, operations, or safety improvements.

xiii. Workforce development and training activities, coordinated to the extent practicable with the existing local training programs supported by the Department of Transportation, the Department of Labor, and the Department of Education.[17]

xiv. Research, development, and testing to advance and facilitate innovative rail projects, including projects using electromagnetic guideways in an enclosure in a very low-pressure environment.

xv. The preparation of emergency plans for communities through which hazardous materials are transported by rail.

xvi. Rehabilitating, remanufacturing, procuring, or overhauling locomotives, provided that such activities result in a significant reduction of emissions.

xvii. Deployment of Magnetic Levitation Transportation Projects.[18] Project eligibility is further provided in Track 5, as described in section C(3)(c)(v).

b. Project Component

If an applicant requests funding for a component or set of components of a larger Capital Project, the project component(s) included in the application must be attainable with the award amount and comply with all eligibility requirements described in section C. In addition, the component(s) must enable independent analysis and decision making, as determined by FRA, under NEPA (*i.e.,* have independent utility, connect logical termini, and not restrict the consideration of alternatives for other reasonably foreseeable rail projects).

c. Application Tracks

Applicants are not limited in the number of projects for which they seek funding. FRA generally evaluates applications in Tracks based on the Lifecycle Stages of a Capital Project. While applications covering multiple Lifecycle Stages are not precluded, FRA generally expects that applications identify only one of the following tracks for an eligible proposed project:

- Track 1—Systems Planning and Project Planning;
- Track 2—Project Development;
- Track 3—FD/Construction;
- Track 4—Research, Workforce Development, Safety Programs and Institutes (Non-Railroad Infrastructure); or
- Track 5—Deployment of Magnetic Levitation Transportation Projects.

FRA strongly encourages applicants to seek funding for the appropriate Lifecycle Stage of a Capital Project, consistent with these application tracks. To the extent possible, applicants should describe their projects consistent with FRA's Capital Projects Guidance, which provides a detailed description of each Lifecycle Stage and its required activities: *https://railroads.dot.gov/elibrary/fra-guidance-development-and-implementation-railroad-capital-project.*

If an application seeks funding under more than one application Track for multiple Lifecycle Stages, FRA may award funds for the application Track and corresponding Lifecycle Stage(s) it determines most appropriate based on project readiness information. Applicants are directed to identify the project components and estimated amount of Federal funding requested for each Lifecycle Stage. If an application selected for award includes multiple Lifecycle Stages, FRA will require the grantee to complete the Lifecycle Stages in the order consistent with FRA's Capital Projects Guidance.

i. *Track 1—Systems Planning and Project Planning:* Track 1 consists of Systems Planning and/or Project Planning specific to an eligible Capital Project. Systems Planning examples include the technical analyses and associated environmental analyses that support the development of railroad capital plans, state rail plans, regional rail plans, and corridor service development plans, including: Identification of alternatives, rail network planning, market analysis, travel demand forecasting, revenue forecasting, railroad system design, railroad operations analysis and simulation, equipment fleet planning, station and access analysis, conceptual engineering and capital programming, operating and maintenance cost forecasting, capital replacement and renewal analysis, and economic analysis. Example activities for Project Planning include: the development of a purpose and need statement; completion of conceptual engineering and other design; documentation showing that project alternatives were considered; completion of an environmental resource inventory and potential environmental concerns analysis; scale design drawings; public and stakeholder involvement; completion of an order-of-magnitude project cost estimate; and for Major Projects, completion of an initial Project Management Plan. Project Planning projects funded under this NOFO must be sufficiently developed when complete to support Project Development activities.

ii. *Track 2—Project Development:* Track 2 consists of projects for eligible Project Development activities. Example activities include: completion of PE and architectural or other design; PE drawings and specifications (scale drawings at the 30 percent design level, including track geometry as appropriate); design criteria, schematics and/or track charts that support the development of PE; work that can be funded in conjunction with developing PE, such as operations modeling, surveying, project work/management

[15] These are planning activities normally performed during the Systems Planning Lifecycle Stage. Consistent with the 2023 Appropriations, railroad project-level planning activities are also eligible.

[16] FRA interprets ''project'' in this section to mean a Capital Project as defined in this NOFO.

[17] Workforce development, training and related eligible activities are not limited to those coordinated with the existing local training programs supported by the Department of Transportation, the Department of Labor, and the Department of Education.

[18] This category covers projects that are eligible under the Maglev Grants Program. Projects under this category may also be eligible to receive CRISI Program funds, to the extent the application complies with all CRISI Program requirements. Applications for funding under both Programs will be evaluated consistent with the selection criteria for the Maglev Grants Program.

plans, preliminary cost estimates, and preliminary project schedules; completion of environmental review; and completion of applicable project management documentation (such as a project management plan, schedule, capital cost estimate, and financial plan). Project Development projects funded under this NOFO must first demonstrate completion of Project Planning elements prior to Project Development funds being awarded and be sufficiently developed when complete to support FD or Construction activities.

iii. *Track 3—FD/Construction:* Track 3 consists of projects for eligible FD and Construction activities. Applicants must complete all necessary Planning and Project Development stages, including PE and NEPA requirements, prior to moving to the FD/Construction stage of a project. FD activities may include completion of the FD documentation, acquisition of right-of-way,[19] resolving remaining uncertainties or risks associated with changes to the design and scope of the Capital Project; addressing procurement processes; and updating/completing the applicable project management documentation (such as a Project Management Plan, schedule, capital cost estimate, and financial plan).[20] Construction activities may include physical construction and installation of the capital project, including procurement and manufacturing of vehicles and equipment, project administration, testing of equipment (*e.g.,* signal equipment and rolling stock), systems integration testing, workforce training, system certification, procurement of insurance, provision of warrantees, pre-revenue service, and start-up testing. Prior to obligation, applicants selected for funding for FD/Construction must demonstrate completion of applicable Systems Planning and Project Planning and Project Development activities, consistent with FRA's Capital Projects Guidance.

iv. *Track 4—Research, Workforce Development, Safety Programs, and Institutes (Non-Railroad Infrastructure):* Track 4 consists of projects not falling within Tracks 1–3, or 5, and includes workforce development activities, research, safety programs or institutes designed to improve rail safety that clearly demonstrate the expected positive impact on rail safety and research, development and testing to advance innovative rail projects. Sufficient detail must be provided on what the project will accomplish, over what duration as well as the applicant's capability to achieve the proposed outcomes. Funding under this track may be sought for projects extending over multiple fiscal years. Examples include initiatives for improving rail safety, training, preparation of hazardous materials emergency plans, trespass enforcement activities, and outreach campaigns resulting in trespasser deterrence and prevention. Applicants with proposed projects at the FRA Transportation Technology Center (TTC), located in Pueblo, Colorado, must demonstrate there is appropriate participation from relevant stakeholders, at the time of application.

v. *Track 5—Deployment of Magnetic Levitation Transportation Projects:* Track 5 consists of eligible projects that (1) involve a segment or segments of a high-speed ground transportation corridor; (2) result in an operating transportation facility that provides a revenue producing service; (3) are approved by the Secretary based on an application submitted to the Secretary of Transportation by a State or authority designated by one or more States. Eligible project costs are: (1) The capital cost of the fixed guideway infrastructure of a Maglev project including land acquisition, support structures, guideways, propulsion equipment and other components attached to guideways, power distribution facilities (including substations), control and communications facilities, access roads, and storage, repair, and maintenance facilities and (2) preconstruction planning activities. Eligible project costs exclude new stations and rolling stock, as well as costs incurred solely for land or right-of-way acquisition (even if such acquisition is to secure future operational right-of-way). Applicants applying under Track 5 will be evaluated under the additional Maglev Grants Program criteria, even if also applying for CRISI Program funding. Please see section E(2)(b) for further details.

d. Rural Project

FRA will consider a project to be in a Rural Area if all or the majority of the project (determined by geographic location(s) where the majority of the project funds will be spent) is located in a Rural Area. However, in the event FRA elects to fund a component of the project, then FRA will reevaluate whether the project is in a Rural Area.

D. Application and Submission Information

Required documents for the application are outlined in the following paragraphs. Applicants must complete and submit all components of the application for the application to be reviewed by FRA. An applicant that fails to submit all required documentation prior to the closing period of the notice may have its application deemed incomplete and will not advance to evaluation review. See section D(2) for the required documents and information for an application package. FRA welcomes the submission of additional relevant supporting documentation, such as planning, engineering, and design documentation, and letters of support from partnering organizations, which will not count against the Project Narrative 25-page limit.

1. Address To Request Application Package

Applicants may access application materials at *https://www.Grants.gov* and must submit all application materials in their entirety through *https://www.Grants.gov* no later than 11:59 p.m. EST, on May 28, 2024. Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Additional information about the registration process is available at: *https://www.grants.gov/applicants/applicant-registration.*

Applicants are strongly encouraged to apply early to ensure that all materials are received before the application deadline. FRA reserves the right to modify this deadline. General information for submitting applications through *Grants.gov* can be found at: *https://www.fra.dot.gov/Page/P0270.* FRA is committed to ensuring that information is available in appropriate alternative formats to meet the requirements of persons who have a disability. If you require an alternative version of files provided or paper copies of materials, please contact Ms. Laura Mahoney, Office of the Chief Financial Officer, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; email: *laura.mahoney@dot.gov;* or telephone: 202–578–9337.

The E-Biz point of contact (E-Biz POC) at the applicant's organization

[19] FRA will only award funds for right-of-way (ROW)/property acquisition activities if the proposed project also includes construction activities consistent with the Construction Lifecycle Stage. FRA will not fund ROW acquisition activities independently or if proposed project only includes pre-construction activities or Lifecycle Stages (*i.e.,* Project Planning, Project Development, or Final Design).

[20] Applicants selected for funding are encouraged to submit the following before obligation: an updated Project Management Plan (including a schedule, capital cost estimate, and financial plan), as grantees will be expected to develop a Project Management Plan under the grant agreement. See FRA's Capital Projects Guidance, Section V—Project Management for additional information.

must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

If an applicant has difficulty at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *https://www.grants.gov/support.*

2. Content and Form of Application Submission

FRA strongly advises applicants to read this section carefully. Applicants must submit all required information and components of the application package to be considered for funding. Applications that are not submitted on time or do not contain all required documentation will not be considered for funding. To support the application, applicants may provide additional relevant and available optional supporting documentation that may have been developed by the applicant, especially such documentation that provides evidence of completion of the appropriate Lifecycle Stage(s) of a Capital Project. Additionally, applicants selected to receive funding must satisfy the requirements in 49 U.S.C. 22905, including FRA's Buy America requirement and conditions explained in part at *https://www.fra.dot.gov/page/P0185* and further in section F.2 of this notice. Required documents and information for an application package include the following:

Application information	NOFO section for guidance
Project Narrative	See D.2.a.
Statement of Work	See D.2.b.i.
Benefit-Cost Analysis	See D.2.b.ii.
Environmental Compliance Documentation	See D.2.b.iii.
Draft Agreement required under 49 U.S.C. 22905(c)(1), if applicable	See D.2.b.iv.
SF 424—Application for Federal Assistance[21]	See D.2.b.v.
SF 424A—Budget Information for Non-Construction or SF 424C—Budget Information for Construction	See. D.2.b.vi.
SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction	See D.2.b.vii.
FRA's F 30—Certifications Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying.	See D.2.b.viii.
FRA F 251—Applicant Financial Capability Questionnaire	See D.2.b.ix.
SF LLL—Disclosure of Lobbying Activities, if applicable	See D.2.b.x.

a. Project Narrative

This section describes the minimum content the applicant is required to provide in the Project Narrative section of the grant application. The Project Narrative must follow the basic outline below to address the program requirements and assist evaluators in locating relevant information.

I. Cover Page	See D.2.a.i.
II. Project Summary	See D.2.a.ii.
III. Grant Funds, Sources and Uses of Project Funds.	See D.2.a.iii.
IV. Applicant Eligibility Criteria.	See D.2.a.iv.
V. Project Eligibility Criteria	See D.2.a.v.
VI. Detailed Project Description.	See D.2.a.vi.
VII. Project Location	See D.2.a.vii.
VIII. Evaluation and Selection Criteria.	See D.2.a.viii.
IX. Project Implementation and Management.	See D.2.a.ix.

The applicant must provide the content listed above in a narrative statement. The Project Narrative may not exceed 25 pages in length (excluding cover pages, table of contents, and supporting documentation). When possible, applicants should submit supporting documents via website links rather than hard copies. If supporting documents are submitted, applicants must clearly identify the relevant portion of the supporting document with the page numbers of the cited information in the Project Narrative. The Project Narrative must adhere to the following outline.

i. *Cover Page:* include a cover page that lists the following elements in either a table or formatted list:

Project Title	
Applicant Name	
Amount of CRISI Program Funding Requested under this NOFO	$:
Amount of Proposed Non-Federal Match	$:
Other Sources of Federal funding, if applicable	Provide funding source and amount.
	$:
Source(s) of Proposed Non-Federal Match	
Total Project Cost	$:
Was a Federal Grant Application Previously Submitted for this Project?	Yes/No. If yes, please specify the program, funding year and project title of the previous application, and identify any differences between the applications.
City(ies), County(ies), State(s) Where the Project is Located	
Is the Project Located in a Rural Area?	Yes/No.
Congressional District(s) Where the Project is Located	
Application Track(s) proposed to be funded by this NOFO?	
Lifecyle Stage(s) proposed to be funded by this NOFO?	

[21] The amount requested from the CRISI program on the SF–424 is the official record of request, and therefore must be consistent with the amount requested in the Project Narrative and Statement of Work documents, including the breakdown of Federal and Non-Federal sources. For applications with discrepancies, FRA will defer to the funding amount in the SF–424.

Current Lifecycle Stage and Anticipated completion of current Lifecycle Stage?	
Is the Project located on real property owned by someone other than the applicant?	If yes, list real property owners and the nature of the property interest.
Host Railroad/Infrastructure Owner(s) of Project Assets;	
Other impacted Railroad(s)	
Tenant Railroad(s), if applicable	
If applicable, is a 49 U.S.C. 22905-compliant Railroad Agreement executed or pending?	Yes/No/Pending.
Is the project currently programmed in ANY medium- or long-range planning document: *For example, State rail plan, or interregional intercity passenger rail systems planning study, State Freight Plan, TIP, STIP, MPO Long Range Transportation Plan, State Long Range Transportation Plan, etc.*?.	Yes/No, and if yes, specify.
Is the project located on a potential corridor selected for the Corridor Identification and Development Program? [22].	Yes/No, if yes, specify the corridor(s).
Is this a project eligible under 49 U.S.C. 22907(c)(2) that supports the development of new intercity passenger rail service routes including alignments for existing routes?.	Yes/No.
Is this a project eligible under 49 U.S.C. 22907(c)(11) that supports the development and implementation of measures to prevent trespassing and reduce associated injuries and fatalities?.	Yes/No.
If YES to the previous question, is this project located in a county identified in FRA's National Strategy to Prevent Trespassing on Railroad Property?.	Yes/No.
Is the application seeking consideration for funding under the Maglev Grants Program?	Yes/No.

ii. *Project Summary:* Provide a brief 4–6 sentence summary of the proposed project. Include challenges the proposed project aims to address and summarize the intended outcomes and anticipated benefits that will result from the proposed project.

iii. *Grant Funds, Sources and Uses of Project Funds:*

Project budgets should show how different funding sources will share in each activity and present the data in dollars and percentages. The budget should identify other Federal funds the applicant is applying for, has been awarded, or intends to use. Funding sources should be grouped into three categories: non-Federal, CRISI request, and other Federal with specific amounts for each funding source. As shown in the table format below, the applicant should indicate the amount in dollars and percentages of CRISI or Maglev Grants Program funding requested, the amount of non-Federal match, source(s) for all non-Federal match,[23] other Federal funds (if applicable), and the total project cost. FRA may not award more funding for a project than is requested in an application. The applicant should itemize funding by project Lifecycle Stage(s) and by project activity. For a Major Project, applicants are encouraged to provide an annualized budget in year of expenditure dollars. Project budget information must be consistent throughout all application materials, specifically the Standard Form (SF) 424, Project Narrative, Statement of Work, and funding commitment letters.[24] The project budget should be specific to the project scope described in the applicant's request for funding under this NOFO. If the project proposed to be funded under this NOFO is part of a larger scope, the applicant may reference the larger scope in the Project Narrative but should only include the project scope proposed to be funded under this NOFO within the budget table.

If applicable, the applicant should explain if the CRISI Program request or other funds must be obligated or spent by a certain date.

If applicable, the applicant should provide the type and estimated value of any proposed in-kind contributions, as well as explain how the contributions meet the requirements in 2 CFR 200.306. If the applicant is requesting set-aside funds per section B(1), identify the dedicated activities and amount requested within the budget table.

Example Project Funding Table: Applicants may use the following table to describe project funding, and may use additional rows and columns, or additional project funding tables, as appropriate.

Task #	Task name/project component	Cost	Percentage of total cost	Source of funds and citation, as applicable
1.				
2.				
Total Project Cost.				
Federal Funding Requested in this Application (CRISI Program Request).				

[22] For more information about selected Corridors under the Corridor Identification Program, please visit: *https://railroads.dot.gov/elibrary/fy22-CID-program-selections.*

[23] Applicants should submit evidence of the availability of Non-Federal funds, which may include a board resolution, letter of support from the State, a budget document highlighting the line item or section committing funds to the proposed project. The applicant may provide this documentation in an appendix. Documentation of previous and recent local investments in the project may evidence of local financial commitment project, but cannot be used to satisfy non-Federal matching requirements. Any funding commitment letters must be signed by an authorized representative of the entity providing a Non-Federal match.

[24] If there is a discrepancy between materials, FRA will defer to the funding amounts shown in the applicant's SF 424 as the amount requested for funding.

Task #	Task name/project component	Cost	Percentage of total cost	Source of funds and citation, as applicable
Non-Federal Funding (State)	Cash: ..... In-Kind:			
Non-Federal Funding (Private Sector).	Cash: ..... In-Kind:			
Non-Federal Federal Funding (Local).	Cash: ..... In-Kind:			
Other Committed Federal Funding [25] (*e.g.*, Federal Highway Administration, congressionally directed/earmark, other FRA grant program funds—including previous CRISI grants, etc.). *Note:* If there are multiple sources of other federal funding, please break funding down by each source.				
Other Pending Federal Funding Requests [26].				
Amount (if any) of funding request eligible for set-aside funds as described in section B(1).				
Portion of Total Project Costs Spent in a Rural Area, if applicable.				
For Highway-rail grade crossing and trespass prevention projects only. Does some or all the proposed Non-Federal Match for the total project cost consist of preliminary engineering costs incurred before project selection (but after November 15, 2021)? [27].	If yes, how much?			

iv. *Applicant Eligibility Criteria:* In this section, the applicant must explain how it meets the applicant eligibility criteria outlined in section C of this NOFO and include citations to appropriate authorities that demonstrate the applicant's eligibility to receive federal funds. For example, if the applicant is a political subdivision of a State, public agency or publicly chartered authority established by one or more States, the applicant should provide relevant legislative language, including citations to the applicable enabling legislation, that demonstrate the applicant's legal status. Applicants that fail to adequately demonstrate their legal status may be found ineligible and their application will not be reviewed.

v. *Project Eligibility Criteria:* Explain how the proposed project meets the project eligibility criteria in section C(3) of this NOFO.

vi. *Detailed Project Description:* In this section, the applicant must provide a detailed project description that expands upon the brief project summary. This detailed description should provide, at a minimum: additional background on the challenges the project aims to address; a summary of current and proposed railroad operations in the project area and service frequency, which should include identification of all railroad owners and operators; typical daily, weekly, or annual train counts by operator; the primary expected project outcomes such as increased safety outcomes or reduced delays, improved rail network asset condition and performance, or similar outcomes and benefits; the expected users and beneficiaries of the project, including all railroad operators; the specific components and elements of the project; and any other information the applicant deems necessary to justify the proposed project. For all projects, applicants must provide information about proposed performance measures, as described in section F(3) and required in 2 CFR 200.301.

(A) Grade crossing information, if applicable: For any project that includes grade crossing components, applicants must provide the following information for each grade crossing to be addressed in the application. The following table

[25] For other Federal funding sources proposed as match, the applicant should explain why the Federal funds are eligible as match and the legal basis for that determination.

[26] For other Federal funds that will be used for the project, the applicant should identify the Federal program and fiscal year of the funding request(s), as well as highlight new or revised information in the application responsive to this NOFO that differs from the application(s) to other financial assistance programs.

[27] If seeking to use Preliminary Engineering costs as match for a Highway-Rail Grade Crossing Improvement Project or trespassing prevention projects, please identify the costs incurred before project selection (but after November 15, 2021).

format can be used within the Project Narrative or, if more space is needed, in a separate, unlocked Excel file attachment (the table will not count against the 25-page Project Narrative page limit):

1. US DOT grade crossing inventory number (for projects involving pathway-rail grade crossings that do not have US DOT grade crossing inventory numbers or data, applicants should provide as much locational data as possible); [28]

2. The proposed improvement requested in the application, using ''new, separated, closed or improved'' (such as gate additions, lights, etc.) to describe proposed improvement;

3. The operator(s) (*i.e.,* the entity(ies) that operates on the railroad right-of-way);

4. The property owner (*i.e.,* the entity(ies) which own the underlying property or right-of-way;

5. The infrastructure owner (*i.e.,* the entity that owns the infrastructure within the railroad right-of-way); and

6. The grade crossing location latitude and longitude coordinates, expressed with at least five decimal places of precision.[29]

Example Table 1. In Project Narrative or attached as an appendix in unlocked Excel file format:

US DOT grade crossing inventory #	Proposed improvement	Rail operator(s)	Railroad owner	Latitude coordinates (at least five decimal places of precision)	Longitude coordinates (at least five decimal places of precision)

* Example Table 1: Grade Crossing Information for Proposed Project.

In addition, if applicable, applicants should provide the page number in the State Highway-Rail Grade Crossing Action Plan where the grade crossing is referenced. Applicants should specify whether the project will result in the elimination of one or more grade crossings through grade separation or otherwise.

(B) Heavily traveled rail corridor information, if applicable: For any project eligible under the eligibility category that reduces congestion and facilitates ridership growth in Intercity Passenger Rail Transportation, applicants must describe how the project is located on a heavily traveled rail corridor.

(C) PTC information, if applicable: For any project that includes deploying PTC, applicants must: (1) document submission of a Positive Train Control Implementation Plan (PTCIP) to FRA pursuant to either 49 U.S.C. 20157(a) or 49 CFR part 236, subpart I (FRA's PTC regulations); (2) document that it is a tenant on one or more host railroads that submitted a PTCIP to FRA; or (3) document how the proposed project will assist in the deployment (*i.e.,* installation and/or full implementation) of PTC, including whether the PTC technology is being implemented voluntarily or pursuant to the statutory mandate for certain main lines.

(D) Workforce development and training information, if applicable: For any project that includes workforce development, applicants must document to the extent practicable similar existing local training programs supported by the Department of Transportation, the Department of Labor, and/or the Department of Education. The applicant must also (a) describe whether the workforce development project incorporates union representation, and (b) describe any involvement or partnership with existing in-house skills training programs, unions and worker organizations, community colleges and public school districts, community-based organizations, supportive services providers, pre-apprenticeships tied to registered apprenticeships, registered apprenticeship programs and other labor-management training programs, or other quality workforce training providers. Applicants are strongly encouraged to outline their plan to recruit, train, and retain a locally hired, diverse workforce.

(E) Trespassing injury and fatality prevention and reduction, if applicable: Provide documentation indicating whether the project is located in a county(ies) with high pedestrian trespasser casualties, as identified in FRA's National Strategy to Prevent Trespassing on Railroad Property, whether the applicant has incorporated the Community Trespass Prevention Program [30] into their project approach, whether and how law enforcement agencies will undertake trespass enforcement activities as part of a larger strategy, whether the project would include funding for law enforcement wages to undertake trespass enforcement activities,[31] and how and whether the project targets hot spots identified by geospatial data. If the project includes an outreach campaign to reduce suicide by railroad, applicants must provide a detailed description of the proposed outreach campaign, including (but not limited to) relevant data on rail-related suicides in the project location, the manner and extent to which trespass suicide is expected to be reduced, and examples of prior efforts to address rail-related suicide.

(F) Emissions reductions information, if applicable: For any projects involving rehabilitating, remanufacturing, procuring, or overhauling locomotives resulting in significant reduction of emissions, identify the number of locomotives that will be procured, replaced, or retired. Also, describe the

[28] To find US DOT grade crossing inventory number(s) and location(s) please see *https://railroads.dot.gov/safety-data/fra-safety-data-reporting/crossing-inventory-data-search.* Applicants are encouraged to review and reference safety data including the most recent 5-year history of highway-rail crossing incidents relevant to their project on FRA's public safety website: *https://safetydata.fra.dot.gov/OfficeofSafety/publicsite/crossing/crossing.aspx* or *https://data.transportation.gov/dataset/Highway-Rail-Grade-Crossing-Accident-Data-Form-57-/aeeh-bp8c/explore.*

[29] For example, if a project was proposed to take place at the Department of Transportation Headquarters in Washington, DC then the reported latitude should be 38.87589 and the longitude should be reported as −77.00337.

[30] The Community Trespass Prevention Program is a problem-solving model designed to provide a step-by-step approach for dealing with trespassing issues in communities. For more information, see *https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/1265/USCommunityTrespassPreventionGuide_2010F%282-29%29.pdf.*

[31] Funding for law enforcement activities is limited to hourly wages for law enforcement officials to undertake enforcement activities at areas that demonstrate a rail trespassing problem in their community on FRA-regulated track. The hourly rate for law enforcement officers performing enforcement activities should be limited to the officer's regular and overtime wage rate (*e.g.* 1.5 times the base rate).

anticipated emissions reductions earned and fuel saving estimates. FRA has developed the Locomotive Emissions Comparison Tool, which applicants may use to calculate locomotive emissions reductions. The Tool is available at: *https://railroads.dot.gov/elibrary/fra-locomotive-emissions-comparison-tool.*

(G) Community Emergency Plans, if applicable: For projects involving the preparation of emergency plans for communities through which hazardous materials are transported by railroad, include commitments for coordination by stakeholders including representatives from the chemical manufacturing industry, distributors, shippers, railroads (and other transportation industry and supply chain representatives), emergency response providers (including firefighters, emergency medical technicians hazmat employees, and law enforcement) and federal, state and local governments. Based on information provided by the transporting railroads, identify the hazardous materials transported through the relevant community by hazard class as defined in 49 CFR 173.2. Proposed plans should address all such hazardous materials and may include rationales for focusing on certain hazardous materials if appropriate. Include the emergency types planned for and the approach for developing and communicating the plan. Include a description of proposed training, including frequency (funding may be sought for projects extending multiple years) and attendees and any required materials.

(H) Maglev Grants Program Magnetic Levitation Transportation Projects, if applicable. Applicants must provide a detailed description of the project, which should include, at a minimum: background on the current transportation challenges the project aims to address, the expected users, beneficiaries, and outcomes of the project, and any other information the applicant deems necessary to justify the proposed project. Applicants should provide specific information regarding the relevance or relationship of the proposed project to other investments in the region along the corridor, as well as the operating changes that are anticipated to result from the introduction and integration of Maglev services within existing transportation corridors and assess the major risks (including safety risks and energy consumption) or obstacles to Maglev's successful deployment and operation. Provide information on the variety of operating conditions that would be expected for the project area, which may include, for example, a variety of at-grade, elevated and depressed guideway structures; extreme temperatures; or intermodal connections at terminals. Provide a detailed summary of all work completed to date, including any preliminary engineering work, the project's previous accomplishments and funding history including Federal financial assistance, and a chronology of key documents produced and funding events (*e.g.,* grants and financing). The applicant should specify whether they are seeking funding for a project that has already received Federal financial assistance, and if applicable, explain how the new scope proposed to be funded under this NOFO relates to the previous scope.

vii. *Project Location:* Applicants must include geospatial data for the project, as well as a map of the project's location. Geospatial data must be expressed in decimal degrees for latitude and longitude with at least five decimal places of precision. If the project includes a length of track or corridor development, the start and end coordinates for each corridor or segment must be provided. Milepost, railroad, and subdivision identifiers can also be provided but must be accompanied by corresponding latitudes and longitudes. For projects with multiple locations, the corresponding geospatial data must be included for each location, with individual columns for latitude and longitude, in table form as an attachment to the application. On the map, include the Congressional districts in which the project will take place.

viii. *Evaluation and Selection Criteria:* The applicant must include a thorough discussion of how the proposed project meets the evaluation and selection criteria. As described in section E, FRA will evaluate applications based on project readiness, technical merit and project benefits, and will consider how the applicant's project aligns with the Administration Priorities. If an application does not sufficiently address the evaluation criteria and the selection criteria, it is unlikely to be a competitive application. Applicants are expected to follow the directions and format requested in this NOFO, and adherence to these directions will be considered in evaluations. Applicants are encouraged to include quantifiable railroad data, such as information on delay, failure or safety incidents, daily train movement, or similar metrics, and should include qualitative data on accessibility improvements to either new or existing assets. To the extent feasible, such railroad metrics should be provided and analyzed discretely for intercity passenger rail and, if applicable, commuter rail passenger transportation and freight rail transportation services involved in the proposed project. For more information on performance metrics see FRA's Metrics and Minimum Standards for Intercity Passenger Rail Service, available at: *https://railroads.dot.gov/elibrary/metrics-and-standards-final-rule-november-16-2020.*

xiii. *Project Implementation and Management:* Applicants must describe proposed project implementation and project management arrangements. Include descriptions of the expected arrangements for project contracting (construction, maintenance and operation), contract oversight and control, change-order management, risk management, and conformance to Federal requirements for project progress reporting (see FRA Reports, available at: *https://www.fra.dot.gov/Page/P0274*). Further, applicants must provide their plan for taking affirmative steps to employ small businesses consistent with 2 CFR 200.321. Describe experience in managing and overseeing similar projects; the technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts; and the qualifications of the primary and supporting organizations to fully and successfully execute the proposed project within the proposed timeframe and budget, including a discussion of the factors in 2 CFR 200.206(b) and the proposed approach to assessing and mitigating project risk.

b. Additional Application Elements

Applicants must submit the following documents and forms. Note, the Standard OMB Forms needed for the electronic application process are available at: *www.Grants.gov.*

i. A Statement of Work (SOW) addressing the scope, schedule, budget, and performance measures for the proposed project if it were selected for award. The applicant should include sufficient detail in the SOW so FRA can understand the expected outcomes of the proposed work to be performed and can monitor progress toward completing project tasks and deliverables during a prospective grant's period of performance. Applicants are expected to include Articles 4–7 of Attachment 2: Project Specific Terms and Conditions, at a minimum.[32] Applications that do not follow this format may be considered incomplete and may not be reviewed.

When preparing the budget, the total cost of a project must be based on the

[32] *https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements.*

best available information as indicated in cited references that include engineering studies, economic feasibility studies, environmental analyses, and information on the expected use of equipment or facilities. Applicants must include annual budget estimates in year of expenditure dollars for the duration of the project.

ii. A Benefit-Cost Analysis (BCA), as an appendix to the Project Narrative, for each project described in the application. A Benefit-Cost Analysis is required for all CRISI program submissions. The BCA must demonstrate in economic terms the merits of investing in the proposed project. Estimates of benefits should be presented in monetary terms whenever possible; if a monetary estimate is not possible, the applicant should provide a quantitative estimate (in physical, non-monetary terms, such as crash or employee casualty rates, ridership estimates, emissions levels, energy efficiency improvements, etc.). The BCA for Track 1 Planning and Track 2 Project Development projects should be for the underlying project, not the planning or PE/NEPA work itself. The Project Narrative should summarize the project's benefits, and should draw from the BCA, as necessary, for quantitative support.

Benefits may apply to existing and new rail users, as well as users of other modes of transportation. In some cases, benefits may be applied to populations in the general vicinity of the project area. Improvements to multimodal connections and shared-use rail corridors may benefit all users involved. Benefits may be quantified for savings in safety costs, reduced costs from disruption of service, maintenance costs, reduced travel time, emissions reductions, and increases in capacity or ability to offer new types of freight or passenger services. Applicants may also describe other categories of benefits that are difficult to quantify such as noise reduction, environmental impact mitigation, improved quality of life, or reliability of travel times. All benefits claimed for the project must be clearly tied to the expected outcomes of the project. Please refer to the Benefit-Cost Analysis Guidance for Discretionary Grant Programs prior to preparing a BCA, available at: *https://www.transportation.gov/office-policy/transportation-policy/benefit-cost-analysis-guidance.* In addition, please also refer to FRA's BCA FAQs for some rail-specific examples of how to apply the BCA Guidance for Discretionary Grant Programs to CRISI funding found here: *https://railroads.dot.gov/sites/fra.dot.gov/files/fra_net/19011/BCA_FAQ_updated_Sept2019.pdf.*

iii. Environmental compliance documentation, as applicable, if a website link to such documentation is not provided in the Project Narrative.

Applicants should explain what Federal (and, if appropriate, State, Tribal, and local) environmental compliance and permitting requirements have been completed. Such requirements include NEPA and other Federal, Tribal, local, and State environmental permitting requirements, if applicable. For all other Federal, State, Tribal, and local permitting requirements, the applicant should describe which permits apply, the status of those reviews, and the expected timeline for completion. If the NEPA process is complete, an applicant should indicate the date of completion, and provide a website link or other reference to the documents demonstrating compliance with NEPA, which might include a final Categorical Exclusion determination documentation, Finding of No Significant Impact, or Record of Decision. If the NEPA process is not yet underway, the application should state this. If the NEPA process is underway, but not complete, the application should detail the type of NEPA review underway, where the project is in the process, and indicate the anticipated date of completion of all NEPA and other environmental requirements. Additional information regarding FRA's environmental processes and requirements is located at *https://fra.dot.gov/environment.*

iv. Draft or finalized agreement required under 49 U.S.C. 22905(c)(1), if applicable. Provide information about the status of agreements with infrastructure owners. FRA encourages early cooperation between applicants and any relevant infrastructure owners. Under section 22905(c)(1), a grant applicant must have entered into a written agreement with a railroad that owns rights-of-way to be used by the project (referred to as the 22905 Agreement) prior to grant obligation. If the agreement is complete at the time of the application, an applicant should indicate the agreement's effective date, and provide a website link or attach the agreement as part of the application. Applicants are also encouraged to provide draft agreements. The written agreement between the grantee and the railroad should describe use and ownership, including any compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with the railroad's employees including terms regulating the contracting of work will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and an assurance that the grantee complies with liability requirements consistent with 49 U.S.C. 28103. For additional guidance see the FRA Answers to Frequently Asked Questions about Rail Improvement Grant Conditions under 49 U.S.C. 22905(c)(1): *https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1.*

v. SF 424—Application for Federal Assistance.

vi. SF 424A—Budget Information for Non-Construction or SF 424C—Budget Information for Construction.

vii. SF 424B—Assurances for Non-Construction or SF 424D—Assurances for Construction.

viii. FRA F30—Certification Regarding Debarment, Suspension and Other Responsibility Matters, Drug-Free Workplace Requirements and Lobbying, located at *https://railroads.dot.gov/elibrary/fra-f-30-certifications-regarding-debarment-suspension-and-other-responsibility-matters.*

ix. FRA F 251—Applicant Financial Capability Questionnaire, located at *https://railroads.dot.gov/elibrary/fra-f-251.*

x. SF LLL—Disclosure of Lobbying Activities.

c. Post-Selection Requirements

See section F(2) of this notice for post-selection requirements.

3. Unique Entity Identifier and System for Award Management (SAM)

To apply for funding through *Grants.gov*, applicants must be properly registered in SAM before submitting an application, provide a valid unique entity identifier in its application, and continue to maintain an active SAM registration all as described in detail below. Complete instructions on how to register and submit an application can be found at *www.Grants.gov.* Registering with *Grants.gov* is a one-time process; however, it can take up to several weeks for first-time registrants to receive confirmation and a user password. FRA recommends that applicants start the registration process as early as possible to prevent delays that may preclude submitting an application package by the application deadline. Applications will not be accepted after the due date.

FRA may not make a grant award to an applicant until the applicant has

complied with all applicable SAM requirements, and if an applicant has not fully complied with the requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant. Late applications, including those that are the result of a failure to register or comply with *Grants.gov* applicant requirements in a timely manner, will not be considered. If an applicant has not fully complied with the requirements by the submission deadline, the application will not be considered. To submit an application through *Grants.gov*, applicants must follow the directions below in subsection D.

a. Register With the SAM at *www.SAM.gov*

All applicants for Federal financial assistance must maintain current registrations in the SAM database. An applicant must be registered in SAM to successfully register in *Grants.gov*. The SAM database is the repository for standard information about Federal financial assistance applicants, grantees, and subrecipients. Organizations that have previously submitted applications via *Grants.gov* are already registered with SAM, as it is a requirement for *Grants.gov* registration. Please note, however, that applicants must update or renew their SAM registration at least once per year to maintain an active status. Therefore, it is critical to check registration status well in advance of the application deadline. If an applicant is selected for an award, the applicant must maintain an active SAM registration with current information throughout the period of the award, including information on a grantee's immediate and highest-level owner and subsidiaries, as well as on all predecessors that have been awarded a Federal contract or grant within the last three years, if applicable. Information about SAM registration procedures is available at *www.SAM.gov.*

b. Obtain a Unique Entity Identifier

On April 4, 2022, the Federal government discontinued using DUNS numbers. The DUNS Number was replaced by a new, non-proprietary identifier that is provided by the System for Award Management (*www.SAM.gov*). This new identifier is called the Unique Entity Identifier (UEI), or the Entity ID. To find or request a Unique Entity Identifier, please visit *www.SAM.gov.*

c. Create a *Grants.gov* Username and Password

Applicants must complete an Authorized Organization Representative (AOR) profile on *www.Grants.gov* and create a username and password. Applicants must use the organization's UEI to complete this step. Additional information about the registration process is available at: *https://www.grants.gov/applicants/applicant-registration.*

d. Acquire Authorization for Your AOR From the E-Business Point of Contact (E-Biz POC)

The E-Biz POC at the applicant's organization must respond to the registration email from *Grants.gov* and login at *www.Grants.gov* to authorize the applicant as the AOR. Please note there can be more than one AOR for an organization.

e. Submit an Application Addressing All Requirements Outlined in This NOFO

If an applicant has trouble at any point during this process, please call the *Grants.gov* Customer Center Hotline at 1–800–518–4726, 24 hours a day, 7 days a week (closed on Federal holidays). For information and instructions on each of these processes, please see instructions at: *https://www.grants.gov/support.*

4. Submission Dates and Times

Applicants must submit complete applications to *www.Grants.gov* no later than 11:59 p.m. ET, May 28, 2024. Applicants will receive a system-generated acknowledgement of receipt. FRA reviews *www.Grants.gov* information on dates/times of applications submitted to determine timeliness of submissions. Late applications will be neither reviewed nor considered, no exceptions. To apply for funding under this announcement, all applicants are required to be registered as an organization with *Grants.gov*. Applicants are strongly encouraged to apply early to ensure all materials are received before this deadline.

To ensure fair competition for limited discretionary funds, no late submissions will be reviewed for any reason, including: (1) failure to complete the *Grants.gov* registration process before the deadline; (2) failure to follow *Grants.gov* instructions on how to register and apply as posted on its website; (3) failure to follow all the instructions in this NOFO; and (4) technical issues experienced with the applicant's computer or information technology environment.

5. Intergovernmental Review

Intergovernmental Review is required for this program. Applicants must contact their State Single Point of Contact to comply with their state's process under Executive Order 12372.

6. Funding Restrictions

Consistent with 2 CFR 200.458, as applicable, FRA will only approve pre-award costs if such costs are incurred pursuant to the negotiation and in anticipation of the grant agreement and if such costs are necessary for efficient and timely performance of the scope of work.[33] Under 2 CFR 200.458, grant recipients must seek written approval from FRA for pre-award activities to be eligible for reimbursement under the grant. Activities initiated prior to the execution of a grant or without FRA's written approval may be ineligible for reimbursement or matching contribution. Cost sharing or matching may be used only for authorized Federal award purposes.

Applicants may count costs incurred for Preliminary Engineering costs on highway-rail grade crossing projects, as described in 49 U.S.C. 22907(c)(5), and trespassing prevention projects, as described in 49 U.S.C. 22907(c)(11), as part of the total project costs. Such costs are eligible as non-Federal share or reimbursement, even if they were incurred before project selection for award, consistent with 49 U.S.C. 22907(h)(4). Such costs must have been incurred no earlier than November 15, 2021, and must be otherwise compliant with 2 CFR part 200 and the requirements of this NOFO.

7. Other Submission Requirements

Please use generally accepted formats such as .pdf, .doc, .docx, .xls, .xlsx and .ppt, when uploading attachments. While applicants may embed picture files, such as .jpg, .gif, and .bmp in document files, applicants should not submit attachments in these formats. Additionally, the following formats will not be accepted: .com, .bat, .exe, .vbs, .cfg, .dat, .db, .dbf, .dll, .ini, .log, .ora, .sys, and .zip.

[33] For more information on pre-award costs, see FRA Answers to Frequently Asked Questions about Pre-Award Authority, available at: *https://railroads.dot.gov/elibrary/federal-railroad-administration-answers-frequently-asked-questions-about-pre-award.*

E. Application Review Information

1. Criteria

a. Eligibility and Completeness

FRA will first screen each application for applicant and project eligibility (eligibility requirements are outlined in section C of this NOFO), completeness (application documentation and submission requirements are outlined in section D of this NOFO), and the 20 percent minimum non-Federal match.

b. Evaluation Criteria

FRA will evaluate all eligible and complete applications using the evaluation criteria outlined in this section to determine project readiness, technical merit, and project benefits.

i. *Project Readiness:*

In evaluating Project Readiness, FRA will evaluate project and applicant risk based on the applicant's preparedness and capacity to implement the proposed project, including whether the applicant is reasonably equipped to begin the capital or planning project in a timely manner to meet its proposed schedule. FRA will evaluate whether the applicant is able to meet project milestones and use Federal funds efficiently to deliver the proposed project.[34]

FRA will evaluate the application for the degree to which—

(A) The application demonstrates strong project readiness, evidenced by status of required NEPA actions and environmental permitting readiness (if applicable);

(B) The status and timeline of agreements, such as an agreement required under 49 U.S.C. 22905(c)(1), necessary for the legal, financial, and technical capacity to complete the project as proposed, are sufficiently developed;

(C) The application identifies the appropriate Lifecycle Stage(s) for the proposed project, demonstrates that the project has completed or will complete any preceding Lifecycle Stage(s), and the project is able to complete all requirements of the identified Lifecycle Stage(s); and

(D) Project partner coordination and commitments, including letters of support, agreements, and funding, are secured or able to be secured without undue delay.

ii. *Technical Merit:*

In evaluating Technical Merit, FRA will evaluate the degree to which the application, statement of work, schedule and budget are reasonable and appropriate to achieve the expected outcomes, commitment of necessary resources and workforce to deliver the project, and the proposed project elements are appropriate for the project funding request. FRA will also consider applicant risk, including the applicant's past performance in developing and delivering similar projects.

FRA will evaluate application information for the degree to which—

(A) The tasks and subtasks outlined in the statement of work (SOW) are appropriate to achieve the expected outcomes of the proposed project;

(B) The technical qualifications and experience of key personnel the applicant proposes to lead and perform the technical efforts, including the qualifications of the primary and supporting organizations, demonstrates the ability to fully and successfully execute the proposed project within the proposed time frame and budget;

(C) The proposed project's business plan considers potential private sector participation in the financing, construction, or operation of the proposed project.

(D) The applicant has, or will have, the legal, financial, and technical capacity to carry out the proposed project; satisfactory continuing control over the use of the equipment or facilities; and the capability and willingness to maintain the equipment or facilities.

(E) The degree to which the applicant and project deploy innovative technology, encourage innovative approaches to project delivery, and incentivize the use of innovative financing.

(F) The proposed project is consistent with planning guidance and documents set forth by DOT, including those required by law or State rail plans developed under title 49, United State Code, chapter 227.

For projects identified as Deployment of Magnetic Levitation Transportation Projects (Track 5), FRA will also evaluate application information for the degree to which—

(A) The project would feasibly integrate Maglev systems with conventional rail systems, such as establishing efficient connections and transfers.

(B) The funds awarded under this section would result in investments that are beneficial not only to the Maglev project, but also to other current or near-term transportation projects.

(C) The project demonstrates: (a) The potential for public-private partnerships and (b) that the project will stand alone as a complete, self-sustaining operation where fully allocated operating expenses of the Maglev service are projected to be offset by revenues attributable to the service.

(D) The financial commitment to the construction of the proposed project from both non-Federal public and private sources is demonstrated.

(E) The project demonstrates coordination and consistency with any applicable ongoing or completed environmental and planning studies for passenger rail on or connecting to the geographic route segment being proposed for Maglev investment.

(F) The project will successfully operate in the variety of Maglev operating conditions which are to be expected in the United States.

(G) The project may feasibly be capable of safe use by the public at a speed in excess of 240 miles per hour.

iii. *Project Benefits:*

FRA will evaluate the Benefit-Cost Analysis and as well as the project benefits of the proposed project for the anticipated private and public benefits relative to the costs of the proposed project and the summary of benefits provided in the narrative and in response to subsection D.2.b.ii including—

(A) Effects on system and service performance;

(B) Effects on safety, competitiveness, reliability, trip or transit time, and resilience;

(C) Efficiencies from improved integration with other modes; and

(D) Ability to meet existing or anticipated demand.

For each evaluation criterion—Project Readiness, Technical Merit and Project Benefits—FRA will evaluate whether the application demonstrates level of risk or responsiveness, as applicable, as described in the rubrics below.

For each merit criterion, FRA will use rubric ratings with applied criteria to evaluate whether the applications meet the defined thresholds:

[34] Additional information on DOT's Project Readiness checklist can be found here: *https://www.transportation.gov/grants/dot-navigator/project-readiness-checklist-dot-discretionary-grant-applicants.*

MERIT CRITERIA RATINGS—PROJECT READINESS

For the Project Readiness Criteria described in section E(2)(a), FRA will evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications, and assign a cumulative Project Readiness risk rating.

Unacceptable	High risk	Medium risk	Low risk
Application provides limited or no information necessary to assess the project readiness criteria; application does not demonstrate support, progress, or completion of required Lifecycle Stage(s) pre-requisites; or application contains one or more significant barriers that would prevent project delivery.	Application provides insufficient information to assess the project readiness criteria; application does not demonstrate sufficient support, progress, or completion of required Lifecycle Stage(s) pre-requisites but indicates risk to advancing the project without foreseeable delays; or application contains a barrier that would likely prevent project delivery in any of these areas.	Application provides sufficient information to assess the project readiness criteria; demonstrates support, progress, or completion on one or more required Lifecycle Stage(s) pre-requisites, but indicates some risk to advancing the project in a timely manner; and the application does not contain a barrier that would likely prevent project delivery in any of these areas.	Application provides thorough and complete information and evidence to assess the project readiness criteria, and demonstrates strong support, progress, or completion on required Lifecycle Stage(s) pre-requisites, and indicates minimal risk to advancing the project in a timely manner; and application does not contain a barrier that would likely prevent project delivery in any of these areas.

MERIT CRITERIA RATINGS—TECHNICAL MERIT

For the Technical Merit Criteria described in section E(2)(b), FRA will evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications, and assign a cumulative technical merit rating.

Unacceptable	Acceptable	Responsive	Highly responsive
Application provides limited or no information necessary to assess the technical merit criteria, or application demonstrates one or more significant technical challenges that would prevent the applicant from delivering the project.	Application contains insufficient information to assess one or more of the technical merit criteria, or application demonstrates technical challenges that could affect project delivery, but not prevent the applicant from delivering the project.	Application provides sufficient information and evidence to assess the technical merit criteria and demonstrates that the applicant can deliver the project with minimal technical challenges.	Application provides thorough and complete information and evidence to assess the technical merit criteria, and sufficiently demonstrates that the project can be successfully delivered by the applicant.

MERIT CRITERIA RATINGS—TECHNICAL MERIT (ONLY APPLICABLE TO APPLICATIONS THAT REQUEST FUNDING UNDER THE MAGLEV GRANTS PROGRAM)

For projects identified as Deployment of Magnetic Levitation Transportation Projects in section E(2)(b), FRA will also evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications, and assign a cumulative technical merit rating.

Unacceptable	Acceptable	Responsive	Highly responsive
The application provides little or no information necessary to assess the technical merit criteria, or application demonstrates one or more significant technical challenges that would prevent the applicant from delivering the project.	Application contains insufficient information to assess one or more of the technical merit criteria, or application demonstrates technical challenges that could affect project delivery, but not prevent the applicant from delivering the project.	Application provides sufficient information and evidence to assess the technical merit criteria and demonstrates that the applicant can deliver the project with minimal technical challenges.	Application provides thorough and complete information and evidence to assess the technical merit criteria, and sufficiently demonstrates that the project can be successfully delivered by the applicant.

MERIT CRITERIA RATINGS—PROJECT BENEFITS

For the Project Benefits Criteria described in section E(2)(c), FRA will evaluate the application's responsiveness to the criteria, including an assessment of supporting justifications, and assign a cumulative Project Benefits rating.

Unacceptable	Acceptable	Responsive	Highly responsive
Application provides insufficient information necessary to assess the project benefits criteria, and does not demonstrate that the project will achieve its intended benefits.	The application contains limited information to assess the project benefits criteria; or the project is not likely to achieve all of its intended benefits.	Application provides sufficient information to assess the project benefits criteria, and adequately demonstrates that the project will likely achieve its intended benefits.	Application provides thorough and complete information and evidence to assess the project benefits criteria, and sufficiently demonstrates that the project will achieve its intended benefits.

In addition to the ratings described above, FRA will also apply the selection preferences described in section E(3)(a) and consider the Administration Priorities described in section E(3)(b).

c. Selection Criteria

After completing the merit review, FRA will apply the selection criteria and consider the Administration Priorities in this section.

i. FRA will give preference to eligible projects in the following circumstances:

(A). The project may not be addressed by other FRA grant programs including short line railroad infrastructure and equipment, safety projects and technology, workforce development, congestion relief projects addressing freight and passenger rail chokepoints, and intercity passenger rail state of good repair (on shared public-private and publicly owned infrastructure);

(B) The proposed Federal share of total project costs does not exceed 50 percent; [35]

(C) The net benefits of the grant funds will be maximized considering the Benefit-Cost Analysis, including

[35] This preference applies to funds made available by IIJA, division J. However, 49 U.S.C. 22907(e)(1)(A) does not apply to projects funded by the 2023 Appropriation. Because the preference still applies to the IIJA funding, FRA encourages applicants to identify sufficient non-Federal contribution so that the Federal share does not exceed 50 percent.

anticipated private and public benefits relative to the costs of the proposed project, and factoring in the other considerations in 49 U.S.C. 22907(e)(2); [36] and

(D) The project is eligible under 49 U.S.C. 22907(c)(11), for the development and implementation of measures to prevent trespassing and reduce associated injuries and fatalities that are located in the top 25 counties with the most pedestrian casualties.[37] In addition, FRA is strongly interested in applications that incorporate a comprehensive approach to project development such as is described in FRA's Community Trespass Prevention Program, and will prioritize selections for those applications that involve multiple project partners and include infrastructure improvements in combination with a safety program focused on enforcement and outreach.

ii. *Administration Priorities:*

FRA will consider projects that address the following key Administration Priorities:

Safety: FRA will assess the project's ability to foster a safe transportation system for the movement of goods and people, consistent with the Department's strategic goal to reduce transportation-related fatalities and serious injuries across the transportation system. Such considerations will include, but are not limited to, the extent to which the project improves and upgrades infrastructure to achieve a higher level of safety, reduces incidences of rail-related trespassing, upgrades infrastructure to achieve a higher level of safety, and uses an appropriately trained workforce. Overall, FRA expects that projects will provide positive safety benefits for all users and not negatively impact safety for all users.

Climate Change and Sustainability: FRA will assess the project's ability to reduce the harmful effects of climate change and anticipate necessary improvements to prepare for extreme weather events. Such considerations may include, but are not limited to, the extent to which the project reduces emissions, promotes energy efficiency, increases resiliency, incorporates evidence-based climate resilience measures or features, and avoids adverse environmental impacts to air or water quality, wetlands, and endangered species. Projects that lead to a significant reduction of emissions resulting from rehabilitating, remanufacturing, procuring, and overhauling a locomotive meet the objective of this priority.

Applicants are encouraged to use the DOT Navigator Climate checklist in responding to this criterion. Applications that are rated highly on this criterion will be those that use data-driven and evidence-based methods to demonstrate that the project will:

- Significantly reduce GHG emissions in the transportation sector; and
- Incorporate evidence-based climate resilience measures or features.

Equity and Justice40: FRA will assess elements including how the project will create positive outcomes that will reduce, mitigate, or reverse how a community is experiencing disadvantage through increasing affordable transportation options, improving health or safety, reducing pollution, connecting Americans to good-paying jobs, fighting climate change, and/or improving access to nature, resources, transportation or mobility, and quality of life. FRA will consider the benefits and potential burdens a project may create, who would experience them and how the benefits and potential burdens will impact disadvantaged communities.

Applicants are encouraged to use Climate & Economic Justice Screening Tool (CEJST), a new tool by the White House Council on Environmental Quality (CEQ), that aims to help Federal agencies identify disadvantaged communities as part of the Justice40 initiative to accomplish the goal that 40% of benefits from certain federal investment reach disadvantaged communities. Applicants should use CEJST as the primary tool to identify disadvantaged communities (Justice40 communities). Applicants are strongly encouraged to use the USDOT Equitable Transportation Community (ETC) Explorer to understand how their community or project area is experiencing disadvantage related to lack of transportation investments or opportunities. Through understanding how a community or project area is experiencing transportation-related disadvantage, applicants are able to address how the benefits of a project will reverse or mitigate the burdens of disadvantage and demonstrate how the project will address challenges and accrued benefits.

Applicants are strongly encouraged to use the FRA's Justice40 Rail Explorer Tool, (*https://usdot.maps.arcgis.com/apps/webappviewer/index.html?id=fd9810f673b64d228ae072bead46f703*) to identify the rail infrastructure in their project and features of the surrounding community as the basis of their assessment. The FRA Justice40 Rail Explorer Tool is a rail-specific complement to the USDOT ETC Explorer and leverages the same methodology and metrics. The FRA Justice40 Rail Explorer Tool provides GIS information on existing rail infrastructure, communities, and pollution levels based on the proposed project's location, and applicants can thus use this tool to note how their project location scores across several different measures. Transportation disadvantaged communities experience burden, as a result of underinvestment in transportation, in the following five components: Transportation Insecurity, Climate and Disaster Risk Burden, Environmental Burden, Health Vulnerability, and Social Vulnerability.

Workforce Development, Job Quality, and Wealth Creation: FRA will assess how the project will create good-paying, safe jobs with free and fair choice to join a union including through the use of a project labor agreement, promote investments in high-quality workforce development programs, adopt local and economic hiring preferences for the project workforce, and promote local inclusive economic and entrepreneurship programs.

For Administration Priorities, FRA will consider the application's responsiveness to the criteria, and will result in a rating of ''Non-responsive, ''Acceptable,'' ''Responsive,'' or ''Highly Responsive'' as described in the rubric below. Applicants do not need to respond to all of the Administration Priorities if the criterion is not applicable to the proposed project.

[36] These benefits may include the effects on system and service performance, including measures such as improved safety, competitiveness, reliability, trip or transit time, resilience, efficiencies from improved integration with other modes, the ability to meet existing or anticipated demand, and any other benefits.

[37] FRA has identified these 25 counties through *https://railroads.dot.gov/safety-data,* and includes the following: California (Los Angeles, San Bernardino, Kern, San Joaquin, Alameda, Contra Costa, Fresno, Riverside, Sacramento, Santa Clara, Orange, Stanislaus, San Diego); Florida (Palm Beach, Broward); Illinois (Cook); Nevada (Clark); Oregon (Multnomah); Pennsylvania (Philadelphia); Tennessee (Davidson); Texas (Tarrant, Dallas, Bexar, Harris); and Washington (King).

ADMINISTRATION PRIORITIES

For the Administration Priorities Criteria described in section E(3)(b), FRA will consider the application's responsiveness to the criteria, including an assessment of supporting justifications.

Non-responsive	Acceptable	Responsive	Highly responsive
Application contains insufficient information to assess any of the Administration Priorities, or project is inconsistent with one or more of the Administration Priorities.	Application contains limited information that is supported by some evidence, but primarily described qualitatively, that the project is consistent with at least one of the Administration Priorities.	Application contains sufficient information that is adequately supported by both quantitative and qualitative evidence that the project has clear and direct benefits in at least one of the Administration Priorities.	Application contains thorough and complete information that is strongly supported by both quantitative and qualitative evidence that the project has clear, direct, and significant benefits in one or more of the Administration Priorities, and is not inconsistent with any of the Administration Priorities.

Upon completion of all reviews, FRA will finalize an Overall Rating for each application. This rating will be a combination of the results of the three Merit Criteria reviews, specifically Project Readiness, Project Benefits, and Technical Merit criteria ratings as described in sections E(2)(a)–E(2)(c); the benefit-cost analysis as identified in section E(2)(c) and further described in section D(2)(b)(ii); and the Administration Priorities as described in section E(3)(b). Provided in the Overall Rating Rubric below, each rating has defined parameters to which each application will be assessed.

OVERALL RATING

Not recommended	Acceptable	Recommended	Highly recommended
The application received an overall score of not recommended based on Project Readiness, Technical Merit, and Project Benefits ratings, confidence in the application's BCA, and consideration of Administration Priorities.	The application received an overall score of acceptable based on Project Readiness, Technical Merit, and Project Benefits ratings, confidence in the benefit-cost analysis, and consideration of Administration Priorities.	The application received an overall score of recommended based on Project Readiness, Technical Merit, and Project Benefits ratings, confidence in the benefit-cost analysis, and has clear and direct benefits in one of the Administration Priorities.	The application received an overall score of highly recommended based on Project Readiness, Technical Merit, and Project Benefits ratings, confidence in the benefit-cost analysis, and has clear, direct, and significant benefits in one or more of the Administration Priorities.

The evaluation process may draw upon subject matter experts within FRA Division offices whose expertise is relevant to understanding the application's responsiveness to the program criteria, such as assessing the applicant's capacity to successfully deliver the project in compliance with applicable Federal requirements based on factors including, but not limited to, the recipient's experience working with Federal agencies, previous experience with DOT discretionary grant awards and/or the technical experience and resources dedicated to the project. Finally, in determining the allocation of program funds, FRA may also consider geographic diversity, diversity in the size of the systems receiving funding, and the applicant's receipt of other competitive awards.

2. Review and Selection Process

FRA will conduct a five-part application review process, as follows:

- *Intake and Eligibility Phase:* Screen applications for applicant and project eligibility, completeness, and the minimum match (completed by the Evaluation Management and Oversight Team, or ''EMOT,'' comprised of FRA program review directors who manage the pre-award process);
- *Evaluation Review Phase:* Evaluate remaining applications against the statutory technical merit criteria, project benefit criteria, project readiness and the applicant's ability (based on past performance and relevant project factors) to develop and deliver similar projects, and alignment with Administration Priorities (completed by technical merit review panels consisting of FRA and Department of Transportation (DOT) staff). The EMOT will compile the results of the Evaluation Review Phase consistent with the CRISI Program set-asides and selection preferences. After considering all FRA reviews under the statutory criteria, applications will be assigned an overall rating of ''Highly Recommended,'' ''Recommended,'' ''Acceptable,'' or ''Not Recommended'';
- *Steering Committee Phase:* The Steering Committee is comprised of Senior Directors with the Office of Railroad Development, which may also include senior leadership from the Railroad Office of Safety and other relevant offices. The EMOT briefs the Steering Committee on all rated applications, and the Steering Committee may request more information from FRA offices whose expertise may be relevant. The Steering Committee provides strategic direction, in line with program goals outlined in this NOFO, on the development of materials and approach for the Senior Review Team (SRT) briefing;
- *Senior Review Phase:* The SRT will review, apply selection criteria, and recommend initial selection of projects for the FRA Administrator's review (completed by the SRT, which may include senior leadership from the Office of the Secretary and FRA); and
- *Selection and Award Phase:* Select recommended awards for the Secretary's or his designee's review and approval (completed by the FRA Administrator).

3. Reporting Matters Related to Integrity and Performance

Before making a Federal award with a total amount of Federal share greater than the simplified acquisition threshold of $250,000 (see 2 CFR 200.88 Simplified Acquisition Threshold), FRA will review and consider any information about the applicant that is in the designated integrity and performance system accessible through SAM (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)). See 41 U.S.C. 2313.

An applicant, at its option, may review information in the designated integrity and performance systems accessible through SAM and comment on any information about itself that a federal awarding agency previously entered and is currently in the designated integrity and performance system accessible through SAM.

FRA will consider any comments by the applicant, in addition to the other information, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 2 CFR 200.205.

F. Federal Award Administration Information [38]

1. Federal Award Notices

FRA will announce applications selected for funding in a press release and on FRA's website after the application review period. This announcement is FRA's notification to successful and unsuccessful applicants alike. Following this announcement, FRA will contact the point of contact listed in the SF 424 to initiate negotiation of a project-specific grant agreement. This notification is not an authorization to begin proposed project activities. FRA requires satisfaction of applicable requirements by the applicant and a formal agreement signed by both the grantee and the FRA, including an approved scope, schedule, and budget, before obligating the grant.

2. Administrative and National Policy Requirements

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, grantees of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States; the relevant authorization and appropriations, the conditions of performance, nondiscrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of DOT; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, grantees, in particular, must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If DOT determines that a grantee has failed to comply with applicable Federal requirements, DOT may terminate the award of funds and disallow previously incurred costs, requiring the grantee to reimburse any expended award funds. The new FRA grant agreement consists of three parts: Attachment 1: Standard Terms and Conditions, Attachment 2: Project-Specific Terms and Conditions, and Terms and Conditions Exhibits.

Examples of administrative and national policy requirements include: 2 CFR part 200; procurement standards at 2 CFR part 200, subpart D—Procurement Standards; 2 CFR 1207.317 and 2 CFR 200.401; compliance with Federal civil rights laws and regulations; disadvantaged business enterprises requirements; debarment and suspension requirements; drug-free workplace requirements; FRA's and OMB's Assurances and Certifications; Americans with Disabilities Act; safety requirements; NEPA; and environmental justice; compliance with 49 U.S.C. 24905(c)(2) for the duration of NEC Projects; and 2 CFR 200.315, governing rights to intangible property. Projects assisted with funds provided through the Maglev Grants Program are subject to 49 U.S.C. 5333(a). Unless otherwise stated in statutory or legislative authority, or appropriations language, all financial assistance awards follow the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards at 2 CFR part 200 and 2 CFR part 1201.

Assistance under this NOFO is subject to the grant conditions in 49 U.S.C. 22905, including labor protective arrangements that are equivalent to the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants subject to 49 U.S.C. 22905, the provision deeming operators rail carriers and employers for certain purposes, and grantee agreements with railroad right-of-way owners for projects using railroad rights-of-way (see section D(2)(a)(viii)(A)(5)).[39]

Projects selected under this NOFO for commuter rail passenger transportation for positive train control projects may be transferred to the Federal Transit Administration for grant administration at the Secretary's discretion. If such a project is transferred to the Federal Transit Administration, applicants will be required to comply with chapter 53 of title 49 of the United States Code.

Projects that have not sufficiently considered climate change environmental justice in their planning, as determined by FRA, will be required to do so before receiving funds for construction, consistent with core policy goals of assessing these potential impacts. For example, see Executive Order 14008, *Tackling the Climate Crisis at Home and Abroad* (86 FR 7619) and Executive Order 14096, *Revitalizing Our Nation's Commitment to Environmental Justice.* In the grant agreement, recipients will be expected to describe activities they have taken or will take prior to obligation of construction funds to address climate change and environmental justice (EJ). (See Article 9 of FRA's Attachment 2: Project-Specific Terms and Conditions for a list of project activities that address climate change and environmental justice priorities, available at: *https://railroads.dot.gov/sites/fra.dot.gov/files/2024-02/Attachment_2_Project_Specific_Terms_12.11.23_PDFa.pdf*). Activities that address climate change include, but are not limited to, demonstrating the project will result in significant greenhouse gas emissions reductions; the project supports emissions reductions goals in a Local/Regional/State plan; the project improves disaster preparedness and resilience; the project incorporates resilience in its design, and the project primarily focuses on funding for state of good repair and clean transportation options, including public transportation, walking, biking, and micro-mobility. Activities that address environmental justice may include, but are not limited to: basing project design on consideration of community impacts; information gained from screening tools such as CEJST, EPA's EJ Screen, or another appropriate environmental and community impacts tools developed by a State agency; connecting transportation disadvantaged communities or other communities with environmental justice concerns based on information gained from the screening tools noted above or FRA's Justice40 Rail Explorer Tool; conducting enhanced, targeted outreach to potentially affected communities, including disadvantaged communities; considering environmental justice in alternatives analysis and final project design; and supporting a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand.

Projects must consider and address equity and barriers to opportunity in their planning, as determined by FRA, and as a condition of receiving construction funds, consistent with Executive Order 13985, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (86 FR 7009). The grant agreement should include the

[38] More information on FRA Discretionary Grant Agreements can be found at: *https://railroads.dot.gov/grants-loans/fra-discretionary-grant-agreements.*

[39] More information on labor protections can be found here: *https://railroads.dot.gov/elibrary/equivalent-labor-protections.*

grantee's description of activities it has taken or will take prior to obligation of construction funds that addresses equity and barriers to opportunity. These activities may include, but are not limited to: completing an equity impact analysis for the project; completing a community needs assessment; adopting an equity and inclusion program/plan; conducting meaningful public engagement to ensure underserved communities are provided an opportunity to be involved in the planning process and is conducted in a manner that is consistent with Title VI of the Civil Rights Act (Title VI); including investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities; hiring from local communities; improving access to or providing economic growth and wealth building opportunities for underserved, overburdened, or rural communities; or addressing historic or current inequitable air pollution or other environmental, health, or economic burdens and impacts. (See Article 10 of FRA's Attachment 2: Project-Specific Terms and Conditions for a list of project activities that address efforts to improve racial equity and reduce barriers to opportunity, available at: *https://railroads.dot.gov/sites/fra.dot.gov/files/2024-02/Attachment_2_Project_Specific_Terms_12.11.23_PDFa.pdf*). While not a selection criterion to the extent the project includes or is part of a station area, the Department encourages project sponsors to consider how the submitted project could develop or facilitate economic development, including commercial and residential development that enhance the economic vitality and competitiveness of the surrounding neighborhood and region.

To the extent that applicants have not sufficiently considered job quality and labor rights in their planning, as determined by the Department of Labor, the applicants will be required to do so before receiving funds for construction, consistent with Executive Order 14025, *Worker Organizing and Empowerment* (86 FR 22829), and Executive Order 14052, *Implementation of the Infrastructure Investment and Jobs Act* (86 FR 64335). Specifically, the project planning activities and project delivery actions must support: (a) strong labor standards and the free and fair choice to join a union, including project labor agreements, local hire agreements, distribution of workplace rights notices, and use of an appropriately trained workforce; (b) support of high-quality workforce development programs, including registered apprenticeship, labor-management training programs, and supportive services to help train, place, and retain people in good-paying jobs and apprenticeships; and (c) comprehensive planning and policies to promote hiring and inclusion for all groups of workers, including through the use of local and economic hiring preferences, linkage agreements with workforce programs that serve underrepresented groups, and proactive plans to prevent harassment. (See Article 11 of FRA's Attachment 2: Project-Specific Terms and Conditions for a list of project activities that address efforts to support good-paying jobs and strong labor standards, available at: *https://railroads.dot.gov/sites/fra.dot.gov/files/2024-02/Attachment_2_Project_Specific_Terms_12.11.23_PDFa.pdf*.

a. Federal Contract Compliance

As a condition of grant award and consistent with Executive Order 11246, *Equal Employment Opportunity* (30 FR 12319, and as amended), all Federally assisted contractors are required to make good faith efforts to meet the goals of 6.9 percent of construction project hours being performed by women, in addition to goals that vary based on geography for construction work hours and for work being performed by people of color. Under Section 503 of the Rehabilitation Act and its implementing regulations, affirmative action obligations for certain contractors include an aspirational employment goal of 7 percent workers with disabilities.

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) is charged with enforcing Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974. OFCCP has a Mega Construction Project Program through which it engages with project sponsors as early as the design phase to help promote compliance with non-discrimination and affirmative action obligations. OFCCP will identify projects that receive an award under this notice and are required to participate in OFCCP's Mega Construction Project Program from a wide range of Federally-assisted projects over which OFCCP has jurisdiction and that have a project cost above $35 million. DOT will require project sponsors with costs above $35 million that receive awards under this funding opportunity to partner with OFCCP, if selected by OFCCP, as a condition of their DOT award.

b. Critical Infrastructure Security, Cybersecurity and Resilience

It is the policy of the United States to strengthen the security and resilience of its critical infrastructure against all hazards, including physical and cyber risks, consistent with Presidential Policy Directive 21—Critical Infrastructure Security and Resilience, and the National Security Memorandum (NSM–5) on Improving Cybersecurity for Critical Infrastructure Control Systems. Each applicant selected for Federal funding must demonstrate, prior to signing of the grant agreement, efforts to consider and address physical and cyber security risks relevant to the transportation mode and type and scale of the project. Projects that have not appropriately considered and addressed physical and cyber security and resilience in their planning, design, and project oversight, as determined by the Department and the Department of Homeland Security, will be required to do so before receiving funds.

c. Domestic Preference Requirements

As expressed in Executive Order 14005, *Ensuring the Future Is Made in All of America by All of America's Workers* (86 FR 7475), the executive branch should maximize, consistent with law, the use of goods, products, and materials produced in, and services offered in, the United States. Funds made available under this notice are subject to the domestic preference requirement in 49 U.S.C. 22905(a) (FRA Buy America) and the Build America, Buy America Act, Public Law 117–58, 70901–52. The Department expects all applicants to comply with the applicable domestic preference requirements. However, Major Projects applicants should include a domestic sourcing plan that provides details on the extent to which the materials covered by the plan are to be imported and the extent to which such materials can be sourced domestically.; and (2) Applicants should also provide an explanation in the plan of the number of domestic jobs, temporary and permanent, that will be generated by the project and outline a plan to transition any foreign labor responsibilities to domestic jobs. Major projects applicants may also request a waiver from certain Buy America requirements along with the domestic sourcing plan.

d. Civil Rights and Title VI

As a condition of a grant award, grant recipients should demonstrate that the recipient has a plan for compliance with civil rights obligations and nondiscrimination laws, including Title

VI of the Civil Rights Act of 1964 and implementing regulations (49 CFR part 21), the Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act, all other civil rights requirements, and accompanying regulations. This may include a current Title VI plan, completed Community Participation Plan, and a plan to address any legacy infrastructure or facilities that are not compliant with ADA standards. DOT's and FRA's Offices of Civil Rights may work with awarded grant recipients to ensure full compliance with Federal civil rights requirements.

3. Reporting

a. Progress Reporting on Grant Activity

Each applicant selected for a grant will be required to comply with all standard FRA reporting requirements, including quarterly progress reports, quarterly Federal financial reports, and interim and final performance reports, as well as all applicable auditing, monitoring and close out requirements. Reports may be submitted electronically. Pursuant to 2 CFR 170.210, non-Federal entities applying under this NOFO must have the necessary processes and systems in place to comply with the reporting requirements should they receive Federal funding.

b. Additional Reporting

Applicants selected for funding are required to comply with all reporting requirements in the standard terms and conditions for FRA grant awards including 2 CFR 180.335 and 2 CFR 180.350. If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the information reported to SAM and ensure that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

c. Performance and Program Evaluation

Recipients and subrecipients are also encouraged to incorporate program evaluation, including associated data collection activities from the outset of their program design and implementation, to meaningfully document and measure their progress towards meeting an agency priority goal(s). Title I of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), Public Law 15–435 (2019) urges Federal awarding agencies and Federal assistance recipients and subrecipients to use program evaluation as a critical tool to learn, to improve equitable delivery, and to elevate program service and delivery across the program lifecycle. Evaluation means ''an assessment using systematic data collection and analysis of one or more programs, policies, and organizations intended to assess their effectiveness and efficiency.'' 5 U.S.C. 311. Credible program evaluation activities are implemented with relevance and utility, rigor, independence and objectivity, transparency, and ethics (OMB Circular A–11, Part 6 Section 290).

For grant recipients receiving an award, evaluation costs are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such costs may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation. (2 CFR part 200).

d. Performance Reporting

Each applicant selected for funding must collect information and report on the project's performance using measures mutually agreed upon by FRA and the grantee to assess progress in achieving strategic goals and objectives. Examples of some rail performance measures for CRISI funding are listed in the table below. The applicable measure(s) will depend upon the type of project. Applicants requesting funding for the acquisition of rolling stock must integrate at least one equipment/rolling stock performance measure, consistent with the application materials and program goals.

Rail measures	Unit measure	Measurement period	Measurement frequency	Primary administration priority	Secondary administration priority	Description
Slow Order Miles	Miles		Quarterly	Workforce Development, Job Quality, and Wealth Creation.	Safety	The number of miles per quarter within the project area that have temporary speed restrictions (''slow orders'') imposed due to track condition. This is an indicator of the overall condition of track. This measure can be used for projects to rehabilitate sections of a rail line since the rehabilitation should eliminate, or at least reduce the slow orders upon project completion.
Gross Ton	Gross Tons		Quarterly	Workforce Development, Job Quality, and Wealth Creation.		The annual gross tonnage of freight shipped in the project area. Gross tons include freight cargo minus tare weight of the rail cars. This measures the volume of freight a railroad ships in a year. This measure can be useful for projects that are anticipated to increase freight shipments.
Rail Track Grade Separation.	Count		Quarterly	Workforce Development, Job Quality, and Wealth Creation.	Safety	The number of automobile crossings that are eliminated at an at-grade crossing as a result of a new grade separation.
Equity in Contracting.	Count of small businesses contracted.	Duration of the Project Performance Period.	Annual	Equity and Justice40.		Contracting with small and socially disadvantaged business enterprises, and labor surplus area firms (each a ''Small Business'') for the Project.
Fuel Savings/Emissions.	Gallons		Annual	Climate Change and Sustainability.		The total gallons of fuel saved as a result of rehabilitating, remanufacturing, procuring, or overhauling locomotives.

e. Program Evaluation

As a condition of grant award, grantees may be required to participate in an evaluation undertaken by DOT, or another agency or partner. The evaluation may take different forms such as an implementation assessment across grant recipients, an impact and/or outcomes analysis of all or selected sites within or across grantee, or a benefit/cost analysis or assessment of return on investment. The Department may require applicants to collect data elements to aid the evaluation. As a part of the evaluation, as a condition of award, grantee must agree to: (1) make records available to the evaluation contractor; (2) provide access to program records, and any other relevant documents to calculate costs and benefits; (3) in the case of an impact analysis, facilitate the access to relevant information as requested; and (4) follow evaluation procedures as specified by the evaluation contractor or DOT staff. For grant recipients, evaluation expenses are allowable costs (either as direct or indirect), unless prohibited by statute or regulation, and such expenses may include the personnel and equipment needed for data infrastructure and expertise in data analysis, performance, and evaluation (2 CFR part 200).

f. Project Signage and Public Acknowledgements

As a condition of grant award, for construction and non-construction projects, recipients may be required to post project signage and to include public acknowledgments in published and other collateral materials (*e.g.,* press releases, marketing materials, website, etc.) satisfactory in form and substance to DOT, that identifies the nature of the project and indicates that ''the project is funded by the Bipartisan Infrastructure Law''. In addition, recipients employing project signage are required to use the official Investing in America emblem in accordance with the Official Investing in America Emblem Style Guide. Costs associated with signage and public acknowledgments must be reasonable and limited. Signs or public acknowledgments should not be produced, displayed, or published if doing so results in unreasonable cost, expense, or recipient burden. The Recipient is encouraged to use recycled or recovered materials when procuring signs.

G. Federal Awarding Agency Contacts

For further information concerning this notice, please contact the FRA NOFO Support program staff via email at *FRA-NOFO-Support@dot.gov.* If additional assistance is needed, you may contact Ms. Deborah Kobrin, Supervisory Transportation Specialist, at email: *deborah.kobrin@dot.gov* or telephone: 202–420–1281 in FRA's Office of Rail Program Development.

H. Other Information

All information submitted as part of or in support of any application shall use publicly available data or data that can be made public and methodologies that are accepted by industry practice and standards, to the extent possible. If the application includes information the applicant considers to be a trade secret or confidential commercial or financial information, the applicant should do the following: (1) note on the front cover that the submission ''Contains Confidential Business Information (CBI)''; (2) mark each affected page ''CBI''; and (3) highlight or otherwise denote the CBI portions.

The DOT regulations implementing the Freedom of Information Act (FOIA) are found at 49 CFR part 7, subpart C—Availability of Reasonably Described Records under the Freedom of Information Act which sets forth rules for FRA to make requested materials, information, and records publicly available under FOIA. Unless prohibited by law and to the extent permitted under the FOIA, contents of application and proposals submitted by successful applicants may be released in response to FOIA requests. The Department may share application information within the Department or with other Federal agencies if the Department determines that sharing is relevant to the respective program's objectives.

Issued in Washington, DC.

Jennifer Mitchell,

Deputy Administrator.

[FR Doc. 2024–06710 Filed 3–28–24; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0004; Notice 1]

Michelin North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Michelin North America, Inc. (MNA) has determined that certain Michelin X Works D tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000) pounds, Speciality Tires, and Tires for Motorcycles.* MNA filed a noncompliance report dated December 16, 2022, and January 11, 2023, and subsequently petitioned NHTSA (the ''Agency'') on January 10, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of MNA's petition.

DATES: Send comments on or before April 29, 2024.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the

closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. Overview: MNA determined that certain Michelin X Works D tires do not fully comply with paragraph S6.5(d) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 kilograms (10,000) pounds, Speciality Tires, and Tires for Motorcycles* (49 CFR 571.119).

MNA filed a noncompliance report dated December 16, 2022, and amended the report on January 11, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* MNA petitioned NHTSA on January 10, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of MNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Tires Involved: Approximately 14,047 Michelin X Works D tires, manufactured between January 1, 2021, and September 14, 2022, were reported by the manufacturer.

III. Noncompliance: MNA explains that the noncompliance is that the maximum dual load in pounds is incorrectly marked on both sides of the tire and therefore does not comply with paragraph S6.5 (d) of FMVSS No. 119. Specifically, the tires state the maximum dual load as 5,590 pounds at 120 psi, when they should state 6,005 pounds at 120 psi.

IV. Rule Requirements: Paragraph S6.5(d) of FMVSS No. 119, includes the requirements relevant to this petition. Except as specified in paragraph S6.5, each tire must be marked on each sidewall with the information specified in paragraphs (a) through (j) of paragraph S6.5.

V. Summary of MNA's Petition: The following views and arguments presented in this section, ''V. Summary of MNA's Petition,'' are the views and arguments provided by MNA. They have not been evaluated by the Agency and do not reflect the views of the Agency. MNA describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

MNA explains that the subject noncompliance was detected during a review of markings for this tire line. MNA says that the mold drawings were corrected for future production upon detection of the subject noncompliance. MNA's investigation of the affected tires concluded that all tires produced with the marking error had entered the market.

First, MNA states that the subject tires were designed and manufactured in accordance with Tire and Rim Association standards, which specify a single max load of 3,000 kg (6,610 lbs) and a dual max load of 2,725 kg (6,005 lbs), both at an inflation pressure of 830 kPa (120 psi). Further, MNA asserts that the subject tires fully comply with all applicable FMVSS tire safety performance standards. MNA highlights that paragraph S7.2(a) of FMVSS No. 119 provides that endurance testing is conducted at the maximum single load value when the tire is marked with both single and dual maximum loads. MNA notes that the correct single load values in kilograms and pounds are marked on the tire. Further, MNA states that except for the max dual load marking in pounds on both sides of the tire, the affected tires correctly display all other required regulatory markings, including load range H corresponding to the designed maximum single load of 3,000 kilograms or 6,610 pounds, the maximum dual load of 2,725 kilograms, as well as the correct inflation pressure of 830 kPa or 120 psi.

MNA reiterates that the subject tires are properly marked with the maximum single and dual loads in kilograms, as well as the correct inflation pressure in kPa and psi. MNA explains that these markings provide both dealers and fleets with the necessary information to enable proper selection and application of the tires. MNA says that if a dealer or fleet were to follow the erroneous maximum dual load in pounds marked on the subject tires, the resulting tire loading would be 55 pounds below the designed maximum dual load of this tire.

MNA states that it has taken corrective measures in production and all tires currently being produced have the correct marking.

MNA refers to the following NHTSA petition decisions that it contends are similar to the subject noncompliance:

- Michelin North America, Inc., docket number NHTSA–2006–25891, granted 22 December 2006.
- Goodyear Tire and Rubber Company, docket number NHTSA–2005–21269, granted 18 July 2005.

MNA concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that MNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve tire distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant tires under their control after MNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2024–06670 Filed 3–28–24; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Submission for OMB Review; Examination Survey

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning the renewal of its information collection titled, ''Examination Survey.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be received by April 29, 2024.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0199, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 293–4835.

Instructions: You must include ''OCC'' as the agency name and ''1557–0199'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching OMB control number ''1557–0199'' or ''Examination Survey.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. The OCC asks the OMB to extend its approval of the collection in this notice.

Title: Examination Survey.

OMB Control No.: 1557–0199.

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Description: The OCC provides each national bank, Federal savings association, and Federal branch or agency (bank) with an Examination Survey at the end of its supervisory cycle (12- or 18-month period). This information collection permits banks to assess the OCC's bank supervisory activities, including the:

- Effectiveness of OCC communications with the bank;
- Reasonableness of OCC requests for data and information;
- Quality of OCC decision making during the exam process;
- Professionalism of OCC examining staff; and
- Responsiveness of OCC examiners.

The OCC developed the survey in 1994, at the suggestion of banking industry members who expressed a desire to provide examination-related feedback to the OCC. The OCC considered that expressed desire and concurred. The information collection continues to be an important tool for the OCC to measure OCC examination performance, design more efficient and effective examinations, and target examiner training.

This information collection continues to formalize and promote a long-standing OCC program. The OCC always has given the institutions it supervises the opportunity to provide input regarding the examination process.

Estimated Burden:

Estimated Number of Respondents: 542.

Estimated Number of Responses per Respondent: 1.

Estimated Annual Burden: 90 hours.

Comments: On January 24, 2024, the OCC published a 60-day notice for this information collection, (89 FR 4657). No comments were received/Discussion of comments and response.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Patrick T. Tierney,

Assistant Director, Office of the Comptroller of the Currency.

[FR Doc. 2024–06702 Filed 3–28–24; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Request for Information and Comment on Customer Identification Program Rule Taxpayer Identification Number Collection Requirement

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice and request for information and comment.

SUMMARY: FinCEN, in consultation with staff at the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Board of Governors of the Federal Reserve System (Board) (collectively, the ''Agencies''), seeks information and comment from interested parties regarding the Customer Identification Program (CIP) Rule requirement for banks to collect a taxpayer identification number (TIN), among other information, from a customer who is a U.S. person, prior to opening an account (the ''TIN collection requirement''). Generally, for a customer who is an individual and a U.S. person (''U.S. individual''), the TIN is a Social Security number (SSN). In this request for information (RFI), FinCEN specifically seeks information to understand the potential risks and benefits, as well as safeguards that could be established, if banks were permitted to collect partial SSN information directly from the customer for U.S. individuals and subsequently use reputable third-party sources to obtain the full SSN prior to account opening. FinCEN seeks this information to evaluate and enhance its understanding of current industry practices and perspectives related to the CIP Rule's TIN collection requirement, and to assess the potential risks and benefits associated with a change to that requirement. This notice also serves as a reminder from FinCEN, and staff at the Agencies, that banks must continue to comply with the current CIP Rule requirement to collect a full SSN for U.S. individuals from the customer prior to opening an account (''SSN collection requirement''). This RFI also supports FinCEN's ongoing efforts to implement section 6216 of the Anti-Money Laundering Act of 2020, which requires FinCEN to, among other things, identify regulations and guidance that may be outdated, redundant, or otherwise do not promote a risk-based anti-money laundering/countering the financing of terrorism (AML/CFT) regime.

DATES: Written comments on this RFI are welcome and must be received on or before May 28, 2024.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0009.
- *Mail:* Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2024–0009.

Please submit comments by one method only.

FOR FURTHER INFORMATION CONTACT: FinCEN's Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Bank Secrecy Act

The legislative framework generally referred to as the Bank Secrecy Act (BSA),[1] which consists of the Currency and Financial Transactions Reporting Act of 1970 and other legislation, is designed to combat money laundering, the financing of terrorism, and other illicit finance activity. To fulfill the purposes of the BSA, Congress authorized the Secretary of the Treasury (Secretary) to administer the BSA and require financial institutions to keep records and file reports that, among other purposes, ''are highly useful in criminal, tax, or regulatory investigations, risk assessments, or proceedings,'' or in the conduct of ''intelligence or counterintelligence activities, including analysis, to protect against terrorism.'' [2] The Secretary has delegated the authority to implement, administer, and enforce compliance with the BSA and its implementing regulations to the Director of FinCEN.[3]

Section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) [4] amended the BSA to require, among other things, the Secretary to prescribe regulations ''setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.'' [5] These minimum standards include, among other things, reasonable procedures for: (1) ''verifying the identity of any person seeking to open an account to the extent reasonable and practicable''; and (2) ''maintaining records of the information used to verify a person's identity, including name, address, and other identifying information.'' [6]

B. The CIP Rule: Certain Minimum Information Collection Requirements and Risk-Based Identity Verification Procedures

In 2003, FinCEN and the Agencies issued regulations implementing section 326 of the USA PATRIOT Act for banks.[7] Among other requirements, the CIP Rule requires a bank to, as part of its AML program, implement a written CIP that contains identity verification procedures that enable the bank to form a reasonable belief that it knows the true identity of its customers, including by verifying the identity of its customers to the extent reasonable and practicable. These procedures must specify the customer identifying information that a bank is to collect from each customer, including, at a minimum, the customer's name, date of birth (for an individual), address, and identification number. For U.S. persons, the identification number is a TIN.[8] Generally, to fulfill the CIP

[1] Certain parts of the Currency and Foreign Transactions Reporting Act of 1970, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act (BSA). These statutes are codified at 12 U.S.C. 1829b, 1951–1960, and 31 U.S.C. 5311–5314, 5316–5336 and includes other authorities in notes thereto. Regulations implementing the BSA appear at 31 CFR chapter X.

[2] 31 U.S.C. 5311(1).

[3] Treasury Order 180–01 (Jan. 14, 2020), Paragraph 3(a), *available at https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01.*

[4] USA PATRIOT Act, Public Law 107–56.

[5] 31 U.S.C. 5318(*l*).

[6] *Id.,* at 5318(*l*)(2)(A)–(B).

[7] *See, e.g.,* Board, FDIC, OCC, FinCEN, Office of Thrift Supervision, and NCUA, *Joint Final Rule—Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks,* 68 FR 25103 (May 9, 2003) (codified at 31 CFR 1020.220(a)(4)), *available at https://www.federalregister.gov/citation/68-FR-25103.* These regulations are codified under 12 CFR 208.63(b)(2), 12 CFR 211.5(m)(2), and 12 CFR 326.8(b)(2) (FDIC); 12 CFR 211.24(j)(2) (Board); 31 CFR 1020.220 (FinCEN); 12 CFR 748.2(b)(2) (NCUA); and 12 CFR 21.21(c)(2) (OCC) (collectively, the ''CIP Rule''). Additionally, in 2020, FinCEN issued a final rule implementing the CIP Rule for banks that lack a Federal functional regulator. *See* FinCEN, *Customer Identification Programs, Anti-Money Laundering Programs, and Beneficial Ownership Requirements for Banks Lacking a Federal Functional Regulator,* 85 FR 57129 (Nov. 16, 2020) (codified at 31 CFR 1010 and 31 CFR 1020).

[8] *See* 31 CFR 1020.220(a)(2)(i)(A)(*4*); *see also* 31 CFR 1010.100(yy). A TIN is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.,* SSN or employer identification number). In instances in which a U.S. person has not yet received a TIN, the CIP Rule provide an exception for persons applying for a

Continued

Rule's TIN collection requirement for a U.S. individual, a bank must collect from the customer prior to opening an account the full SSN. While a bank's procedures for verifying a customer's identity may be risk-based and may vary from bank to bank, the CIP Rule makes clear that the collection of certain identifying information is a minimum requirement and such information must be collected directly from the customer prior to opening an account, except with respect to credit card accounts. The CIP Rule generally does not provide for a bank collecting an individual's SSN from a person other than the customer (*e.g.,* from a third-party service provider).

When the CIP Rule was adopted, banks were exempted from the requirement with respect to credit card accounts to collect identifying information, including an identification number, directly from the customer. Instead, for credit card accounts, a bank may obtain the customer's identifying information, such as the SSN, from a third-party source prior to extending credit to the customer. FinCEN recognized at that time that without this exception, the CIP Rule would alter a bank's business practices by requiring additional information beyond what was already obtained directly from a customer who opened a credit card account at the point of sale or by telephone.[9] Concerns were raised during the proposed CIP Rule's comment period that an individual applying for a credit card account would be reluctant to give out their SSN, especially through non-face-to-face means, due to consumer privacy and security concerns.[10] FinCEN observed that requiring a bank to collect a customer's identifying information from the customer in every case, including over the phone, would likely alter the manner in which they do business.[11] FinCEN was also mindful of the legislative history of section 326, which indicated that Congress expected implementing regulations be appropriately tailored for accounts opened in situations where the account holder was not physically present at the financial institution and would not impose requirements that were burdensome, prohibitively expensive, or impractical.[12] Therefore, credit card accounts were exempted from the CIP Rule's information collection requirements, allowing banks to obtain a customer's identifying information from a third-party source, such as a credit bureau, prior to an extension of credit. FinCEN considered this practice to be an efficient and effective means of extending credit with little risk that the lender did not know the identity of the borrower.[13]

Since the CIP Rule was adopted in 2003, FinCEN is cognizant that there has been significant innovation in the way that customers interact with financial institutions and receive financial services, as well as significant innovation in the customer identifying information collection and verification tools available to financial institutions.[14] Many banks now partner with non-bank financial institutions (*e.g.,* third-party service providers) to facilitate new financial products and services, such as buy-now-pay-later (BNPL) loans that extend credit at point of sale to customers. These products and services operate in a similar manner to credit cards but may be offered by non-bank financial institutions that may or may not be subject to the BSA and its implementing regulations, or other similar regulatory requirements. Nonetheless, banks that do not comply with the CIP Rule may face supervisory action, particularly if the non-bank financial institution the bank has partnered with does not collect the customer's identifying information directly from the customer, as required by the CIP Rule.

This RFI will inform FinCEN's understanding in this area and assist FinCEN in evaluating the risks, benefits, and potential safeguards related to certain CIP Rule requirements applicable to banks. Specifically, FinCEN is seeking input from banks and other interested parties regarding the CIP Rule's SSN collection requirement, including potentially allowing banks to collect partial SSN information from the customer and using a third-party source to collect the full SSN. Partial SSN collection refers to the practice where a bank may collect a certain part of the SSN from individuals who are the customers (*e.g.,* last four digits of an individual's SSN), and then obtain the full SSN from a reputable third-party service provider.

II. Request for Information Overview

FinCEN is aware of public interest by banks, trade associations, and Congress about the SSN collection requirement.[15] In particular, there has been expressed interest in permitting banks to collect a partial SSN while also permitting the use of reputable third-party sources to obtain the full SSN prior to account opening. FinCEN is interested in comments from the public on whether permitting partial SSN collection by a bank prior to account opening may promote, with appropriate safeguards, increased accessibility to financial services for a broader population of individuals. As noted earlier, this practice is currently not permissible under the CIP Rule, except for the previously described exception for credit card accounts.[16]

FinCEN recognizes the expansion of additional tools, sources, and methods available to banks since the initial adoption of the CIP Rule in 2003 to collect and verify customer identifying information, for example the emergence of new identity sources such as state mobile driver's licenses.[17] FinCEN also

TIN. In such cases, instead of obtaining a TIN from a customer prior to opening an account, the bank's CIP may include procedures for opening an account for a customer (including an individual) that has applied for, but has not received, a TIN. *See* 31 CFR 1020.220(a)(2)(i)(B).

[9] 68 FR 25103, at p.103 (May 9, 2003) (codified at 31 CFR 1020.220(a)(4)), *available at https://www.federalregister.gov/citation/68-FR-25103.*

[10] *Id.* at p.113.

[11] *Id.* at p.116.

[12] *Id.* at p. 103. *See also* H.R. Rep. No. 107–250, pt. 1, at 63 (2001).

[13] *Id.* at p. 105.

[14] FinCEN and the Agencies have previously issued interagency guidance on the applicability of the CIP Rule to prepaid cards. The guidance clarifies that certain prepaid cards issued by a bank should be subject to the bank's CIP, including when a bank issues prepaid cards under arrangements with third-party program managers that sell, distribute, promote, or market the prepaid cards issued by the bank. *See Interagency Guidance to Issuing Banks on Applying Customer Identification Program* (Mar. 21, 2016), *available at https://fincen.gov/sites/default/files/shared/InterAgency Guidance20160318.pdf.*

[15] *See* Ranking Member Congresswoman Maxine Waters of the U.S. House Committee on Financial Services letter to FinCEN and the Agencies (Sept. 7, 2023), *available at https://democrats-financialservices.house.gov/news/documentsingle.aspx?DocumentID=410778; see also* House Subcommittee on National Security, Illicit Finance, and International Financial Institutions Hearing Entitled: ''Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI)'' (Apr. 27, 2023), *available at https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=408719* (which entered into the Congressional Record a letter from the American FinTech Council to H. Das, Acting Director of FinCEN titled ''Comments Regarding Regulatory Clarity, CIP Rules, and Consumer Products'' (Apr. 3, 2023), *available at https://fintechcouncil.org/fincen-bnpl*); and House Subcommittee on National Security, Illicit Finance, and International Financial Institutions Hearing Entitled: ''Oversight of the Financial Crimes Enforcement Network (FinCEN) and then Office of Terrorism and Financial Intelligence (TFI)'' (Feb. 14, 2024), *available at https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=409139* (which had questions regarding TIN collection entered into the record).

[16] *See* 31 CFR 1020.220(a)(2)(i).

[17] *See* Department of Homeland Security, Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes; Waiver for Mobile Driver's Licenses, 88 FR 60056 (Aug. 30, 2023), *available at https://www.federalregister.gov/d/2023-18582.*

recognizes there are, and will be, more available customer identifying attributes that banks may collect (*e.g.,* email address, geolocation, and internet protocol (IP) address location), some of which vary in accuracy and authenticity, but which could be used holistically as part of a banks' risk-based verification procedures under the CIP Rule.

Notwithstanding these advancements, FinCEN is aware of consumer fraud and protection concerns around permitting a bank to obtain the full SSN from a third-party service provider. For instance, by permitting a bank to collect only the last four digits of an SSN from a customer who is an individual, a bank may increase the ease and speed of identity theft, including synthetic identity fraud that can result in accounts opened without appropriate safeguards.[18] Additional risks may arise if there is inaccuracy when using a third-party source to obtain an individual's full SSN, which may lead to potential impediments to law enforcement investigative efforts in obtaining accurate customer identifying information. FinCEN also recognizes differing regulatory requirements for customer information required between banks and other entity types, which may not subject to the BSA and FinCEN's implementing regulations, may result in regulatory arbitrage and even allow for illicit finance activity risk to remain undetected in the U.S. financial system, particularly by entities not subject to suspicious activity reporting requirements pursuant to the BSA.[19]

This RFI seeks information and comment on the potential risks, benefits, and safeguards around banks collecting partial SSNs for U.S. individuals directly from the customer and subsequently using reputable third-party sources to obtain a full SSN prior to account opening. FinCEN is also gathering information about current industry practices regarding SSN collection. This RFI also seeks responses to specific questions below.

III. Suggested Topics for Commenters

To allow FinCEN to evaluate comments more effectively, FinCEN requests that, where possible, comments include any suggested use of FinCEN authorities, or changes to FinCEN regulations or guidance, including the nature of the requested change and supporting data or other information on impacts, costs, and benefits.

The following questions are intended to assist in the formulation of comments and are not intended to restrict what may be addressed by the public. Commenters may also address matters that do not appear in the questions below related to the CIP Rule's SSN collection requirement. FinCEN requests that, in addressing these questions, commenters identify issues in as much detail as possible and provide specific examples where appropriate. Commenters are requested to comment on some or all of the questions below and are encouraged to indicate in which area the comments are focused. FinCEN requests that commenters note their highest priorities in their response, along with an explanation of how or why certain suggestions have been prioritized, when possible.

1. Should banks be permitted to collect part or all of a customer's SSN for a U.S. individual from a third-party source prior to account opening? Should banks be permitted to collect other customer identifying information required by the CIP Rule from a third-party source?

2. If banks were permitted to collect partial SSN information from a customer in the case of a U.S. individual and subsequently use a reputable third-party source to obtain the full SSN prior to account opening:

a. What would be the risks and benefits of permitting this partial SSN collection practice for banks?

b. What safeguards would need to be in place? What impact would there be on a bank's policies, practices, and procedures?

c. What practices and procedures would banks use to obtain a customer's full SSN when a partial SSN is collected from the customer?

d. How would the collection of a partial SSN from the customer impact how a bank forms a reasonable belief of the customer's identity?

e. How would the reliance on third-party sources for SSN collection impact the adherence to CIP recordkeeping requirements, if at all?

f. What minimum due diligence processes would a bank typically conduct, or expect to conduct, before contracting with a third-party source for SSN collection? How do banks review and assess the capability, quality, and performance of the third-party source, including the accuracy and reliability of the full SSN collected by the third-party source?

g. What ongoing due diligence and monitoring would be conducted on the third-party source? How frequently would ongoing due diligence be conducted?

h. What measures could banks have in place to verify the accuracy of a full SSN retrieved from a third-party source?

i. How would existing third-party monitoring and due diligence processes be modified to ensure the privacy and security of customer data?

j. What would be the impact of allowing partial SSN collection with third-party validation in terms of identity theft-related safeguards for customers?

3. Regarding the current CIP Rule SSN collection requirement for banks to collect the full SSN for a U.S. individual directly from the customer prior to account opening:

a. What is the impact of the current requirement on banks and their customers to collect the full SSN directly from the customer?

b. Does the current SSN collection requirement impact a customer's ability to access financial products and services?

c. How does the current SSN collection requirement impact a bank's AML program? What type of changes to the SSN collection requirement would improve the risk-based nature of a financial institution's AML program?

d. What are the risks and benefits of collecting a full SSN directly from the customer? What safeguards are in place to protect SSN information?

e. Is there any impact on the SSN collection requirement from the method used by the customer to access a bank's products and services (*e.g.,* mobile application, third-party website, face-to-face)?

f. What factors and consideration may be necessary to identify, assess, and mitigate any risks associated with new technologies or innovative approaches to the SSN collection requirement?

g. Is there any impact on the SSN collection requirement related to geography? For example, how should the location of the customer be considered in terms of the SSN collection requirement?

h. Do certain financial products and services pose higher or lower levels of risk in terms of the SSN collection requirement? Are there certain products or services that are better placed for either full or partial SSN collection?

i. For banks registered to use an authoritative, government-affiliated source for verification, such as the Social Security Administration's

[18] *See* FinCEN, *Financial Trends Analysis: Identity-Related Suspicious Activity: 2021 Threats and Trends* (Jan. 2024), *available at https://www.fincen.gov/sites/files/shared/FTA_Identity_Final508.pdf* (which highlights the use of ''synthetic identity,'' a combination of real and fake customer identifying information, to exploit a financial institution's identity verification processes).

[19] *See* 31 CFR 1022.210(d)(1)(i)(A). Money services businesses, for example, have an AML Program requirement to verify customer identification, but are not subject to the CIP Rule.

electronic Consent Based SSN Verification (eCBSV) program, which typically requires customer consent prior to accessing this program, how would banks be able to use the eCBSV program if banks no longer obtained the full SSN from the customer?

4. Regarding current practices by parties not subject to the CIP Rule's SSN collection requirement (*i.e.,* non-banks) when using third-party sources for SSN collection:

a. What are the risks and benefits of using a third-party source for SSN collection?

b. What minimum due diligence processes does a non-bank typically conduct before contracting with a third-party source for SSN collection? How do non-banks review and assess the capability, quality, and performance of the third-party source, including the accuracy and reliability of the full SSN collected by the third-party source?

c. What ongoing due diligence and monitoring do non-banks conduct on the third-party source? How frequently is ongoing due diligence conducted?

d. What measures do non-banks have in place to verify the accuracy of a full SSN retrieved from a third-party source?

e. How do non-banks ensure the privacy and security of customer data when using a third-party source for SSN collection?

f. What authoritative or private sector third-party sources are generally used for obtaining SSNs?

g. What, if any, limitations and/or shortcomings have been identified in third-party sources used to obtain SSN information?

h. What is the typical timeframe from when a customer enters their partial TIN to the non-bank receiving the full SSN from the third-party source?

i. What types of processes or strategies may be employed by third-party sources to manage high volume and/or time-sensitive SSN collection requests?

j. How frequently do customers fail the third-party SSN collection? What process(es) can be applied in such instances?

k. Have there been expected or observed differences in the rate of fraud or suspicious activity when non-banks using a partial SSN collection process versus full SSN collection directly from a customer?

l. How frequently does the partial SSN provided by a customer match to more than one individual when submitted to a third-party source? What additional steps are taken in such a case?

m. When the customer provides a partial SSN, is the customer notified that the remaining digits of their SSN will be obtained from a third-party source? Are there instances when non-banks may display a full SSN to a customer who provided a partial SSN? How would non-banks address and mitigate identity theft-related risks in those instances?

5. Provide any publicly available studies or data points that demonstrate:

a. Customer behavior in seeking or avoiding access to financial products or services based on risks associated with a customer providing a full SSN, whether perceived or actual.

b. Accuracy and reliability of third-party sources from which SSN information could be acquired.

c. Impact on financial crime or other illicit finance activity risks when a customer is not required to provide a full SSN.

d. The benefits and risks for non-banks (*e.g.,* employers, retailers, financial service providers, and government agencies) and third-party service providers in obtaining a partial SSN from the customer and then using a third-party source to obtain the customer's full SSN.

6. Regarding current CIP practices of all financial institutions, both banks and non-banks:

a. What risks have been identified with the SSN collection requirement, and how have those risks been mitigated?

b. Do financial institutions use a combination of documentary and non-documentary methods to verify the identity of its customers, or do financial institutions rely solely on one of the two methods?

i. For financial institutions that do not rely on a combination of both methods, what is the rationale?

ii. For financial institutions that rely solely on non-documentary methods, what is the rationale and what information is collected to form a reasonable belief that it knows the true identity of the customer?

c. What are the variations to TIN collection and verification practices used by financial institutions?

d. Other than processes related to TIN collection and verification, what other means are used by financial institutions to collect and verify customer identifying information?

e. Describe the processes and technologies used by financial institutions when obtaining and verifying partial and/or full customer identifying information as it pertains to various delivery channels (such as telephonic, mobile, and point-of-sale).

f. Describe similarities and differences in the collection and verification practices by financial institutions between individuals who provide SSNs and legal entities that provide Employer Identification Numbers.

7. What are the competitive advantages and disadvantages between banks that are required to collect the full SSN from the customer and those non-banks that collect a partial SSN from the customer and then use a third-party source to obtain the customer's full SSN?

8. What types of products/services are impacted by differing regulatory requirements related to SSN collection?

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

[FR Doc. 2024–06763 Filed 3–28–24; 8:45 am]

BILLING CODE 4810–02–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 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 dates.

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 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 26, 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.

BILLING CODE 4810–AL–P

Individuals

1. AL-MINALA, Muhammad 'Ali, Damascus, Syria; DOB 03 Jun 1985; POB Damascus, Syria; nationality Syria; Gender Male (individual) [SYRIA] (Linked To: CENTRAL BANK OF SYRIA).

   Designated pursuant to Section 1(b)(ii) of E.O. 13582 of August 17, 2011, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria" (E.O. 13582), 76 FR 52209, 3 CFR 2011 Comp., p. 264, for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the CENTRAL BANK OF SYRIA, a person whose property and interests in property are blocked pursuant to E.O. 13582.

2. MAKAROV, Aleksey (a.k.a. MAKAROV, Alexey), Russia; DOB 06 Aug 1974; nationality Russia; Gender Male; Passport 753533725 (Russia) expires 03 Aug 2026 (individual) [SYRIA] [SYRIA-CAESAR] (Linked To: CENTRAL BANK OF SYRIA).

   Designated pursuant to Section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the CENTRAL BANK OF SYRIA, a person who property and interests in property are blocked pursuant to E.O. 13582.

   Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA).

3. DAVID, Yafi (Arabic: يافي ديفيد) (a.k.a. YAFEE, Daoud), United Arab Emirates; DOB 25 Aug 1969; POB Syria; nationality Ukraine; Gender Male; Passport FE550041 (Ukraine) expires 01 Jun 2026; Identification Number 121619695 (Oman) (individual) [SYRIA] (Linked To: GRAINS MIDDLE EAST TRADING DWC-LLC).

   Designated pursuant to section 1(b)(ii) of E.O. 13582 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, GRAINS MIDDLE EAST TRADING DWC-LLC, a person whose property and interests in property are blocked pursuant to E.O. 13582.

4. AL-DJ, Mahmoud Abdulilah (a.k.a. AL-DAJ, Mahmoud Abdul-ilah; a.k.a. AL-DJ, Mahmoud (Arabic: محمد الدج); a.k.a. DAJ, Mahmoud Abdul-ilah; a.k.a. DAJJ, Mahmud Abdulilah), Syria; DOB 26 Jul 1983; POB Tell Rifaat, Aleppo, Syria; nationality Syria; Gender Male (individual) [SYRIA].

Designated pursuant to Section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, GOVERNMENT OF SYRIA, a person whose property and interests in property are blocked pursuant to E.O. 13582.

5. AL-KAYALI, Taher (a.k.a. CAIALI, Taer; a.k.a. KAYALI, Taher (Arabic: طاهر كيالي); a.k.a. KAYALI, Taher Abdel Karim), Syria; DOB 11 Jul 1960; POB Aleppo, Syria; nationality Syria; Gender Male; National ID No. 02010229257 (Syria) (individual) [SYRIA].

   Designated pursuant to Section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, GOVERNMENT OF SYRIA, a person who property and interests in property are blocked pursuant to E.O. 13582.

Entities

1. MAYA EXCHANGE COMPANY (Arabic: شركة مايا للصرافة) (a.k.a. MAYA FOR EXCHANGE AND INTERNATIONAL HAWALAS), Ground Floor, Property Number 17/9/2230, Baqi Zadeh Building, Fardus Street, Salhiyah, Damascus, Syria; First Real Estate Zone, Property Number 936, Section 2, Ground Floor, Haju Building, Abd al-Hamid al-Durubi Street, Homs, Syria; Tartus Real Estate Zone, Section 8, Property Number 3881, Revolution Street, Al-Baraniyah, Tartus, Syria; Ground Floor, Second Real Estate Zone, Sections 7-9, Property 2533, Aziziyah Falls, Baghdad Station, Aleppo, Syria; Organization Type: Other monetary intermediation [SYRIA] [SYRIA-CAESAR] (Linked To: CENTRAL BANK OF SYRIA).

   Designated pursuant to Section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, CENTRAL BANK OF SYRIA, a person who property and interests in property are blocked pursuant to E.O. 13582.

   Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA).

2. GRAINS MIDDLE EAST TRADING DWC-LLC (Arabic: جرينز الشرق الأوسط للتجارة دي دبليو سي ش.ذ.م.م), Building A3 Office 213 Dubai World Central Business Park, Dubai, United Arab Emirates; Office 1705, Lake Central Tower, Business Bay, Dubai, United Arab Emirates; Office 426, A5 Building, Dubai World Central, Dubai, United Arab Emirates; Bahnhofstrasse 29, Zug 6300, Switzerland; Bahnhofstrasse 21, Zug 6300, Switzerland; Website https://grains-middleeast.com; Organization Established Date 18 Jul 2019; alt. Organization Established Date 10 May 2022; Company Number CHE-390.605.414 (Switzerland); Business Registration Number 9245 (United Arab Emirates); Registration Number CH-170.9.002.230-0 (Switzerland); Economic Register Number (CBLS) 11454986 (United Arab Emirates) [SYRIA] (Linked To: LIMITED LIABILITY COMPANY STG LOGISTIC).

Designated pursuant to Section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, LIMITED LIABILITY COMPANY STG LOGISTIC, a person whose property and interests in property are blocked pursuant to E.O. 13582.

3. LIMITED LIABILITY COMPANY STG LOGISTIC (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СТГ ЛОГИСТИК) (a.k.a. ООО STG LOGISTIK; a.k.a. STG STROYTRANSGAZ LOGISTIC; a.k.a. "STG LOGISTIC"), 12 Universitetsky Ave, Moscow 119330, Russia; Damascus, Syria; Organization Established Date 04 Sep 2009; Tax ID No. 5027148148 (Russia); Registration Number 1095027004236 (Russia) [SYRIA] [SYRIA-CAESAR].

   Designated pursuant to Section 1(b)(i) of E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, GOVERNMENT OF SYRIA, a person who property and interests in property are blocked pursuant to E.O. 13582.

   Also designated pursuant to Section 7412(a)(2)(A)(i) of the Caesar Act, for being a foreign person that knowingly provides significant financial, material, or technological support to, or knowingly engages in a significant transaction with the GOVERNMENT OF SYRIA (including any entity owned or controlled by the GOVERNMENT OF SYRIA).

4. AL-TA'IR COMPANY (Arabic: شركة الطير), Damascus, Syria; Organization Established Date 17 Dec 2012; Organization Type: Transportation and storage [SYRIA] (Linked To: AL-DJ, Mahmoud Abdulilah).

   Designated pursuant to Section 1(b)(ii) of E.O. 13582 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MAHMOUD ABDULILAH AL-DJ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

5. FREEBIRD TRAVEL AND TOURISM (a.k.a. AL-TAIR AL-HUR (Arabic: الطير الحر); a.k.a. FREE BIRD COMPANY), Maysaloon Street, Al Muhandiseen Building Floor No. 12, Damascus, Syria; Hour al-Enz al-Mammzar Center, Second Floor, Office 12, Dubai, United Arab Emirates; Athens, Greece; Organization Established Date 2022; Organization Type: Travel agency activities [SYRIA] (Linked To: AL-DJ, Mahmoud Abdulilah).

   Designated pursuant to Section 1(b)(ii) of E.O. 13582 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, MAHMOUD ABDULILAH AL-DJ, a person whose property and interests in property are blocked pursuant to E.O. 13582.

6. NEPTUNUS LLC (a.k.a. NEPTUNUS CO LTD), 653/38 Baghdad Street, Lattakia, Syria; Organization Established Date 2017; Business Registration Number 6068911 (Syria) [SYRIA] (Linked To: AL-KAYALI, Taher).

   Designated pursuant to Section 1(b)(ii) of E.O. 13582 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, TAHER AL-

KAYALI, a person whose property and interests in property are blocked pursuant to E.O. 13582.

Dated: March 26, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06728 Filed 3–28–24; 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 seven persons 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 these vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective 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 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 26, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and the following vessels subject to U.S. jurisdiction are blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Entities

1. KNH SHIPPING PRIVATE LIMITED (a.k.a. KNH GLOBAL PRIVATE LIMITED; a.k.a. KNH SHIPPING LTD.; a.k.a. KNH SHIPPING PVT LTD), Shop No. 8, Mayur Complex, Faridi Nagar Cimap, Chandan Road, Indra Nagar, Lucknow, Uttar Pradesh 226016, India; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; C.I.N. U63090UP2019PTC117063 (India); Registration Number 117603 (India) issued 17 May 2019 [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. HASSALEH INTERNATIONAL COMPANY (a.k.a. HASSALEH INTERNATIONAL CO), 80 Broad Street, Monrovia, Liberia; Registration Country Liberia; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number IMO 6270941 [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.

3. QUOC VIET MARINE TRANSPORT JSC (a.k.a. CONG TY CO PHAN VAN TAI HANG HAI QUOC VIET), 5, Road 7, Phu Huu Ward, District 9, Ho Chi Minh City, Vietnam; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Registration Number 1701198159 (Vietnam) issued 2009 [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.

4. MELODY SHIPMANAGEMENT PVT LTD (a.k.a. MELODY SHIPMANAGEMENT PRIVATE LIMITED), Office 309, 3rd Floor, Space 912, ABV Brand Factory, Mira Bhayandar Road, Mira Road (E), Thane, Maharashtra 401107, India; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Identification Number U61200MH2018PTC311397 (India) issued 02 Jul 2018; alt. Identification Number IMO 6052641; Registration Number 311397 (India) [SDGT] (Linked To: QUOC VIET MARINE TRANSPORT JSC).

   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, QUOC VIET MARINE TRANSPORT JSC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. MASS COM GROUP GENERAL TRADING AND CONTRACTING COMPANY WLL (Arabic: شركه ماس كوم جروب للتجاره العامه والمقاولات) (a.k.a. MASS COM GROUP FOR GENERAL TRADING; a.k.a. MASS COM GROUP FOR GENERAL TRADING AND CONTRACTING; a.k.a. MASS COM GROUP GEN. TRAD. & CONT. CO. WLL), Capital - Jibla - Fahd al-Salim Street, Kuwait; Apt. 11 Bid. 14614 St. Qutaiba Bl 146, Hawally, Kuwait; Website https://masscom-kw.corn/; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 04 May 2009; Trade License No. 331174 (Kuwait); Chamber of Commerce Number 119284 (Kuwait) [SDGT].

   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-LAW, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

6. ORCHIDIA REGIONAL FOR GENERAL TRADING AND CONTRACTING COMPANY (Arabic: شركه اوركيديا الاقليميه للتجاره العامه والمقاولات) (a.k.a. ORCHID REGIONAL COMPANY FOR GENERAL TRADING AND CONTRACTING; a.k.a. ORCHIDIA REGIONAL GEN. TRAD. & CONT. CO.), Al Farwaniyah- Jeleeb Al-Shuyoukh-'Abdullah Mutlaq al-Musaylim Street, Kuwait; 1 Bullah Almusailam Av, Jeleeb Alshuokh, Kuwait; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Organization Established Date 22 Jul 2006; Trade License No. 114367 (Kuwait); Chamber of Commerce Number 103054 (Kuwait) [SDGT].

   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-LAW, a person whose property and interests in property are proposed to be concurrently blocked pursuant to E.O. 13224, as amended.

Individual

1. AL–LAW, Tawfiq Muhammad Sa'id (a.k.a. AL–LAW, Tawfiq; a.k.a. ALLOU, Tawfik), Beirut, Lebanon; DOB 04 May 1992; nationality Syria; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Digital Currency Address—USDT TWBAPzpPiZarfVsY2BLXeaLhN Hurn4wkWG; Passport N013053807 (Syria) (individual) [SDGT] (Linked To: HIZBALLAH).

   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, HIZBALLAH, a person whose property and interests in property are blocked pursuant to E.O. 13224.

Vessels

1. DAWN II (f.k.a. AKIN I; a.k.a. SPAR) (3FHW2) 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 9185530; MMSI 374100000 (vessel) [SDGT] (Linked To: HASSALEH INTERNATIONAL COMPANY).

Identified pursuant to E.O. 13224, as amended, as property in which HASSALEH INTERNATIONAL COMPANY, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

2. ABYSS (T8A4595) Palau flag; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Vessel Registration Identification IMO 9157765; MMSI 511101287 (vessel) [SDGT] (Linked To: QUOC VIET MARINE TRANSPORT JSC).

Identified pursuant to E.O. 13224, as amended, as property in which QUOC VIET MARINE TRANSPORT JSC, a person whose property and interests in property are blocked pursuant to E.O. 13224, as amended, has an interest.

Dated: March 26, 2024.

Bradley T. Smith,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2024–06732 Filed 3–28–24; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR)

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of the Treasury will submit the following information collection 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 29, 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:

Financial Crimes Enforcement Network (FinCEN)

Title: Reports of Foreign Financial Accounts Regulations and FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR).

OMB Control Number: 1506–0009.

Type of Review: Extension without change of a currently approved collection.

Description: 31 U.S.C. 5314 authorizes the Secretary to require any ''resident or citizen of the United States or a person in, and doing business in, the United States, to . . . keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency.'' The term ''foreign financial agency'' encompasses the activities outside the United States of an entity that meets the statutory definition of ''financial agency,'' notably, ''a person acting for a person as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities or gold, or a service provided with respect to money, securities, futures, precious metals, stone and jewels, or value that substitutes for currency.'' The Secretary is also authorized to prescribe exemptions to the reporting requirement and to prescribe other matters the Secretary considers necessary to carry out 31 U.S.C. 5314.

The regulations implementing 31 U.S.C. 5314 appear at 31 CFR 1010.350, 1010.360, and 1010.420. 31 CFR 1010.350 generally requires each U.S. person having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country to report such relationship to the Commissioner of Internal Revenue for each year such relationship exists, and to provide and report such information specified in a reporting form prescribed under 31 U.S.C. 5314. The FinCEN Report 114, Report of Foreign Bank and Financial Accounts (FBAR) is used to file the information required by this section. The FBAR must be filed electronically with FinCEN. 31 CFR 1010.306(c) requires the FBAR to be filed for foreign financial accounts exceeding $10,000 maintained during the previous calendar year. No FBAR is required to be filed if the aggregate account value of foreign financial accounts maintained during the previous calendar year is below $10,000.

31 CFR 1010.420 outlines the recordkeeping requirements associated with foreign financial accounts required to be reported under section 1010.350. Specifically, filers must retain records of such accounts for a period of five years and make the records available for inspection as authorized by law.

Form: FinCEN Report 114.

Affected Public: Individuals and households.

Estimated Number of Respondents: 1,503,807.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 1,503,807.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 1,503,807.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2024–06697 Filed 3–28–24; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Multiple Internal Revenue Service (IRS) Information Collection Requests

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before April 29, 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 Melody Braswell by emailing *PRA@treasury.gov,* calling (202) 622–1035, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

1. Title: Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan).

OMB Number: 1545–0199.

Form Number: 5306–A.

Abstract: This form is used by banks, credit unions, insurance companies, and trade or professional associations to apply for approval of a simplified employee pension plan or a Savings Incentive Match Plan to be used by more than one employer. The data collected is used to determine if the prototype plan submitted is an approved plan.

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: 6.

Estimated Time per Respondent: 19 hours, 37 minutes.

Estimated Total Annual Burden Hours: 116.

2. Title: U.S. Estate (and Generation-Skipping Transfer) Tax Return Estate of Nonresident not a Citizen of the U.S.

OMB Number: 1545–0531.

Form Number: 706–NA.

Abstract: Form 706–NA is used to compute estate and generation-skipping transfer tax liability for nonresident alien decedents in accordance with section 6018 of the Internal Revenue Code. IRS uses the information on the form to determine the correct amount of tax and credits.

Current Actions: There are no changes being made to the collection at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; and Businesses or other for-profit organizations.

Estimated Number of Responses: 20,500.

Estimated Time per Respondent: 4 hours, 48 minutes.

Estimated Total Annual Burden Hours: 91,840.

3. Title: Annual Certification for Multiemployer Defined Benefit Plans.

OMB Number: 1545–2111.

Form Number: 15315.

Abstract: Internal Revenue Code section 432(b)(3) requires an actuarial certification of whether a multiemployer plan is in endangered status, and whether a multiemployer plan is or will be in critical status, for each plan year. This certification must be completed by the 90th day of the plan year and must be provided to the Secretary of the Treasury and to the plan sponsor. If the certification is with respect to a plan year that is within the plan's funding improvement period or rehabilitation period arising from a prior certification of endangered or critical status, the actuary must also certify whether the plan is making scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Actuaries submit Form 15315 to report the actuarial certification of a multiemployer plan's status.

Current Actions: There is no change to the existing collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, Not-for-profit institutions.

Estimated Number of Responses: 1,200.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 900.

4. Title: Grandfathered Health Plan.

OMB Number: 1545–2178.

Form Project Number: TD 9744.

Abstract: This document contains final regulations regarding grandfathered health plans, preexisting condition exclusions, lifetime and annual dollar limits on benefits, rescissions, coverage of dependent children to age 26, internal claims and appeal and external review processes, and patient protections under the Affordable Care Act. It finalizes changes to the proposed and interim final rules based on comments and incorporates sub regulatory guidance issued since publication of the proposed and interim final rules.

Current Actions: Adjustments to the burden estimates result from updated estimates on the number of grandfathered group health plans and increases in wage and postage rates. These updated data inputs reduce the hour burden by 1,550 hours compared with the prior submission and reduce the cost burden by $241,267 compared with the prior submission.

Type of Review: Revision of a currently approved collection.

Affected Public: Private Sector—Businesses or other for-profits and not for profit institutions.

Estimated Number of Responses: 8,868,468.

Estimated Time per Respondent: 2 min.

Estimated Total Annual Burden Hours: 655.

5. Title: Qualification and Transfer of Credit under Sections 30D and 25E from Taxpayer to Eligible Entity.

OMB Number: 1545–2311.

Abstract: Under the procedures prescribed in these revenue procedures, a dealer of a new clean vehicle or previously owned clean vehicle that wishes to partake in the advanced payment program under IRC sections 30D(g) and 25E(f) must register with the IRS through the IRS Identity Registration System and through the IRS Clean Vehicle Sales Portal. At the time of registration through the IRS Clean Vehicle Sales Portal, the dealer must provide certain information to the IRS and make certain certifications. After those are complete, the IRS will perform a tax compliance check to ensure the dealer is compliant with its tax obligations. After a taxpayer makes a transfer election under IRC sections 30D(g) or 25E(f) to the dealer, a dealer must upload certain information through the IRS Clean Vehicle Sales Portal, and the IRS, upon review, and if all conditions are met, will issue a payment to the dealer.

Qualified manufacturers who wish to have certain new clean vehicles qualify for the IRC section 30D credit in the subsequent year must submit certain information related to applicable critical minerals and battery components.

The IRS created a Clean Vehicles Sale Portal for qualified manufacturers, dealers, and sellers to register and provide the requisite information. The likely respondents are businesses and other for-profit entities.

Current Actions: There are changes to the existing collection. The IRS is revising this collection to add reporting obligations for qualified manufacturers to submit to the Department of Energy (DOE). This creates a modified collection obligation for qualified manufacturers related to applicable critical minerals and battery components. This modification provides that qualified manufacturers who wish to have certain new clean vehicles qualify for the IRC section 30D credit in the subsequent year must submit a report to the DOE that includes

supporting documentation in relation to battery components and applicable critical minerals, as well as associated constituent materials, contained in the battery from which the electric motor of the vehicle draws electricity; and submit attestations under penalty of perjury.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,031,150.

Estimated Average Time per Respondent: 116 hours, 30 minutes.

Estimated Total Annual Burden Hours: 301,138.

Authority: 44 U.S.C. 3501 *et seq.*

Melody Braswell,

Treasury PRA Clearance Officer.

[FR Doc. 2024–06680 Filed 3–28–24; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 89 Friday,
No. 62 March 29, 2024

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2025 and Updates to the IRF Quality Reporting Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1804–P]

RIN 0938–AV31

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2025 and Updates to the IRF Quality Reporting Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Proposed rule.

SUMMARY: This rule proposes updates to the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2025. As required by statute, this proposed rule includes the classification and weighting factors for the IRF prospective payment system's case-mix groups and a description of the methodologies and data used in computing the prospective payment rates for FY 2025. We are proposing updates to the Office of Management and Budget (OMB) market area delineations for the IRF prospective payment system (PPS) wage index and proposing to apply a 3-year phase-out of the rural adjustment. This rule also includes proposals for the IRF Quality Reporting Program (QRP).

DATES: To be assured consideration, comments must be received at one of the addresses provided below, by May 28, 2024.

ADDRESSES: In commenting, please refer to file code CMS–1804–P.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *https://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1804–P, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1804–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Patricia Taft, (410) 786–4561, for general information.

Kim Schwartz, (410) 786–2571, for information about the IRF payment policies, payment rates and coverage policies.

Ariel Cress, (410) 786–8571, for information about the IRF quality reporting program.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *https://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

Plain Language Summary: In accordance with 5 U.S.C. 553(b)(4), a plain language summary of this rule may be found at *https://www.regulations.gov.*

I. Executive Summary

A. Purpose

This proposed rule updates the prospective payment rates for IRFs for FY 2025 (that is, for discharges occurring on or after October 1, 2024, and on or before September 30, 2025) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). As required by section 1886(j)(5) of the Act, this proposed rule includes the classification and weighting factors for the IRF PPS's case-mix groups (CMGs), a description of the methodologies and data used in computing the prospective payment rates for FY 2025, and revised OMB core-based statistical area delineations from the July 21, 2023, OMB Bulletin (No. 23–01) for the IRF PPS wage index. This proposed rule includes three proposals for the FY 2028 IRF QRP and two Requests for Information (RFIs).

This proposed rule proposes the collection of four new items as standardized patient assessment data elements and the modification of one item collected as a standardized patient assessment data element, in the IRF-Patient Assessment Instrument (IRF–PAI) beginning with the FY 2028 IRF QRP. This proposed rule also proposes to remove one assessment item from the IRF–PAI beginning October 1, 2026. In addition, this proposed rule requests information on quality measure concepts for the IRF QRP in future years and an IRF star rating system.

B. Summary of Major Provisions

In this proposed rule, we use the methods described in the FY 2024 IRF PPS final rule (88 FR 50956) to update the prospective payment rates for FY 2025 using updated FY 2023 IRF claims and the most recent available IRF cost report data, which is FY 2022 IRF cost report data. We are also proposing to use the revised OMB market area delineations from the July 21, 2023, OMB Bulletin (No. 23–01) for the IRF PPS wage index, and to apply a 3-year phase-out of the rural adjustment for those IRFs changing from rural to urban.

Beginning with the FY 2028 IRF QRP, we are proposing four new items as standardized patient assessment data elements to be collected and submitted using the IRF–PAI: one item for Living Situation, two items for Food, and one item for Utilities. Additionally, we are proposing to modify the current Transportation item, and to remove one item (Admission Class) from the IRF–PAI. Finally, we are seeking input from interested parties on future IRF QRP quality measure concepts and an IRF star rating system.

C. Summary of Impact

TABLE 1: Cost and Benefit

Provision Description	Transfers/Costs
FY 2025 IRF PPS payment rate update	The overall economic impact of this final rule is an estimated $255 million in increased payments from the Federal Government to IRFs during FY 2025.
FY 2028 IRF QRP changes	The overall economic impact of this final rule is an estimated increase in cost to IRFs of $392,113.40 beginning with the FY 2028 IRF QRP.

II. Background

A. Statutory Basis and Scope for IRF PPS Provisions

Section 1886(j) of the Act provides for the implementation of a per-discharge PPS for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (collectively, hereinafter referred to as IRFs). Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs), but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. A complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880) and we provided a general description of the IRF PPS for FYs 2007 through 2019 in the FY 2020 IRF PPS final rule (84 FR 39055 through 39057). A general description of the IRF PPS for FYs 2020 through 2024, along with detailed background information for various other aspects of the IRF PPS, is now available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS.*

Under the IRF PPS from FY 2002 through FY 2005, the prospective payment rates were computed across 100 distinct CMGs, as described in the FY 2002 IRF PPS final rule (66 FR 41316). We constructed 95 CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget-neutral conversion factor). For a detailed discussion of the budget-neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRFs' unadjusted prospective payment rates.

For cost reporting periods that began on or after January 1, 2002, and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRFs would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166), we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of the Office of Management and Budget's (OMB's) Core-Based Statistical Area (CBSA) market definitions; modifications to the CMGs, tier comorbidities; and CMG relative weights, implementation of a new teaching status adjustment for IRFs; rebasing and revising the market basket used to update IRF payments, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Beginning with the FY 2006 IRF PPS final rule (70 FR 47908 through 47917), the market basket used to update IRF payments was a market basket reflecting the operating and capital cost structures for freestanding IRFs, freestanding inpatient psychiatric facilities (IPFs), and long-term care hospitals (LTCHs). Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule.

In response to COVID–19 Public Health Emergency (PHE), we published two interim final rules with comment period affecting IRF payment and conditions for participation. The interim final rule with comment period (IFC) entitled ''Medicare and Medicaid Programs; Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency,'' published on April 6, 2020 (85 FR 19230) (hereinafter referred to as the April 6, 2020 IFC), included certain changes to the IRF PPS medical supervision requirements at 42 CFR 412.622(a)(3)(iv) and 412.29(e) during the PHE for COVID–19. In addition, in the April 6, 2020 IFC, we removed the post-admission physician evaluation requirement at § 412.622(a)(4)(ii) for all

IRFs during the PHE for COVID–19. In the FY 2021 IRF PPS final rule, to ease documentation and administrative burden, we permanently removed the post-admission physician evaluation documentation requirement at § 412.622(a)(4)(ii) beginning in FY 2021.

A second IFC, entitled ''Medicare and Medicaid Programs, Basic Health Program, and Exchanges; Additional Policy and Regulatory Revisions in Response to the COVID–19 Public Health Emergency and Delay of Certain Reporting Requirements for the Skilled Nursing Facility Quality Reporting Program,'' was published on May 8, 2020 (85 FR 27550) (hereinafter referred to as the May 8, 2020 IFC). Among other changes, the May 8, 2020 IFC included a waiver of the ''3-hour rule'' at § 412.622(a)(3)(ii) to reflect the waiver required by section 3711(a) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136, enacted on March 27, 2020). In the May 8, 2020 IFC, we also modified certain IRF coverage and classification requirements for freestanding IRF hospitals to relieve acute care hospital capacity concerns in States (or regions, as applicable) experiencing a surge during the PHE for COVID–19. In addition to the policies adopted in our IFCs, we responded to the PHE with numerous blanket waivers [1] and other flexibilities,[2] some of which are applicable to the IRF PPS. CMS finalized these policies in the Calendar Year 2023 Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems final rule with comment period (87 FR 71748). Subsequently, on May 11, 2023, the U.S. Department of Health and Human Services (''HHS'') declared the expiration of the COVID–19 public health emergency. (See *https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html.*) As a result, the ''3-hour rule'' waiver at § 412.622(a)(3)(ii), and other IRF flexibilities were terminated.

The regulatory history previously included in each rule or notice issued under the IRF PPS, including a general description of the IRF PPS for FYs 2007 through 2024, is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS.*

B. Provisions of the Affordable Care Act and the Medicare Access and CHIP Reauthorization Act of 2015 (MACRA) Affecting the IRF PPS in FY 2012 and Beyond

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the ''Affordable Care Act'' or ''ACA''.

The ACA included several provisions that affect the IRF PPS in FYs 2012 and beyond. In addition to what was previously discussed, section 3401(d) of the ACA also added section 1886(j)(3)(C)(ii)(I) of the Act (providing for a ''productivity adjustment'' for FY 2012 and each subsequent FY). The productivity adjustment for FY 2025 is discussed in section V.D. of this proposed rule. Section 1886(j)(3)(C)(ii)(II) of the Act provides that the application of the productivity adjustment to the market basket update may result in an update that is less than 0.0 for a FY and in payment rates for a FY being less than such payment rates for the preceding FY.

Section 3004(b) of the ACA and section 411(b) of the MACRA (Pub. L. 114–10, enacted on April 16, 2015) also addressed the IRF PPS. Section 3004(b) of ACA reassigned the previously designated section 1886(j)(7) of the Act to section 1886(j)(8) of the Act and inserted a new section 1886(j)(7) of the Act, which contains requirements for the Secretary to establish a QRP for IRFs. Under that program, data must be submitted in a form and manner and at a time specified by the Secretary. Beginning in FY 2014, section 1886(j)(7)(A)(i) of the Act requires the application of a 2-percentage point reduction to the market basket increase factor otherwise applicable to an IRF (after application of paragraphs (C)(iii) and (D) of section 1886(j)(3) of the Act) for a FY if the IRF does not comply with the requirements of the IRF QRP for that FY. Application of the 2-percentage point reduction may result in an update that is less than 0.0 for a FY and in payment rates for a FY being lower than payment rates for the preceding FY. Reporting-based reductions to the market basket increase factor are not cumulative; they only apply for the FY involved. Section 411(b) of the MACRA amended section 1886(j)(3)(C) of the Act by adding paragraph (iii), which required us to apply for FY 2018, after the application of section 1886(j)(3)(C)(ii) of the Act, an increase factor of 1.0 percent to update the IRF prospective payment rates.

C. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule (66 FR 41316), upon the admission and discharge of a Medicare Part A fee-for-service (FFS) patient, the IRF is required to complete the appropriate sections of a Patient Assessment Instrument (PAI), designated as the IRF–PAI. In addition, beginning with IRF discharges occurring on or after October 1, 2009, the IRF is also required to complete the appropriate sections of the IRF–PAI upon the admission and discharge of each Medicare Advantage (MA) patient, as described in the FY 2010 IRF PPS final rule (74 FR 39762) and the FY 2010 IRF PPS correction notice (74 FR 50712). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the Grouper software. The Grouper software uses specific IRF–PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The Grouper software produces a five-character CMG number. The first character is an alphabetic character that indicates the comorbidity tier. The last four characters are numeric characters that represent the distinct CMG number. A free download of the Grouper software is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/Software.html.* The Grouper software is also embedded in the internet Quality Improvement and Evaluation System (iQIES) User tool available in iQIES at *https://www.cms.gov/medicare/quality-safety-oversight-general-information/iqies.*

Once a Medicare Part A FFS patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104–191, enacted on August 21, 1996) compliant electronic claim or, if the Administrative Simplification Compliance Act of 2002 (ASCA) (Pub. L. 107–105, enacted on December 27, 2002) permits, a paper claim (a UB–04 or a CMS–1450 as appropriate) using the five-character CMG number and sends it to the appropriate Medicare Administrative Contractor (MAC). In

[1] CMS, ''COVID–19 Emergency Declaration Blanket Waivers for Health Care Providers,'' (updated Feb. 19, 2021) (available at *https://www.cms.gov/files/document/summary-covid-19-emergency-declaration-waivers.pdf*).

[2] CMS, ''COVID–19 Frequently Asked Questions (FAQs) on Medicare Fee-for-Service (FFS) Billing,'' (updated March 5, 2021) (available at *https://www.cms.gov/files/document/03092020-covid-19-faqs-508.pdf*).

addition, once a MA patient is discharged, in accordance with the Medicare Claims Processing Manual, chapter 3, section 20.3 (Pub. 100–04), hospitals (including IRFs) must submit to their MAC an informational-only bill (type of bill (TOB) 111) that includes Condition Code 04. This will ensure that the MA days are included in the hospital's Supplemental Security Income (SSI) ratio (used in calculating the IRF LIP adjustment) for FY 2007 and beyond. Claims submitted to Medicare must comply with both ASCA and HIPAA.

Section 3 of the ASCA amended section 1862(a) of the Act by adding paragraph (22), which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services for which a claim is submitted other than in an electronic form specified by the Secretary. Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider. In addition, the Secretary also has the authority to waive such denial in such unusual cases as the Secretary finds appropriate. For more information, see the ''Medicare Program; Electronic Submission of Medicare Claims'' final rule (70 FR 71008). Our instructions for the limited number of Medicare claims submitted on paper are available at *https://www.cms.gov/manuals/downloads/clm104c25.pdf.*

Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR part 160 and part 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the CMS program claim memoranda at *https://www.cms.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600.)

The MAC processes the claim through its software system. This software system includes pricing programming called the ''Pricer'' software. The Pricer software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

III. Summary of Provisions of the Proposed Rule

In the FY 2025 IRF PPS proposed rule, we are proposing to update the IRF PPS for FY 2025 and the IRF QRP for FY 2028.

The proposed policy changes and updates to the IRF prospective payment rates for FY 2025 are as follows:

- Update the CMG relative weights and average length of stay values for FY 2025, in a budget neutral manner, as discussed in section IV.
- Update the IRF PPS payment rates for FY 2025 by the market basket increase factor, based upon the most current data available, with a productivity adjustment required by section 1886(j)(3)(C)(ii)(I) of the Act, as described in section V.
- Update the FY 2025 IRF PPS payment rates by the FY 2025 wage index, describe the proposed adoption of the revised OMB market area delineations, the phase-out of the rural adjustment for those IRFs changing from rural to urban, and the labor-related share in a budget-neutral manner, as discussed in section V.
- Describe the calculation of the IRF standard payment conversion factor for FY 2025, as discussed in section V.
- Update the outlier threshold amount for FY 2025, as discussed in section VI.
- Update the cost-to-charge ratio (CCR) ceiling and urban/rural average CCRs for FY 2025, as discussed in section VI.

We also propose updates to the IRF QRP beginning with the FY 2028 IRF QRP and request information in section VII. of this proposed rule as follows:

- Propose to adopt four items as standardized patient assessment data elements and modify one item collected as a standardized patient assessment data element in the IRF–PAI.
- Remove the Admission Class item from the IRF–PAI.
- Request information on IRF QRP quality measure and concepts.
- Request information on an IRF QRP star rating system.

IV. Proposed Update to the Case-Mix Group (CMG) Relative Weights and Average Length of Stay (ALOS) Values for FY 2025

As specified in § 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed for an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care, as well as provider efficiency.

In this proposed rule, we propose to update the CMG relative weights and ALOS values for FY 2025. Typically, we use the most recent available data to update the CMG relative weights and ALOS values. For FY 2025, we are proposing to use the FY 2023 IRF claims and FY 2022 IRF cost report data. These data are the most current and complete data available at this time. Currently, only a small portion of the FY 2023 IRF cost report data is available for analysis, but the majority of the FY 2023 IRF claims data are available for analysis. We are proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule, we would use such data to determine the FY 2025 CMG relative weights and ALOS values in the final rule.

We are proposing to apply these data using the same methodologies that we have used to update the CMG relative weights and ALOS values each FY since we implemented an update to the methodology. The detailed cost to charge ratio (CCR) data from the cost reports of IRF provider units of primary acute care hospitals is used for this methodology, instead of CCR data from the associated primary care hospitals, to calculate IRFs' average costs per case, as discussed in the FY 2009 IRF PPS final rule (73 FR 46372). In calculating the CMG relative weights, we use a hospital-specific relative value method to estimate operating (routine and ancillary services) and capital costs of IRFs. The process to calculate the CMG relative weights for this proposed rule is as follows:

Step 1. We estimate the effects that comorbidities have on costs.

Step 2. We adjust the cost of each Medicare discharge (case) to reflect the effects found in Step 1.

Step 3. We use the adjusted costs from Step 2 to calculate CMG relative weights, using the hospital-specific relative value method.

Step 4. We normalize the FY 2025 CMG relative weights using a normalization factor that results in the average CMG relative weights in FY 2025 being the same as the average CMG relative weights in the FY 2024 IRF PPS final rule (88 FR 50956).

Consistent with the methodology that we have used to update the IRF classification system in each instance in the past, we are proposing to update the CMG relative weights for FY 2025 in such a way that total estimated aggregate payments to IRFs for FY 2025 are the same with or without the changes (that is, in a budget-neutral manner) by applying a budget neutrality factor to the standard payment amount. To calculate the appropriate budget neutrality factor for use in updating the FY 2025 CMG relative weights, we use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2025 (with no changes to the CMG relative weights).

Step 2. Calculate the estimated total amount of IRF PPS payments for FY 2025 by applying the changes to the CMG relative weights (as discussed in this proposed rule).

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor of 0.9973 that would maintain the same total estimated aggregate payments in FY 2025 with and without the changes to the proposed CMG relative weights.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2025 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

In section V. of this proposed rule, we discuss the use of the existing methodology to calculate the standard payment conversion factor for FY 2025.

In Table 2, ''Relative Weights and Average Length of Stay Values for Case-Mix Groups,'' we present the proposed CMGs, the comorbidity tiers, the corresponding relative weights, and the ALOS values for each CMG and tier for FY 2025. The ALOS for each CMG is used to determine when an IRF discharge meets the definition of a short-stay transfer, which results in a per diem case level adjustment.

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TABLE 2: Proposed Relative Weights and Average Length of Stay Values for the Case-Mix Groups

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0101	Stroke M >=72.50	0.9768	0.8476	0.7762	0.7403	10	10	9	8
0102	Stroke M >=63.50 and M <72.50	1.2392	1.0752	0.9847	0.9392	11	11	11	10
0103	Stroke M >=50.50 and M <63.50	1.5975	1.3861	1.2694	1.2107	14	15	13	13
0104	Stroke M >=41.50 and M <50.50	2.0388	1.7690	1.6201	1.5452	17	16	16	16
0105	Stroke M <41.50 and A >=84.50	2.5472	2.2100	2.0240	1.9305	22	22	20	20
0106	Stroke M <41.50 and A <84.50	2.8963	2.5129	2.3014	2.1950	24	24	23	22
0201	Traumatic brain injury M >=73.50	1.0197	0.8451	0.7679	0.7233	9	10	8	8
0202	Traumatic brain injury M >=61.50 and M <73.50	1.3225	1.0961	0.9959	0.9381	12	12	11	10
0203	Traumatic brain injury M >=49.50 and M <61.50	1.6521	1.3693	1.2441	1.1720	14	15	13	13
0204	Traumatic brain injury M >=35.50 and M <49.50	2.0483	1.6976	1.5425	1.4530	18	17	16	15
0205	Traumatic brain injury M <35.50	2.6222	2.1732	1.9747	1.8601	29	22	19	18
0301	Non-traumatic brain injury M >=65.50	1.1965	0.9588	0.8810	0.8309	10	10	9	9
0302	Non-traumatic brain injury M >=52.50 and M <65.50	1.5457	1.2387	1.1382	1.0734	13	12	12	11
0303	Non-traumatic brain injury M >=42.50 and M <52.50	1.8638	1.4936	1.3724	1.2942	15	15	14	14
0304	Non-traumatic brain injury M <42.50 and A >=78.50	2.1608	1.7316	1.5911	1.5005	20	17	16	15
0305	Non-traumatic brain injury M <42.50 and A <78.50	2.3777	1.9055	1.7508	1.6512	20	19	17	16
0401	Traumatic spinal cord injury M >=56.50	1.2084	1.0874	1.0520	0.9558	13	11	11	11
0402	Traumatic spinal cord injury M >=47.50 and M <56.50	1.5448	1.3901	1.3448	1.2218	16	14	14	13
0403	Traumatic spinal cord injury M >=41.50 and M <47.50	1.9428	1.7482	1.6913	1.5367	18	17	17	17
0404	Traumatic spinal cord injury M <31.50 and A <61.50	2.9590	2.6627	2.5760	2.3404	22	29	23	23
0405	Traumatic spinal cord injury M >=31.50 and M <41.50	2.3976	2.1575	2.0873	1.8964	27	21	21	21
0406	Traumatic spinal cord injury M >=24.50 and M <31.50 and A >=61.50	3.0626	2.7559	2.6663	2.4224	27	30	26	25
0407	Traumatic spinal cord injury M <24.50 and A >=61.50	4.1570	3.7408	3.6190	3.2880	42	39	33	36
0501	Non-traumatic spinal cord injury M >=60.50	1.2759	0.9897	0.9351	0.8618	11	11	10	10
0502	Non-traumatic spinal cord injury M >=53.50 and M <60.50	1.5973	1.2390	1.1707	1.0789	15	12	12	12

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
0503	Non-traumatic spinal cord injury M >=48.50 and M <53.50	1.8307	1.4200	1.3417	1.2365	15	14	14	13
0504	Non-traumatic spinal cord injury M >=39.50 and M <48.50	2.1769	1.6885	1.5954	1.4704	19	17	16	16
0505	Non-traumatic spinal cord injury M <39.50	3.0255	2.3467	2.2174	2.0436	26	23	22	20
0601	Neurological M >=64.50	1.3260	0.9955	0.9288	0.8380	10	10	9	9
0602	Neurological M >=52.50 and M <64.50	1.6823	1.2630	1.1784	1.0632	13	12	12	11
0603	Neurological M >=43.50 and M <52.50	1.9813	1.4874	1.3878	1.2522	15	14	13	13
0604	Neurological M <43.50	2.4852	1.8657	1.7408	1.5706	20	17	16	16
0701	Fracture of lower extremity M >=61.50	1.2565	0.9710	0.9201	0.8498	12	11	10	9
0702	Fracture of lower extremity M >=52.50 and M <61.50	1.5501	1.1978	1.1350	1.0483	13	13	12	11
0703	Fracture of lower extremity M >=41.50 and M <52.50	1.9073	1.4738	1.3966	1.2899	16	15	14	14
0704	Fracture of lower extremity M <41.50	2.3302	1.8006	1.7063	1.5759	19	18	17	16
0801	Replacement of lower-extremity joint M >=63.50	1.2136	0.9821	0.8906	0.8298	10	10	9	9
0802	Replacement of lower-extremity joint M >=57.50 and M <63.50	1.3773	1.1146	1.0107	0.9417	11	11	10	10
0803	Replacement of lower-extremity joint M >=51.50 and M <57.50	1.5280	1.2366	1.1213	1.0448	12	12	11	11
0804	Replacement of lower-extremity joint M >=42.50 and M <51.50	1.7135	1.3867	1.2575	1.1717	14	14	13	12
0805	Replacement of lower-extremity joint M <42.50	2.0539	1.6622	1.5073	1.4044	16	16	15	14
0901	Other orthopedic M >=63.50	1.1970	0.9619	0.8972	0.8211	10	10	9	9
0902	Other orthopedic M >=51.50 and M <63.50	1.4914	1.1985	1.1179	1.0231	12	12	12	11
0903	Other orthopedic M >=44.50 and M <51.50	1.7800	1.4304	1.3341	1.2210	14	14	13	13
0904	Other orthopedic M <44.5	2.1328	1.7140	1.5986	1.4631	17	17	16	15
1001	Amputation lower extremity M >=64.50	1.2060	0.9999	0.9126	0.8155	11	11	10	9
1002	Amputation lower extremity M >=55.50 and M <64.50	1.5303	1.2687	1.1579	1.0347	14	14	12	11
1003	Amputation lower extremity M >=47.50 and M <55.50	1.7958	1.4889	1.3588	1.2143	15	15	14	13
1004	Amputation lower extremity M <47.50	2.2977	1.9049	1.7385	1.5536	19	19	17	16
1101	Amputation non-lower extremity M >=58.50	1.2582	1.0190	1.0190	0.9934	10	11	12	11
1102	Amputation non-lower extremity M >=52.50 and M <58.50	1.6072	1.3017	1.3017	1.2689	13	14	14	13

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
1103	Amputation non-lower extremity M <52.50	2.0039	1.6230	1.6230	1.5821	17	14	17	14
1201	Osteoarthritis M >=61.50	1.3199	1.0100	0.9435	0.8649	11	10	9	10
1202	Osteoarthritis M >=49.50 and M <61.50	1.6025	1.2262	1.1456	1.0501	13	12	11	11
1203	Osteoarthritis M <49.50 and A >=74.50	2.0725	1.5859	1.4816	1.3580	16	17	15	14
1204	Osteoarthritis M <49.50 and A <74.50	2.1745	1.6639	1.5545	1.4249	17	15	16	13
1301	Rheumatoid other arthritis M >=62.50	1.1226	0.8989	0.8592	0.7969	10	9	10	8
1302	Rheumatoid other arthritis M >=51.50 and M <62.50	1.5415	1.2343	1.1798	1.0943	13	12	12	12
1303	Rheumatoid other arthritis M >=44.50 and M <51.50 and A >=64.50	1.7456	1.3977	1.3360	1.2392	15	13	13	13
1304	Rheumatoid other arthritis M <44.50 and A >=64.50	2.2136	1.7724	1.6942	1.5714	16	17	16	16
1305	Rheumatoid other arthritis M <51.50 and A <64.50	2.0921	1.6752	1.6012	1.4851	17	14	14	16
1401	Cardiac M >=68.50	1.1253	0.8889	0.8258	0.7601	10	9	9	8
1402	Cardiac M >=55.50 and M <68.50	1.4285	1.1284	1.0483	0.9649	12	12	11	10
1403	Cardiac M >=45.50 and M <55.50	1.7498	1.3822	1.2840	1.1820	14	14	13	12
1404	Cardiac M <45.50	2.1390	1.6897	1.5697	1.4449	18	16	15	14
1501	Pulmonary M >=68.50	1.2625	1.0315	0.9742	0.9097	12	10	9	9
1502	Pulmonary M >=56.50 and M <68.50	1.5969	1.3048	1.2323	1.1507	13	12	12	11
1503	Pulmonary M >=45.50 and M <56.50	1.8179	1.4853	1.4028	1.3099	16	14	13	12
1504	Pulmonary M <45.50	2.2486	1.8372	1.7351	1.6202	19	17	16	15
1601	Pain syndrome M >=65.50	1.2819	0.9705	0.8714	0.8110	9	10	9	9
1602	Pain syndrome M >=58.50 and M <65.50	1.4866	1.1254	1.0106	0.9405	11	11	10	10
1603	Pain syndrome M >=43.50 and M <58.50	1.8646	1.4116	1.2675	1.1796	13	13	13	12
1604	Pain syndrome M <43.50	2.3143	1.7520	1.5732	1.4641	14	15	16	14
1701	Major multiple trauma without brain or spinal cord injury M >=57.50	1.3312	1.0409	0.9627	0.8743	11	11	10	10
1702	Major multiple trauma without brain or spinal cord injury M >=50.50 and M <57.50	1.6546	1.2938	1.1965	1.0867	13	14	12	12
1703	Major multiple trauma without brain or spinal cord injury M >=41.50 and M <50.50	1.9665	1.5377	1.4221	1.2916	16	15	14	14
1704	Major multiple trauma without brain or spinal cord injury M >=36.50 and M <41.50	2.2253	1.7401	1.6093	1.4616	17	17	16	15
1705	Major multiple trauma without brain or spinal cord injury M <36.50	2.6098	2.0408	1.8874	1.7142	22	20	19	17

CMG	CMG Description (M=motor, A=age)	Relative Weight				Average Length of Stay			
		Tier 1	Tier 2	Tier 3	No Comorbidity Tier	Tier 1	Tier 2	Tier 3	No Comorbidity Tier
1801	Major multiple trauma with brain or spinal cord injury M >=67.50	1.0552	0.8513	0.8025	0.7437	11	10	10	9
1802	Major multiple trauma with brain or spinal cord injury M >=55.50 and M <67.50	1.4134	1.1402	1.0748	0.9961	14	12	12	11
1803	Major multiple trauma with brain or spinal cord injury M >=45.50 and M <55.50	1.8216	1.4695	1.3852	1.2839	17	16	15	14
1804	Major multiple trauma with brain or spinal cord injury M >=40.50 and M <45.50	1.9918	1.6069	1.5147	1.4039	18	16	15	15
1805	Major multiple trauma with brain or spinal cord injury M >=30.50 and M <40.50	2.4129	1.9466	1.8349	1.7006	20	21	18	17
1806	Major multiple trauma with brain or spinal cord injury M <30.50	3.4116	2.7522	2.5944	2.4045	39	27	24	23
1901	Guillain-Barré M >=66.50	1.0348	0.7974	0.7436	0.7278	11	9	9	8
1902	Guillain-Barré M >=51.50 and M <66.50	1.6652	1.2833	1.1966	1.1713	17	14	13	13
1903	Guillain-Barré M >=38.50 and M <51.50	2.5018	1.9280	1.7977	1.7596	23	19	17	19
1904	Guillain-Barré M <38.50	3.6577	2.8188	2.6284	2.5727	32	30	25	25
2001	Miscellaneous M >=66.50	1.1777	0.9424	0.8810	0.8022	10	10	9	9
2002	Miscellaneous M >=55.50 and M <66.50	1.4691	1.1755	1.0989	1.0006	12	12	11	11
2003	Miscellaneous M >=46.50 and M <55.50	1.7588	1.4073	1.3156	1.1979	15	14	13	12
2004	Miscellaneous M <46.50 and A >=77.50	2.1025	1.6823	1.5727	1.4320	18	16	15	15
2005	Miscellaneous M <46.50 and A <77.50	2.2160	1.7731	1.6576	1.5093	19	18	16	15
2101	Burns M >=52.50	1.5169	1.1654	1.1654	0.9830	14	14	13	11
2102	Burns M <52.50	2.3089	1.7739	1.7739	1.4963	19	23	18	15
5001	Short-stay cases, length of stay is 3 days or fewer	0.0000	0.0000	0.0000	0.1715	0	0	0	2
5101	Expired, orthopedic, length of stay is 13 days or fewer	0.0000	0.0000	0.0000	0.7563	0	0	0	8
5102	Expired, orthopedic, length of stay is 14 days or more	0.0000	0.0000	0.0000	1.8223	0	0	0	16
5103	Expired, not orthopedic, length of stay is 15 days or fewer	0.0000	0.0000	0.0000	0.9160	0	0	0	9
5104	Expired, not orthopedic, length of stay is 16 days or more	0.0000	0.0000	0.0000	2.3794	0	0	0	23

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Generally, updates to the CMG relative weights result in some increases and some decreases to the CMG relative weight values. Table 2 shows how we estimate that the application of the proposed revisions for FY 2025 would affect particular CMG relative weight values, which would affect the overall distribution of payments within CMGs and tiers. We note that, because we implement the CMG relative weight revisions in a budget-neutral manner (as previously described), total estimated aggregate payments to IRFs for FY 2025 would not be affected as a result of the proposed CMG relative weight revisions. However, the proposed revisions would affect the distribution of payments within CMGs and tiers.

TABLE 3: Distributional Effects of the Proposed Changes to the CMG Relative Weights

Percentage Change in CMG Relative Weights	Number of Cases Affected	Percentage of Cases Affected
Increased by 15% or more	0	0.0%
Increased by between 5% and 15%	1,659	0.4%
Changed by less than 5%	401,353	99.2%
Decreased by between 5% and 15%	1,357	0.3%
Decreased by 15% or more	28	0.0%

As shown in Table 3, 99.2 percent of all IRF cases are in CMGs and tiers that would experience less than a 5 percent change (either increase or decrease) in the CMG relative weight value as a result of the proposed revisions for FY 2025. The proposed changes in the ALOS values for FY 2025, compared with the FY 2024 ALOS values, are small and do not show any particular trends in IRF length of stay patterns.

We invite public comment on our proposed updates to the CMG relative weights and ALOS values for FY 2025.

V. Proposed FY 2025 IRF PPS Payment Update

A. Background

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services for which payment is made under the IRF PPS. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF prospective payment rates for each FY. Section 1886(j)(3)(C)(ii)(I) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Thus, in this proposed rule, we are proposing to update the IRF PPS payments for FY 2025 by a market basket increase factor as required by section 1886(j)(3)(C) of the Act based upon the most current data available, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act.

We have utilized various market baskets through the years in the IRF PPS. For a discussion of these market baskets, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47046).

In FY 2016, we finalized the use of a 2012-based IRF market basket, using Medicare cost report data for both freestanding and hospital-based IRFs (80 FR 47049 through 47068). In FY 2020, we finalized a rebased and revised IRF market basket to reflect a 2016 base year. The FY 2020 IRF PPS final rule (84 FR 39071 through 39086) contains a complete discussion of the development of the 2016-based IRF market basket. Beginning with FY 2024, we finalized a rebased and revised IRF market basket to reflect a 2021 base year. The FY 2024 IRF PPS final rule (88 FR 50966 through 50988) contains a complete discussion of the development of the 2021-based IRF market basket.

B. Proposed FY 2025 Market Basket Update and Productivity Adjustment

1. Proposed FY 2025 Market Basket Update

For FY 2025 (that is, beginning October 1, 2024, and ending September 30, 2025), we are proposing to update the IRF PPS payments by a market basket increase factor as required by section 1886(j)(3)(C) of the Act, with a productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. For FY 2025, we are proposing to use the same methodology described in the FY 2024 IRF PPS final rule (88 FR 50982 through 50984).

Consistent with historical practice, we are proposing to estimate the market basket update for the IRF PPS for FY 2025 based on IHS Global Inc.'s (IGI's) forecast using the most recent available data. Based on IGI's fourth quarter 2023 forecast with historical data through the third quarter of 2023, the proposed 2021-based IRF market basket increase factor for FY 2025 is projected to be 3.2 percent. We are also proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket update or productivity adjustment), we would use such data, if appropriate, to determine the FY 2025 market basket update in the final rule.

2. Proposed FY 2025 Productivity Adjustment

According to section 1886(j)(3)(C)(i) of the Act, the Secretary shall establish an increase factor based on an appropriate percentage increase in a market basket of goods and services. Section 1886(j)(3)(C)(ii) of the Act requires that, after establishing the increase factor for a FY, the Secretary shall reduce such increase factor for FY 2012 and each subsequent FY, by the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act. Section 1886(b)(3)(B)(xi)(II) of the Act sets forth the definition of this productivity adjustment. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide, private nonfarm business multifactor productivity (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''productivity adjustment''). The U.S. Department of Labor's Bureau of Labor Statistics (BLS) publishes the official measures of productivity for the U.S. economy. We note that previously the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) of the Act, was referred to by BLS as private nonfarm business multifactor productivity. Beginning with the November 18, 2021, release of productivity data, BLS replaced the term multifactor productivity (MFP) with total factor productivity (TFP). BLS noted that this is a change in terminology only and will not affect the data or methodology. As a result of this change, the productivity measure referenced in section 1886(b)(3)(B)(xi)(II) is now published by BLS as private nonfarm business total factor productivity. However, as mentioned above, the data and methods are unchanged. Please see *www.bls.gov* for the BLS historical published TFP data. A complete description of IGI's TFP projection methodology is available on the CMS website at *https://www.cms.gov/data-research/statistics-trends-and-reports/medicare-program-rates-statistics/market-basket-research-and-information.* In addition, in the FY 2022 IRF final rule (86 FR 42374), we noted that effective with FY 2022 and forward, CMS changed the name of this adjustment to refer to it as the productivity adjustment rather than the MFP adjustment.

Using IGI's fourth quarter 2023 forecast, the 10-year moving average

growth of TFP for FY 2025 is projected to be 0.4 percent. In accordance with section 1886(j)(3)(C) of the Act, we are proposing to base the FY 2025 market basket update, which is used to determine the applicable percentage increase for the IRF payments, on IGI's fourth quarter 2023 forecast of the 2021-based IRF market basket. We are proposing to then reduce the market basket percentage increase by the estimated productivity adjustment for FY 2025 of 0.4 percentage point (the 10-year moving average growth of TFP for the period ending FY 2025 based on IGI's fourth quarter 2023 forecast). Therefore, the proposed FY 2025 IRF update is equal to 2.8 percent (3.2 percent market basket percentage increase reduced by the 0.4 percentage point productivity adjustment). Furthermore, we are proposing that if more recent data become available after the publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the market basket percentage increase and/or productivity adjustment), we would use such data, if appropriate, to determine the FY 2025 market basket percentage increase and productivity adjustment in the final rule.

For FY 2025, the Medicare Payment Advisory Commission (MedPAC) recommends that we reduce IRF PPS payment rates by 5 percent.[3] As discussed, and in accordance with sections 1886(j)(3)(C) and 1886(j)(3)(D) of the Act, the Secretary is proposing to update the IRF PPS payment rates for FY 2025 by the proposed IRF market basket update of 2.8 percent. Section 1886(j)(3)(C) of the Act does not provide the Secretary with the authority to apply a different update factor to IRF PPS payment rates for FY 2025.

We invite public comment on our proposals for the FY 2025 market basket percentage increase and productivity adjustment.

C. Proposed Labor-Related Share for FY 2025

Section 1886(j)(6) of the Act specifies that the Secretary is to adjust the proportion (as estimated by the Secretary from time to time) of IRFs' costs that are attributable to wages and wage-related costs, of the prospective payment rates computed under section 1886(j)(3) of the Act, for area differences in wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for such facilities. The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We are proposing to continue to classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market.

Based on our definition of the labor-related share and the cost categories in the 2021-based IRF market basket, we are proposing to calculate the labor-related share for FY 2025 as the sum of the FY 2025 relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation, Maintenance, and Repair Services, All Other: Labor-Related Services, and a portion of the Capital-Related relative importance from the 2021-based IRF market basket. For more details regarding the methodology for determining specific cost categories for inclusion in the 2021-based IRF labor-related share, see the FY 2024 IRF PPS final rule (88 FR 50985 through 50988).

The relative importance reflects the different rates of price change for these cost categories between the base year (2021) and FY 2025. We calculate the labor-related relative importance from the IRF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2025. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Based on IGI's fourth quarter 2023 forecast of the 2021-based IRF market basket, the sum of the FY 2025 relative importance for Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Facilities Support Services, Installation Maintenance & Repair Services, and All Other: Labor-Related Services is 70.5 percent. We are proposing that the portion of Capital-Related costs that are influenced by the local labor market is 46 percent. Since the relative importance for Capital-Related costs is 8.1 percent of the 2021-based IRF market basket for FY 2025, we are proposing to take 46 percent of 8.1 percent to determine the labor-related share of Capital-Related costs for FY 2025 of 3.7 percent. Therefore, we are proposing a total labor-related share for FY 2025 of 74.2 percent (the sum of 70.5 percent for the proposed labor-related share of operating costs and 3.7 percent for the proposed labor-related share of Capital-Related costs). We are proposing that if more recent data become available after publication of the proposed rule and before the publication of the final rule (for example, a more recent estimate of the labor-related share), we would use such data, if appropriate, to determine the FY 2025 IRF labor-related share in the final rule.

Table 4 shows the current estimate of the proposed FY 2025 labor-related share and the FY 2024 final labor-related share using the 2021-based IRF market basket relative importance.

[3] *https://www.medpac.gov/wp-content/uploads/2025/03/Mar25_MedPAC_ReportToCongress_SEC.pdf.*

TABLE 4: FY 2025 Proposed IRF Labor-Related Share and FY 2024 IRF Labor-Related Share

	FY 2025 Proposed Labor-Related Share [1]	FY 2024 Final Labor Related Share [2]
Wages and Salaries	49.3	49.0
Employee Benefits	11.7	11.8
Professional Fees: Labor-Related [3]	5.5	5.5
Administrative and Facilities Support Services	0.7	0.7
Installation, Maintenance, and Repair Services	1.5	1.5
All Other: Labor-Related Services	1.8	1.8
Subtotal	**70.5**	**70.3**
Labor-related portion of Capital-Related (46%)	3.7	3.8
Total Labor-Related Share	**74.2**	**74.1**

[1] Based on the 2021-based IRF market basket relative importance, IGI 4th quarter 2023 forecast.

[2] Based on the 2021-based IRF market basket relative importance as published in the **Federal Register** (88 FR 50987).

[3] Includes all contract advertising and marketing costs and a portion of accounting, architectural, engineering, legal, management consulting, and home office contract labor costs.

We invite public comments on the proposed labor-related share for FY 2025.

D. Wage Adjustment for FY 2025

1. Background

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion of rehabilitation facilities' costs attributable to wages and wage-related costs (as estimated by the Secretary from time to time) by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustment or updates made under section 1886(j)(6) of the Act for a FY are made in a budget-neutral manner.

In the FY 2023 IRF PPS final rule (87 FR 47054 through 47056) we finalized a policy to apply a 5-percent cap on any decrease to a provider's wage index from its wage index in the prior year, regardless of the circumstances causing the decline. We amended IRF PPS regulations at § 412.624(e)(1)(ii) to reflect this permanent cap on wage index decreases. Additionally, we finalized a policy that a new IRF would be paid the wage index for the area in which it is geographically located for its first full or partial FY with no cap applied because a new IRF would not have a wage index in the prior FY. A full discussion of the adoption of this policy is found in the FY 2023 IRF PPS final rule.

For FY 2025, we propose to maintain the policies and methodologies described in the FY 2024 IRF PPS final rule (88 FR 50956) related to the labor market area definitions and the wage index methodology for areas with wage data. Thus, we propose to use the core based statistical areas (CBSAs) labor market area definitions and the FY 2025 pre-reclassification and pre-floor hospital wage index data. In accordance with section 1886(d)(3)(E) of the Act, the FY 2025 pre-reclassification and pre-floor hospital wage index is based on data submitted for hospital cost reporting periods beginning on or after October 1, 2020, and before October 1, 2021 (that is, FY 2021 cost report data).

The labor market designations made by the OMB include some geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We propose to continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation for the FY 2025 IRF PPS wage index. For FY 2025, the only rural area without wage index data available is North Dakota. We have determined that the borders of 18 rural counties are local and contiguous with 8 urban counties. Therefore, under this methodology, the wage indexes for the counties of Burleigh/Morton/Oliver (CBSA 13900: 0.9020), Cass (CBSA 22020: 0.8763), Grand Forks (CBSA 24220: 0.7865), and McHenry/Renville/Ward (CBSA 33500: 0.7686) are averaged, resulting in an imputed rural wage index of 0.8334 for rural North Dakota for FY 2025. In past years for rural Puerto Rico, we did not apply this methodology due to the distinct economic circumstances there; due to the close proximity of almost all of Puerto Rico's various urban and non-urban areas, this methodology would produce a wage index for rural Puerto Rico that is higher than that in half of its urban areas. However, because rural Puerto Rico now has hospital wage index data on which to base an area wage adjustment, we will not apply this policy for FY 2025. For urban areas without specific hospital wage index data, we will continue using the average wage indexes of all urban areas within the State to serve as a reasonable proxy for the wage index of that urban CBSA as proposed and finalized in FY 2006 (70 FR 47927). For FY 2025, the only urban area without wage index data available is CBSA 25980, Hinesville-Fort Stewart, GA.

We invite public comment on our proposal regarding the Wage Adjustment for FY 2025.

2. Core-Based Statistical Areas (CBSAs) for the FY 2025 IRF Wage Index

The wage index used for the IRF PPS is calculated using the pre-reclassification and pre-floor inpatient PPS (IPPS) wage index data and is assigned to the IRF on the basis of the labor market area in which the IRF is geographically located. IRF labor market areas are delineated based on the CBSAs established by the OMB. The CBSA delineations (which were implemented

for the IRF PPS beginning with FY 2016) are based on revised OMB delineations issued on February 28, 2013, in OMB Bulletin No. 13–01. OMB Bulletin No. 13–01 established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas in the United States and Puerto Rico based on the 2010 Census and provided guidance on the use of the delineations of these statistical areas using standards published in the June 28, 2010 **Federal Register** (75 FR 37246 through 37252). We refer readers to the FY 2016 IRF PPS final rule (80 FR 47068 through 47076) for a full discussion of our implementation of the OMB labor market area delineations beginning with the FY 2016 wage index.

Generally, OMB issues major revisions to statistical areas every 10 years, based on the results of the decennial census. Additionally, OMB occasionally issues updates and revisions to the statistical areas in between decennial censuses to reflect the recognition of new areas or the addition of counties to existing areas. In some instances, these updates merge formerly separate areas, transfer components of an area from one area to another or drop components from an area. On July 15, 2015, OMB issued OMB Bulletin No. 15–01, which provides minor updates to and supersedes OMB Bulletin No. 13–01 that was issued on February 28, 2013. The attachment to OMB Bulletin No. 15–01 provides detailed information on the update to statistical areas since February 28, 2013. The updates provided in OMB Bulletin No. 15–01 are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2012, and July 1, 2013.

In the FY 2018 IRF PPS final rule (82 FR 36250 through 36251), we adopted the updates set forth in OMB Bulletin No. 15–01 effective October 1, 2017, beginning with the FY 2018 IRF wage index. For a complete discussion of the adoption of the updates set forth in OMB Bulletin No. 15–01, we refer readers to the FY 2018 IRF PPS final rule. In the FY 2019 IRF PPS final rule (83 FR 38527), we continued to use the OMB delineations that were adopted beginning with FY 2016 to calculate the area wage indexes, with updates set forth in OMB Bulletin No. 15–01 that we adopted beginning with the FY 2018 wage index.

On August 15, 2017, OMB issued OMB Bulletin No. 17–01, which provided updates to and superseded OMB Bulletin No. 15–01 that was issued on July 15, 2015. The attachments to OMB Bulletin No. 17–01 provide detailed information on the update to statistical areas since July 15, 2015, and are based on the application of the 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas to Census Bureau population estimates for July 1, 2014, and July 1, 2015. In the FY 2020 IRF PPS final rule (84 FR 39090 through 39091), we adopted the updates set forth in OMB Bulletin No. 17–01 effective October 1, 2019, beginning with the FY 2020 IRF wage index.

On April 10, 2018, OMB issued OMB Bulletin No. 18–03, which superseded the August 15, 2017 OMB Bulletin No. 17–01, and on September 14, 2018, OMB issued OMB Bulletin No. 18–04, which superseded the April 10, 2018 OMB Bulletin No. 18–03. These bulletins established revised delineations for Metropolitan Statistical Areas, Micropolitan Statistical Areas, and Combined Statistical Areas, and provided guidance on the use of the delineations of these statistical areas. A copy of this bulletin may be obtained at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf.*

To this end, as discussed in the FY 2021 IRF PPS proposed (85 FR 22075 through 22079) and final (85 FR 48434 through 48440) rules, we adopted the revised OMB delineations identified in OMB Bulletin No. 18–04 (available at *https://www.whitehouse.gov/wp-content/uploads/2018/09/Bulletin-18-04.pdf*) beginning October 1, 2020, including a 1-year transition for FY 2021 under which we applied a 5-percent cap on any decrease in an IRF's wage index compared to its wage index for the prior fiscal year (FY 2020). The updated OMB delineations more accurately reflect the contemporary urban and rural nature of areas across the country, and the use of such delineations allows us to determine more accurately the appropriate wage index and rate tables to apply under the IRF PPS. OMB issued further revised CBSA delineations in OMB Bulletin No. 20–01, on March 6, 2020 (available on the web at *https://www.whitehouse.gov/wp-content/uploads/2020/03/Bulletin-20-01.pdf*). However, we determined that the changes in OMB Bulletin No. 20–01 do not impact the CBSA-based labor market area delineations adopted in FY 2021. Therefore, we did not propose to adopt the revised OMB delineations identified in OMB Bulletin No. 20–01 for FY 2022 through FY 2024.

On July 21, 2023, OMB issued OMB Bulletin No. 23–01 (available at *https://www.whitehouse.gov/wp-content/uploads/2023/07/OMB-Bulletin-23-01.pdf*) which updates and supersedes OMB Bulletin No. 20–01 based upon the 2020 Standards for Delineating Core Based Statistical Areas (''the 2020 Standards'') published by the Office of Management and Budget (OMB) on July 16, 2021 (86 FR 37770). OMB Bulletin No. 23–01 revised CBSA delineations which are comprised of counties and equivalent entities (for example, boroughs, a city and borough, and a municipality in Alaska, planning regions in Connecticut, parishes in Louisiana, municipios in Puerto Rico, and independent cities in Maryland, Missouri, Nevada, and Virginia). For FY 2025, we propose to adopt the revised OMB delineations identified in OMB Bulletin No. 23–01.

a. Urban Counties Becoming Rural

As previously discussed, we are proposing to implement the new OMB statistical area delineations (based upon the 2020 decennial Census data) beginning in FY 2025 for the IRF PPS wage index. Our analysis shows that a total of 54 counties (and county equivalents) that are currently considered part of an urban CBSA would be considered located in a rural area, for IRF PPS payment beginning in FY 2025, if we adopt the new OMB delineations. Table 5 lists the 54 urban counties that would be rural if we finalize our proposal to implement the new OMB delineations.

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TABLE 5: Counties That Would Transition from Urban to Rural Status

Federal Information Processing Standard (FIPS) County Code	County Name	State	Current CBSA	Current CBSA Name
01129	WASHINGTON	AL	33660	Mobile, AL
05025	CLEVELAND	AR	38220	Pine Bluff, AR
05047	FRANKLIN	AR	22900	Fort Smith, AR-OK
05069	JEFFERSON	AR	38220	Pine Bluff, AR
05079	LINCOLN	AR	38220	Pine Bluff, AR
09015	WINDHAM	CT	49340	Worcester, MA-CT
10005	SUSSEX	DE	41540	Salisbury, MD-DE
13171	LAMAR	GA	12060	Atlanta-Sandy Springs-Alpharetta, GA
16077	POWER	ID	38540	Pocatello, ID
17057	FULTON	IL	37900	Peoria, IL
17077	JACKSON	IL	16060	Carbondale-Marion, IL
17087	JOHNSON	IL	16060	Carbondale-Marion, IL
17183	VERMILION	IL	19180	Danville, IL
17199	WILLIAMSON	IL	16060	Carbondale-Marion, IL
18121	PARKE	IN	45460	Terre Haute, IN
18133	PUTNAM	IN	26900	Indianapolis-Carmel-Anderson, IN
18161	UNION	IN	17140	Cincinnati, OH-KY-IN
21091	HANCOCK	KY	36980	Owensboro, KY
21101	HENDERSON	KY	21780	Evansville, IN-KY
22045	IBERIA	LA	29180	Lafayette, LA
24001	ALLEGANY	MD	19060	Cumberland, MD-WV
24047	WORCESTER	MD	41540	Salisbury, MD-DE
25011	FRANKLIN	MA	44140	Springfield, MA
26155	SHIAWASSEE	MI	29620	Lansing-East Lansing, MI
27075	LAKE	MN	20260	Duluth, MN-WI
28031	COVINGTON	MS	25620	Hattiesburg, MS
31051	DIXON	NE	43580	Sioux City, IA-NE-SD
36123	YATES	NY	40380	Rochester, NY
37049	CRAVEN	NC	35100	New Bern, NC
37077	GRANVILLE	NC	20500	Durham-Chapel Hill, NC
37085	HARNETT	NC	22180	Fayetteville, NC
37087	HAYWOOD	NC	11700	Asheville, NC
37103	JONES	NC	35100	New Bern, NC
37137	PAMLICO	NC	35100	New Bern, NC
42037	COLUMBIA	PA	14100	Bloomsburg-Berwick, PA
42085	MERCER	PA	49660	Youngstown-Warren-Boardman, OH-PA
42089	MONROE	PA	20700	East Stroudsburg, PA
42093	MONTOUR	PA	14100	Bloomsburg-Berwick, PA
42103	PIKE	PA	35084	Newark, NJ-PA
45027	CLARENDON	SC	44940	Sumter, SC
48431	STERLING	TX	41660	San Angelo, TX
49003	BOX ELDER	UT	36260	Ogden-Clearfield, UT
51113	MADISON	VA	47894	Washington-Arlington-Alexandria, DC-VA-MD-WV
51175	SOUTHAMPTON	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC

Federal Information Processing Standard (FIPS) County Code	County Name	State	Current CBSA	Current CBSA Name
51620	FRANKLIN CITY	VA	47260	Virginia Beach-Norfolk-Newport News, VA-NC
54035	JACKSON	WV	16620	Charleston, WV
54043	LINCOLN	WV	16620	Charleston, WV
54057	MINERAL	WV	19060	Cumberland, MD-WV
55069	LINCOLN	WI	48140	Wausau-Weston, WI
72001	ADJUNTAS	PR	38660	Ponce, PR
72055	GUANICA	PR	49500	Yauco, PR
72081	LARES	PR	10380	Aguadilla-Isabela, PR
72083	LAS MARIAS	PR	32420	Mayagüez, PR
72141	UTUADO	PR	10380	Aguadilla-Isabela, PR

We are proposing that the wage data for all hospitals located in the counties listed in Table 5 now be considered rural when their respective State's rural wage index value is calculated. This rural wage index value would be used under the IRF PPS.

b. Rural Counties Becoming Urban

Analysis of the new OMB delineations (based upon the 2020 decennial Census data) shows that a total of 54 counties (and county equivalents) that are currently located in rural areas would be in urban areas if we finalize our proposal to implement the new OMB delineations. Table 6 lists the 54 rural counties that would be urban if we finalize this proposal.

TABLE 6: Counties That Would Transition from Rural to Urban Status

FIPS County Code	County	State	Proposed CBSA	Proposed CBSA Name
01087	MACON	AL	12220	Auburn-Opelika, AL
01127	WALKER	AL	13820	Birmingham, AL
12133	WASHINGTON	FL	37460	Panama City-Panama City Beach, FL
13187	LUMPKIN	GA	12054	Atlanta-Sandy Springs-Roswell, GA
15005	KALAWAO	HI	27980	Kahului-Wailuku, HI
17053	FORD	IL	16580	Champaign-Urbana, IL
17127	MASSAC	IL	37140	Paducah, KY-IL
18159	TIPTON	IN	26900	Indianapolis-Carmel-Greenwood, IN
18179	WELLS	IN	23060	Fort Wayne, IN
20021	CHEROKEE	KS	27900	Joplin, MO-KS
21007	BALLARD	KY	37140	Paducah, KY-IL
21039	CARLISLE	KY	37140	Paducah, KY-IL
21127	LAWRENCE	KY	26580	Huntington-Ashland, WV-KY-OH
21139	LIVINGSTON	KY	37140	Paducah, KY-IL
21145	MC CRACKEN	KY	37140	Paducah, KY-IL
21179	NELSON	KY	31140	Louisville/Jefferson County, KY-IN
22053	JEFFRSON DAVIS	LA	29340	Lake Charles, LA
22083	RICHLAND	LA	33740	Monroe, LA
26015	BARRY	MI	24340	Grand Rapids-Wyoming-Kentwood, MI
26019	BENZIE	MI	45900	Traverse City, MI
26055	GRAND TRAVERSE	MI	45900	Traverse City, MI
26079	KALKASKA	MI	45900	Traverse City, MI
26089	LEELANAU	MI	45900	Traverse City, MI
27133	ROCK	MN	43620	Sioux Falls, SD-MN
28009	BENTON	MS	32820	Memphis, TN-MS-AR
28123	SCOTT	MS	27140	Jackson, MS
30007	BROADWATER	MT	25740	Helena, MT
30031	GALLATIN	MT	14580	Bozeman, MT
30043	JEFFERSON	MT	25740	Helena, MT
30049	LEWIS AND CLARK	MT	25740	Helena, MT
30061	MINERAL	MT	33540	Missoula, MT
32019	LYON	NV	39900	Reno, NV
37125	MOORE	NC	38240	Pinehurst-Southern Pines, NC
38049	MCHENRY	ND	33500	Minot, ND
38075	RENVILLE	ND	33500	Minot, ND
38101	WARD	ND	33500	Minot, ND
39007	ASHTABULA	OH	17410	Cleveland, OH
39043	ERIE	OH	41780	Sandusky, OH
41013	CROOK	OR	13460	Bend, OR
41031	JEFFERSON	OR	13460	Bend, OR
42073	LAWRENCE	PA	38300	Pittsburgh, PA
45087	UNION	SC	43900	Spartanburg, SC
46033	CUSTER	SD	39660	Rapid City, SD
47081	HICKMAN	TN	34980	Nashville-Davidson--Murfreesboro--Franklin, TN
48007	ARANSAS	TX	18580	Corpus Christi, TX
48035	BOSQUE	TX	47380	Waco, TX
48079	COCHRAN	TX	31180	Lubbock, TX
48169	GARZA	TX	31180	Lubbock, TX

FIPS County Code	County	State	Proposed CBSA	Proposed CBSA Name
48219	HOCKLEY	TX	31180	Lubbock, TX
48323	MAVERICK	TX	20580	Eagle Pass, TX
48407	SAN JACINTO	TX	26420	Houston-Pasadena-The Woodlands, TX
51063	FLOYD	VA	13980	Blacksburg-Christiansburg-Radford, VA
51181	SURRY	VA	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC
55123	VERNON	WI	29100	La Crosse-Onalaska, WI-MN

We are proposing that when calculating the area wage index, the wage data for hospitals located in these counties would be included in their new respective urban CBSAs.

c. Urban Counties Moving to a Different Urban CBSA

In addition to rural counties becoming urban and urban counties becoming rural, several urban counties would shift from one urban CBSA to another urban CBSA under our proposal to adopt the new OMB delineations. In other cases, if we adopt the new OMB delineations, counties would shift between existing and new CBSAs, changing the constituent makeup of the CBSAs.

In one type of change, an entire CBSA would be subsumed by another CBSA. For example, CBSA 31460 (Madera, CA) currently is a single county (Madera, CA) CBSA. Madera County would be a part of CBSA 23420 (Fresno, CA) under the new OMB delineations.

In another type of change, some CBSAs have counties that would split off to become part of, or to form, entirely new labor market areas. For example, CBSA 29404 (Lake County-Kenosha County, IL-WI) currently is comprised of two counties (Lake County, IL and Kenosha County, WI). Under the new OMB delineations, Kenosha County would split off and form the new CBSA 28450 (Kenosha, WI), while Lake County would remain in CBSA 29404.

Finally, in some cases, a CBSA would lose counties to another existing CBSA if we adopt the new OMB delineations. For example, Meade County, KY, would move from CBSA 21060 (Elizabethtown-Fort Knox, KY) to CBSA 31140 (Louisville/Jefferson County, KY-IN). CBSA 21060 would still exist in the new labor market delineations with fewer constituent counties. Table 7 lists the urban counties that would move from one urban CBSA to another urban CBSA under the new OMB delineations.

TABLE 7: Counties That Would Change to a Different CBSA

FIPS County Code	County Name	State	Current CBSA	Proposed CBSA
06039	MADERA	CA	31460	23420
11001	THE DISTRICT	DC	47894	47764
12053	HERNANDO	FL	45300	45294
12057	HILLSBOROUGH	FL	45300	45294
12101	PASCO	FL	45300	45294
12103	PINELLAS	FL	45300	41304
12119	SUMTER	FL	45540	48680
13013	BARROW	GA	12060	12054
13015	BARTOW	GA	12060	31924
13035	BUTTS	GA	12060	12054
13045	CARROLL	GA	12060	12054
13057	CHEROKEE	GA	12060	31924
13063	CLAYTON	GA	12060	12054
13067	COBB	GA	12060	31924
13077	COWETA	GA	12060	12054
13085	DAWSON	GA	12060	12054
13089	DE KALB	GA	12060	12054
13097	DOUGLAS	GA	12060	12054
13113	FAYETTE	GA	12060	12054
13117	FORSYTH	GA	12060	12054
13121	FULTON	GA	12060	12054
13135	GWINNETT	GA	12060	12054
13143	HARALSON	GA	12060	31924
13149	HEARD	GA	12060	12054
13151	HENRY	GA	12060	12054
13159	JASPER	GA	12060	12054
13199	MERIWETHER	GA	12060	12054
13211	MORGAN	GA	12060	12054
13217	NEWTON	GA	12060	12054
13223	PAULDING	GA	12060	31924
13227	PICKENS	GA	12060	12054
13231	PIKE	GA	12060	12054
13247	ROCKDALE	GA	12060	12054
13255	SPALDING	GA	12060	12054
13297	WALTON	GA	12060	12054
18073	JASPER	IN	23844	29414
18089	LAKE	IN	23844	29414
18111	NEWTON	IN	23844	29414
18127	PORTER	IN	23844	29414
21163	MEADE	KY	21060	31140
22103	ST. TAMMANY	LA	35380	43640
24009	CALVERT	MD	47894	30500

FIPS County Code	County Name	State	Current CBSA	Proposed CBSA
24017	CHARLES	MD	47894	47764
24033	PRINCE GEORGES	MD	47894	47764
24037	ST. MARYS	MD	15680	30500
25015	HAMPSHIRE	MA	44140	11200
34009	CAPE MAY	NJ	36140	12100
34023	MIDDLESEX	NJ	35154	29484
34025	MONMOUTH	NJ	35154	29484
34029	OCEAN	NJ	35154	29484
34035	SOMERSET	NJ	35154	29484
36027	DUTCHESS	NY	39100	28880
36071	ORANGE	NY	39100	28880
37019	BRUNSWICK	NC	34820	48900
39035	CUYAHOGA	OH	17460	17410
39055	GEAUGA	OH	17460	17410
39085	LAKE	OH	17460	17410
39093	LORAIN	OH	17460	17410
39103	MEDINA	OH	17460	17410
39123	OTTAWA	OH	45780	41780
47057	GRAINGER	TN	34100	28940
51013	ARLINGTON	VA	47894	11694
51043	CLARKE	VA	47894	11694
51047	CULPEPER	VA	47894	11694
51059	FAIRFAX	VA	47894	11694
51061	FAUQUIER	VA	47894	11694
51107	LOUDOUN	VA	47894	11694
51153	PRINCE WILLIAM	VA	47894	11694
51157	RAPPAHANNOCK	VA	47894	11694
51177	SPOTSYLVANIA	VA	47894	11694
51179	STAFFORD	VA	47894	11694
51187	WARREN	VA	47894	11694
51510	ALEXANDRIA CITY	VA	47894	11694
51600	FAIRFAX CITY	VA	47894	11694
51610	FALLS CHURCH CITY	VA	47894	11694
51630	FREDERICKSBURG CITY	VA	47894	11694
51683	MANASSAS CITY	VA	47894	11694
51685	MANASSAS PARK CITY	VA	47894	11694
53061	SNOHOMISH	WA	42644	21794
54037	JEFFERSON	WV	47894	11694
55059	KENOSHA	WI	29404	28450
72023	CABO ROJO	PR	41900	32420
72059	GUAYANILLA	PR	49500	38660
72079	LAJAS	PR	41900	32420
72111	PENUELAS	PR	49500	38660
72121	SABANA GRANDE	PR	41900	32420
72125	SAN GERMAN	PR	41900	32420
72153	YAUCO	PR	49500	38660

If providers located in these counties move from one CBSA to another under the new OMB delineations, there may be impacts, both negative and positive, upon their specific wage index values.

In other cases, adopting the revised OMB delineations would involve a change only in CBSA name and/or number, while the CBSA continues to encompass the same constituent counties. For example, CBSA 19430 (Dayton-Kettering, OH) would experience a change to its name and become CBSA 19430 (Dayton-Kettering-Beavercreek, OH), while all of its three constituent counties would remain the same. We consider these proposed changes (where only the CBSA name and/or number would change) to be inconsequential changes with respect to the IRF PPS wage index. Table 8 sets forth a list of such CBSAs where there would be a change in CBSA name and/or number only if we adopt the revised OMB delineations.

TABLE 8: Urban CBSAs With Change to Name and/or Number

Current CBSA	Current CBSA Name	New CBSA	Proposed CBSA Name
10380	Aguadilla-Isabela, PR	10380	Aguadilla, PR
10540	Albany-Lebanon, OR	10540	Albany, OR
12060	Atlanta-Sandy Springs-Alpharetta, GA	12054	Atlanta-Sandy Springs-Roswell, GA
12060	Atlanta-Sandy Springs-Alpharetta, GA	31924	Marietta, GA
12420	Austin-Round Rock-Georgetown, TX	12420	Austin-Round Rock-San Marcos, TX
12540	Bakersfield, CA	12540	Bakersfield-Delano, CA
13820	Birmingham-Hoover, AL	13820	Birmingham, AL
13980	Blacksburg-Christiansburg, VA	13980	Blacksburg-Christiansburg-Radford, VA
14860	Bridgeport-Stamford-Norwalk, CT	14860	Bridgeport-Stamford-Danbury, CT
15260	Brunswick, GA	15260	Brunswick-St. Simons, GA
15680	California-Lexington Park, MD	30500	Lexington Park, MD
16540	Chambersburg-Waynesboro, PA	16540	Chambersburg, PA
16984	Chicago-Naperville-Evanston, IL	16984	Chicago-Naperville-Schaumburg, IL
17460	Cleveland-Elyria, OH	17410	Cleveland, OH
19430	Dayton-Kettering, OH	19430	Dayton-Kettering-Beavercreek, OH
19740	Denver-Aurora-Lakewood, CO	19740	Denver-Aurora-Centennial, CO
21060	Elizabethtown-Fort Knox, KY	21060	Elizabethtown, KY
21060	Elizabethtown-Fort Knox, KY	31140	Louisville/Jefferson County, KY-IN
21780	Evansville, IN-KY	21780	Evansville, IN
21820	Fairbanks, AK	21820	Fairbanks-College, AK
22660	Fort Collins, CO	22660	Fort Collins-Loveland, CO
23224	Frederick-Gaithersburg-Rockville, MD	23224	Frederick-Gaithersburg-Bethesda, MD
23844	Gary, IN	29414	Lake County-Porter County-Jasper County, IN
24340	Grand Rapids-Kentwood, MI	24340	Grand Rapids-Wyoming-Kentwood, MI
24860	Greenville-Anderson, SC	24860	Greenville-Anderson-Greer, SC

Current CBSA	Current CBSA Name	New CBSA	Proposed CBSA Name
25540	Hartford-East Hartford-Middletown, CT	25540	Hartford-West Hartford-East Hartford, CT
25940	Hilton Head Island-Bluffton, SC	25940	Hilton Head Island-Bluffton-Port Royal, SC
26380	Houma-Thibodaux, LA	26380	Houma-Bayou Cane-Thibodaux, LA
26420	Houston-The Woodlands-Sugar Land, TX	26420	Houston-Pasadena-The Woodlands, TX
26900	Indianapolis-Carmel-Anderson, IN	26900	Indianapolis-Carmel-Greenwood, IN
27900	Joplin, MO	27900	Joplin, MO-KS
27980	Kahului-Wailuku-Lahaina, HI	27980	Kahului-Wailuku, HI
29404	Lake County-Kenosha County, IL-WI	28450	Kenosha, WI
29404	Lake County-Kenosha County, IL-WI	29404	Lake County, IL
29820	Las Vegas-Henderson-Paradise, NV	29820	Las Vegas-Henderson-North Las Vegas, NV
31020	Longview, WA	31020	Longview-Kelso, WA
31460	Madera, CA	23420	Fresno, CA
34100	Morristown, TN	28940	Knoxville, TN
34740	Muskegon, MI	34740	Muskegon-Norton Shores, MI
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	34820	Myrtle Beach-Conway-North Myrtle Beach, SC
34820	Myrtle Beach-Conway-North Myrtle Beach, SC-NC	48900	Wilmington, NC
35084	Newark, NJ-PA	35084	Newark, NJ
35154	New Brunswick-Lakewood, NJ	29484	Lakewood-New Brunswick, NJ
35300	New Haven-Milford, CT	35300	New Haven, CT
35380	New Orleans-Metairie, LA	43640	Slidell-Mandeville-Covington, LA
35840	North Port-Sarasota-Bradenton, FL	35840	North Port-Bradenton-Sarasota, FL
35980	Norwich-New London, CT	35980	Norwich-New London-Willimantic, CT
36084	Oakland-Berkeley-Livermore, CA	36084	Oakland-Fremont-Berkeley, CA
36140	Ocean City, NJ	12100	Atlantic City-Hammonton, NJ
36260	Ogden-Clearfield, UT	36260	Ogden, UT
36540	Omaha-Council Bluffs, NE-IA	36540	Omaha, NE-IA
37460	Panama City, FL	37460	Panama City-Panama City Beach, FL
39100	Poughkeepsie-Newburgh-Middletown, NY	28880	Kiryas Joel-Poughkeepsie-Newburgh, NY
39340	Provo-Orem, UT	39340	Provo-Orem-Lehi, UT
39540	Racine, WI	39540	Racine-Mount Pleasant, WI
41540	Salisbury, MD-DE	41540	Salisbury, MD
41620	Salt Lake City, UT	41620	Salt Lake City-Murray, UT
41900	San Germán, PR	32420	Mayagüez, PR
42644	Seattle-Bellevue-Kent, WA	21794	Everett, WA
42680	Sebastian-Vero Beach, FL	42680	Sebastian-Vero Beach-West Vero Corridor, FL
42700	Sebring-Avon Park, FL	42700	Sebring, FL
43620	Sioux Falls, SD	43620	Sioux Falls, SD-MN
44140	Springfield, MA	11200	Amherst Town-Northampton, MA
44420	Staunton, VA	44420	Staunton-Stuarts Draft, VA
44700	Stockton, CA	44700	Stockton-Lodi, CA
45300	Tampa-St. Petersburg-Clearwater, FL	41304	St. Petersburg-Clearwater-Largo, FL
45300	Tampa-St. Petersburg-Clearwater, FL	45294	Tampa, FL
45540	The Villages, FL	48680	Wildwood-The Villages, FL
45780	Toledo, OH	41780	Sandusky, OH
47220	Vineland-Bridgeton, NJ	47220	Vineland, NJ
47260	Virginia Beach-Norfolk-Newport News, VA-NC	47260	Virginia Beach-Chesapeake-Norfolk, VA-NC

Current CBSA	Current CBSA Name	New CBSA	Proposed CBSA Name
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	11694	Arlington-Alexandria-Reston, VA-WV
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	30500	Lexington Park, MD
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	47764	Washington, DC-MD
48140	Wausau-Weston, WI	48140	Wausau, WI
48300	Wenatchee, WA	48300	Wenatchee-East Wenatchee, WA
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	48424	West Palm Beach-Boca Raton-Delray Beach, FL
49340	Worcester, MA-CT	49340	Worcester, MA
49500	Yauco, PR	38660	Ponce, PR
49660	Youngstown-Warren-Boardman, OH-PA	49660	Youngstown-Warren, OH

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d. Change to County-Equivalents in the State of Connecticut

The June 6, 2022 Census Bureau Notice (87 FR 34235—34240), OMB Bulletin No. 23–01 replaced the 8 counties in Connecticut with 9 new ''Planning Regions.'' Planning regions now serve as county-equivalents within the CBSA system. We are proposing to adopt the planning regions as county equivalents for wage index purposes. We believe it is necessary to adopt this migration from counties to planning region county-equivalents in order to maintain consistency with OMB updates. We are providing the following crosswalk with the current and proposed FIPS county and county-equivalent codes and CBSA assignments.

TABLE 9: Connecticut Counties to Planning Regions

FIPS	Current County	Current CBSA	Proposed FIPS	Proposed Planning Region Area (County Equivalent)	Proposed CBSA
9003	Hartford	25540	9110	Capitol	25540
9015	Windham	49340	9150	Northeastern Connecticut	7
9005	Litchfield	7	9160	Northwest Hills	7
9001	Fairfield	14860	9190	Western Connecticut	14860
9011	New London	35980	9180	Southeastern Connecticut	35980
9013	Tolland	25540	9110	Capitol	25540
9009	New Haven	35300	9170	South Central Connecticut	35300
9007	Middlesex	25540	9130	Lower Connecticut River Valley	25540

3. Transition Policy for FY 2025 Wage Index Changes

Overall, we believe that implementing the new OMB delineations would result in wage index values being more representative of the actual costs of labor in a given area. We recognize that some providers (10 percent) would have a higher wage index due to our proposed implementation of the new labor market area delineations. However, we also recognize that more providers (16 percent) would experience decreases in wage index values as a result of our proposed implementation of the new labor market area delineations. Our analysis for the FY 2025 proposed rule indicates that 16 IRFs will experience a change in either rural or urban designations. Of these, 8 facilities designated as rural in FY 2024 would be designated as urban in FY 2025. Based upon the CBSA delineations, those rural IRFs that change from rural to urban would lose the 14.9 percent rural adjustment. To mitigate the financial impacts of this loss, we are proposing a transition for these facilities, as discussed further below.

CMS recognizes that IRFs in certain areas may experience reduced payments due to the proposed adoption of the revised OMB delineations and has finalized transition policies to mitigate negative financial impacts and provide stability to year-to-year wage index variations. In the FY 2021 final rule (85 FR 48434), CMS finalized a wage index transition policy to apply a 5 percent cap for IRFs that may experience decreases in their final wage index from the prior fiscal year. In FY 2023, the 5 percent cap policy was made permanent. This 5 percent cap on reductions policy is discussed in further detail in FY 2023 final rule at 87 FR 47054 through 47056. It is CMS's long held opinion that revised labor market delineations should be adopted as soon as is possible to maintain the integrity of the wage index system. We believe the 5- percent cap policy will sufficiently mitigate significant disruptive financial impacts on hospitals negatively affected by the proposed adoption of the revised OMB delineations. Besides the rural adjustment transition discussed immediately below, we do not believe any additional transition is necessary

considering that the current cap on wage index decreases, which was not in place when implementing prior decennial census updates in FY 2006 and FY 2015, ensures that an IRFs wage index would not be less than 95 percent of its final wage index for the prior year.

Consistent with the transition policy adopted in FY 2006 (70 FR 47923 [4] through 47927 [5]), we considered the appropriateness of applying a 3-year phase-out of the rural adjustment for IRFs located in rural counties that would become urban under the new OMB delineations, given the potentially significant payment impacts for these facilities. We continue to believe, as discussed in the FY 2006 IRF final rule (70 FR 47880 [6]), that the phase-out of the rural adjustment transition period for these facilities specifically is appropriate because, as a group, we expect these IRFs would experience a steeper and more abrupt reduction in their payments compared to other IRFs. Therefore, we are proposing a budget neutral three-year phase-out of the rural adjustment for existing FY 2024 rural IRFs that will become urban in FY 2025 and that experience a loss in payments due to changes from the new CBSA delineations. Accordingly, the incremental steps needed to reduce the impact of the loss of the FY 2024 rural adjustment of 14.9 percent will be phased out over FYs 2025, 2026 and 2027. This policy will allow rural IRFs which would be classified as urban in FY 2025 to receive two-thirds of the 2024 rural adjustment for FY 2025. For FY 2026, these IRFs will receive the full FY 2026 wage index and one-third of the FY 2024 rural adjustment. For FY 2027, these IRFs will receive the full FY 2027 wage index without a rural adjustment. We believe a three-year budget-neutral phase-out of the rural adjustment for IRFs that transition from rural to urban status under the new CBSA delineations would best accomplish the goals of mitigating the loss of the rural adjustment for existing FY 2024 rural IRFs. The purpose of the gradual phase-out of the rural adjustment for these facilities is to alleviate the significant payment implications for existing rural IRFs that may need time to adjust to the loss of their FY 2024 rural payment adjustment or that experience a reduction in payments solely because of this redesignation. As stated, this policy is specifically for rural IRFs that become urban in FY 2025 and that experience a loss in payments due to changes from the new CBSA delineations. Thus, we are not implementing a transition policy for urban facilities that become rural in FY 2025 because these IRFs will receive the full rural adjustment of 14.9 percent beginning October 1, 2024.

We invite comments on our proposed implementation of revised labor market area delineations and on the proposed transition policy for rural IRFs that would be designated as urban under the new CBSA delineations. The proposed wage index applicable to FY 2025 is set forth in Table A available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html.* Table A provides a crosswalk between the FY 2024 wage index for a provider using the current OMB delineations in effect in FY 2024 and the FY 2025 wage index using the proposed revised OMB delineations.

4. IRF Budget-Neutral Wage Adjustment Factor Methodology

To calculate the wage-adjusted facility payment for the proposed payment rates set forth in this proposed rule, we multiply the unadjusted Federal payment rate for IRFs by the FY 2025 labor-related share based on the 2021-based IRF market basket relative importance (74.2 percent) to determine the labor-related portion of the standard payment amount. (A full discussion of the calculation of the labor-related share appears in section VI.E. of this proposed rule.) We would then multiply the labor-related portion by the applicable IRF wage index. The wage index tables are available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html.*

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget-neutral manner. We calculate a budget-neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45689) and codified at § 412.624(e)(1), as described in the steps below. We use the listed steps to ensure that the FY 2025 IRF standard payment conversion factor reflects the update to the wage indexes (based on the FY 2021 hospital cost report data) and the update to the labor-related share, in a budget-neutral manner:

Step 1. Calculate the total amount of estimated IRF PPS payments using the labor-related share and the wage indexes from FY 2024 (as published in the FY 2024 IRF PPS final rule (88 FR 50956)).

Step 2. Calculate the total amount of estimated IRF PPS payments using the FY 2025 wage index values (based on updated hospital wage data and considering the permanent cap on wage index decreases policy) and the FY 2025 proposed labor-related share of 74.2 percent.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2. The resulting quotient is the FY 2025 budget-neutral wage adjustment factor of 0.9928.

Step 4. Apply the budget neutrality factor from step 3 to the FY 2025 IRF PPS standard payment amount after the application of the increase factor to determine the FY 2025 standard payment conversion factor.

We discuss the calculation of the standard payment conversion factor for FY 2025 in section VI.G. of this proposed rule.

We invite public comment on our proposals regarding the Wage Adjustment for FY 2025.

G. Description of the Proposed IRF Standard Payment Conversion Factor and Payment Rates for FY 2025

To calculate the proposed standard payment conversion factor for FY 2025, as illustrated in Table 10, we begin by applying the proposed increase factor for FY 2025, as adjusted in accordance with sections 1886(j)(3)(C) of the Act, to the standard payment conversion factor for FY 2024 ($18,541). Applying the proposed 2.8 payment update for FY 2025 to the standard payment conversion factor for FY 2024 of $18,541 yields a standard payment amount of $19,060. Then, we apply the proposed budget neutrality factor for the FY 2025 wage index (taking into account the policy placing a permanent cap on decreases in the wage index), and labor-related share of 0.9928, which results in a standard payment amount of $18,923. We next apply the proposed budget neutrality factor for the CMG relative weights of 0.9973, which results in the proposed standard payment conversion factor of $18,872 for FY 2025.

We invite public comment on the proposed FY 2025 standard payment conversion factor.

[4] *https://www.federalregister.gov/citation/70-FR-47923.*

[5] *https://www.federalregister.gov/citation/70-FR-47927.*

[6] *https://www.federalregister.gov/citation/70-FR-47880.*

TABLE 10: Calculations to Determine the Proposed FY 2025 Standard Payment Conversion Factor

Explanation for Adjustment		Calculations
FY 2024 Standard Payment Conversion Factor		$18,541
Proposed Market Basket Increase Factor for FY 2025 (3.2%), reduced by 0.4 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act	x	1.028
Proposed Budget Neutrality Factor for the Updates to the Wage Index and Labor-Related Share	x	0.9928
Proposed Budget Neutrality Factor for the Revisions to the CMG Relative Weights	x	0.9973
Proposed FY 2025 Standard Payment Conversion Factor	=	$18,872

We then apply the proposed CMG relative weights described in section IV. of this proposed rule to the FY 2025 standard payment conversion factor ($18,872), to determine the unadjusted IRF prospective payment rates for FY 2025. The unadjusted prospective payment rates for FY 2025 are shown in Table 11.

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TABLE 11: Proposed FY 2025 IRF PPS Payment Rates

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
0101	$18,434.17	$15,995.91	$14,648.45	$13,970.94
0102	$23,386.18	$20,291.17	$18,583.26	$17,724.58
0103	$30,148.02	$26,158.48	$23,956.12	$22,848.33
0104	$38,476.23	$33,384.57	$30,574.53	$29,161.01
0105	$48,070.76	$41,707.12	$38,196.93	$36,432.40
0106	$54,658.97	$47,423.45	$43,432.02	$41,424.04
0201	$19,243.78	$15,948.73	$14,491.81	$13,650.12
0202	$24,958.22	$20,685.60	$18,794.62	$17,703.82
0203	$31,178.43	$25,841.43	$23,478.66	$22,117.98
0204	$38,655.52	$32,037.11	$29,110.06	$27,421.02
0205	$49,486.16	$41,012.63	$37,266.54	$35,103.81
0301	$22,580.35	$18,094.47	$16,626.23	$15,680.74
0302	$29,170.45	$23,376.75	$21,480.11	$20,257.20
0303	$35,173.63	$28,187.22	$25,899.93	$24,424.14
0304	$40,778.62	$32,678.76	$30,027.24	$28,317.44
0305	$44,871.95	$35,960.60	$33,041.10	$31,161.45
0401	$22,804.92	$20,521.41	$19,853.34	$18,037.86
0402	$29,153.47	$26,233.97	$25,379.07	$23,057.81
0403	$36,664.52	$32,992.03	$31,918.21	$29,000.60
0404	$55,842.25	$50,250.47	$48,614.27	$44,168.03
0405	$45,247.51	$40,716.34	$39,391.53	$35,788.86
0406	$57,797.39	$52,009.34	$50,318.41	$45,715.53
0407	$78,450.90	$70,596.38	$68,297.77	$62,051.14
0501	$24,078.78	$18,677.62	$17,647.21	$16,263.89
0502	$30,144.25	$23,382.41	$22,093.45	$20,361.00
0503	$34,548.97	$26,798.24	$25,320.56	$23,335.23
0504	$41,082.46	$31,865.37	$30,108.39	$27,749.39
0505	$57,097.24	$44,286.92	$41,846.77	$38,566.82
0601	$25,024.27	$18,787.08	$17,528.31	$15,814.74
0602	$31,748.37	$23,835.34	$22,238.76	$20,064.71
0603	$37,391.09	$28,070.21	$26,190.56	$23,631.52
0604	$46,900.69	$35,209.49	$32,852.38	$29,640.36
0701	$23,712.67	$18,324.71	$17,364.13	$16,037.43
0702	$29,253.49	$22,604.88	$21,419.72	$19,783.52
0703	$35,994.57	$27,813.55	$26,356.64	$24,342.99
0704	$43,975.53	$33,980.92	$32,201.29	$29,740.38
0801	$22,903.06	$18,534.19	$16,807.40	$15,659.99
0802	$25,992.41	$21,034.73	$19,073.93	$17,771.76
0803	$28,836.42	$23,337.12	$21,161.17	$19,717.47
0804	$32,337.17	$26,169.80	$23,731.54	$22,112.32
0805	$38,761.20	$31,369.04	$28,445.77	$26,503.84
0901	$22,589.78	$18,152.98	$16,931.96	$15,495.80
0902	$28,145.70	$22,618.09	$21,097.01	$19,307.94
0903	$33,592.16	$26,994.51	$25,177.14	$23,042.71
0904	$40,250.20	$32,346.61	$30,168.78	$27,611.62
1001	$22,759.63	$18,870.11	$17,222.59	$15,390.12
1002	$28,879.82	$23,942.91	$21,851.89	$19,526.86
1003	$33,890.34	$28,098.52	$25,643.27	$22,916.27
1004	$43,362.19	$35,949.27	$32,808.97	$29,319.54
1101	$23,744.75	$19,230.57	$19,230.57	$18,747.44
1102	$30,331.08	$24,565.68	$24,565.68	$23,946.68
1103	$37,817.60	$30,629.26	$30,629.26	$29,857.39
1201	$24,909.15	$19,060.72	$17,805.73	$16,322.39
1202	$30,242.38	$23,140.85	$21,619.76	$19,817.49
1203	$39,112.22	$29,929.10	$27,960.76	$25,628.18

CMG	Payment Rate Tier 1	Payment Rate Tier 2	Payment Rate Tier 3	Payment Rate No Comorbidity
1204	$41,037.16	$31,401.12	$29,336.52	$26,890.71
1301	$21,185.71	$16,964.04	$16,214.82	$15,039.10
1302	$29,091.19	$23,293.71	$22,265.19	$20,651.63
1303	$32,942.96	$26,377.39	$25,212.99	$23,386.18
1304	$41,775.06	$33,448.73	$31,972.94	$29,655.46
1305	$39,482.11	$31,614.37	$30,217.85	$28,026.81
1401	$21,236.66	$16,775.32	$15,584.50	$14,344.61
1402	$26,958.65	$21,295.16	$19,783.52	$18,209.59
1403	$33,022.23	$26,084.88	$24,231.65	$22,306.70
1404	$40,367.21	$31,888.02	$29,623.38	$27,268.15
1501	$23,825.90	$19,466.47	$18,385.10	$17,167.86
1502	$30,136.70	$24,624.19	$23,255.97	$21,716.01
1503	$34,307.41	$28,030.58	$26,473.64	$24,720.43
1504	$42,435.58	$34,671.64	$32,744.81	$30,576.41
1601	$24,192.02	$18,315.28	$16,445.06	$15,305.19
1602	$28,055.12	$21,238.55	$19,072.04	$17,749.12
1603	$35,188.73	$26,639.72	$23,920.26	$22,261.41
1604	$43,675.47	$33,063.74	$29,689.43	$27,630.50
1701	$25,122.41	$19,643.86	$18,168.07	$16,499.79
1702	$31,225.61	$24,416.59	$22,580.35	$20,508.20
1703	$37,111.79	$29,019.47	$26,837.87	$24,375.08
1704	$41,995.86	$32,839.17	$30,370.71	$27,583.32
1705	$49,252.15	$38,513.98	$35,619.01	$32,350.38
1801	$19,913.73	$16,065.73	$15,144.78	$14,035.11
1802	$26,673.68	$21,517.85	$20,283.63	$18,798.40
1803	$34,377.24	$27,732.40	$26,141.49	$24,229.76
1804	$37,589.25	$30,325.42	$28,585.42	$26,494.40
1805	$45,536.25	$36,736.24	$34,628.23	$32,093.72
1806	$64,383.72	$51,939.52	$48,961.52	$45,377.72
1901	$19,528.75	$15,048.53	$14,033.22	$13,735.04
1902	$31,425.65	$24,218.44	$22,582.24	$22,104.77
1903	$47,213.97	$36,385.22	$33,926.19	$33,207.17
1904	$69,028.11	$53,196.39	$49,603.16	$48,551.99
2001	$22,225.55	$17,784.97	$16,626.23	$15,139.12
2002	$27,724.86	$22,184.04	$20,738.44	$18,883.32
2003	$33,192.07	$26,558.57	$24,828.00	$22,606.77
2004	$39,678.38	$31,748.37	$29,679.99	$27,024.70
2005	$41,820.35	$33,461.94	$31,282.23	$28,483.51
2101	$28,626.94	$21,993.43	$21,993.43	$18,551.18
2102	$43,573.56	$33,477.04	$33,477.04	$28,238.17
5001	$-	$-	$-	$3,236.55
5101	$-	$-	$-	$14,272.89
5102	$-	$-	$-	$34,390.45
5103	$-	$-	$-	$17,286.75
5104	$-	$-	$-	$44,904.04

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H. Example of the Methodology for Adjusting the Prospective Payment Rates

Table 12 illustrates the methodology for adjusting the proposed prospective payments (as described in section V. of this proposed rule). The following examples are based on two hypothetical Medicare beneficiaries, both classified into CMG 0104 (without comorbidities). The unadjusted prospective payment rate for CMG 0104 (without comorbidities) appears in Table 11.

Example: One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a rural non-teaching hospital has a Disproportionate Share Hospital (DSH) percentage of 5 percent (which would result in a LIP adjustment of 1.0156), a wage index of 0.8693, and a rural adjustment of 14.9 percent. Facility B, an urban teaching hospital, has a DSH percentage of 15 percent (which would result in a LIP adjustment of 1.0454 percent), a wage index of 0.9106, and a teaching status adjustment of 0.0784.

To calculate each IRF's labor and non-labor portion of the proposed prospective payment, we begin by taking the proposed FY 2025 unadjusted prospective payment rate for CMG 0104 (without comorbidities) from Table 11. Then, we multiply the proposed labor-related share for FY 2025 (74.2 percent) described in section VI. of this proposed rule by the unadjusted prospective payment rate. To determine the non-labor portion of the proposed prospective payment rate, we subtract the labor portion of the Federal payment from the proposed unadjusted prospective payment.

To compute the wage-adjusted prospective payment, we multiply the labor portion of the proposed Federal payment by the appropriate wage index located in the applicable wage index table. This table is available on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/InpatientRehabFacPPS/IRF-Rules-and-Related-Files.html.*

The resulting figure is the wage-adjusted labor amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted labor amount to the non-labor portion of the proposed Federal payment.

Adjusting the proposed wage-adjusted Federal payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching status adjustment (if applicable), we multiply the teaching status adjustment (0.0784, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted prospective payment rates. Table 12 illustrates the components of the adjusted payment calculation.

TABLE 12: Example of Computing the Proposed FY 2025 IRF Prospective Payment

Steps		Rural Facility A (Spencer Co., IN)		Urban Facility B (Harrison Co., IN)	
1	Unadjusted Payment		$29,161.01		$29,161.01
2	Labor-Related Share	X	0.742	X	0.742
3	Labor Portion of Payment	=	$21,637.47	=	$21,637.47
4	CBSA-Based Wage Index	X	0.8693	X	0.9106
5	Wage-Adjusted Amount	=	$18,809.45	=	$19,703.08
6	Non-Labor Amount	+	$7,523.54	+	$7,523.54
7	Wage-Adjusted Payment	=	$26,332.99	=	$27,226.62
8	Rural Adjustment	X	1.149	X	1.000
9	Wage- and Rural-Adjusted Payment	=	$30,256.61	=	$27,226.62
10	LIP Adjustment	X	1.0156	X	1.0454
11	Wage-, Rural- and LIP-Adjusted Payment	=	$30,728.61	=	$28,462.71
12	Wage- and Rural-Adjusted Payment		$30,256.61		$27,226.62
13	Teaching Status Adjustment	X	0	X	0.0784
14	Teaching Status Adjustment Amount	=	$0.00	=	$2,134.57
15	Wage-, Rural-, and LIP-Adjusted Payment	+	$30,728.61	+	$28,462.71
16	Total Adjusted Payment	=	$30,728.61	=	$30,597.28

Thus, the proposed adjusted payment for Facility A would be $30,728.61, and the proposed adjusted payment for Facility B would be $30,597.28.

VI. Proposed Update to Payments for High-Cost Outliers Under the IRF PPS for FY 2025

A. Update to the Outlier Threshold Amount for FY 2025

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. For the FY 2002 IRF PPS final rule, we analyzed various outlier policies using 3, 4, and 5 percent of the total estimated payments, and we concluded that an outlier policy set at 3 percent of total estimated payments would optimize the extent to which we could reduce the financial risk to IRFs of caring for high-cost patients, while still providing for adequate payments for all other (non-high cost outlier) cases.

Subsequently, we updated the IRF outlier threshold amount in the FYs 2006 through 2024 IRF PPS final rules and the FY 2011 and FY 2013 notices (70 FR 47880, 71 FR 48354, 72 FR 44284, 73 FR 46370, 74 FR 39762, 75 FR 42836, 76 FR 47836, 76 FR 59256, 77 FR 44618, 78 FR 47860, 79 FR 45872, 80 FR 47036, 81 FR 52056, 82 FR 36238, 83 FR 38514, 84 FR 39054, 85 FR 48444, 86 FR 42362, 87 FR 47038, and 88 FR 50956 respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated in the FY 2009 final rule (73 FR 46370 at 46385) that we would continue to

analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

To update the IRF outlier threshold amount for FY 2025, we propose to use FY 2023 claims data and the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006 through 2024. The outlier threshold is calculated by simulating aggregate payments and using an iterative process to determine a threshold that results in outlier payments being equal to 3 percent of total payments under the simulation. To determine the outlier threshold for FY 2025, we estimated the amount of FY 2025 IRF PPS aggregate and outlier payments using the most recent claims available (FY 2023) and the proposed FY 2025 standard payment conversion factor, labor-related share, and wage indexes, incorporating any applicable budget-neutrality adjustment factors. The outlier threshold is adjusted either up or down in this simulation until the estimated outlier payments equal 3 percent of the estimated aggregate payments. Based on an analysis of the preliminary data used for the proposed rule, we estimated that IRF outlier payments as a percentage of total estimated payments would be approximately 3.2 percent in FY 2024. Therefore, we propose to update the outlier threshold amount from $10,423 for FY 2024 to $12,158 for FY 2025 to maintain estimated outlier payments at approximately 3 percent of total estimated aggregate IRF payments for FY 2025.

We note that, as we typically do, we will update our data between the FY 2025 IRF PPS proposed and final rules to ensure that we use the most recent available data in calculating IRF PPS payments.

We invite public comment on the proposed update to the IRF outlier threshold for FY 2025.

B. Proposed Update to the IRF Cost-to-Charge Ratio Ceiling and Urban/Rural Averages for FY 2025

CCRs are used to adjust charges from Medicare claims to costs and are computed annually from facility-specific data obtained from MCRs. IRF specific CCRs are used in the development of the CMG relative weights and the calculation of outlier payments under the IRF PPS. In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR45692 through 45694), we propose to apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, we propose to update the national urban and rural CCRs for IRFs, as well as the national CCR ceiling for FY 2025, based on analysis of the most recent data available. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first MCR.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2025, as discussed below in this section.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2025, we propose to estimate a national average CCR of 0.492 for rural IRFs, which we calculated by taking an average of the CCRs for all rural IRFs using their most recently submitted cost report data. Similarly, we propose to estimate a national average CCR of 0.406 for urban IRFs, which we calculated by taking an average of the CCRs for all urban IRFs using their most recently submitted cost report data. We apply weights to both of these averages using the IRFs' estimated costs, meaning that the CCRs of IRFs with higher total costs factor more heavily into the averages than the CCRs of IRFs with lower total costs. For this proposed rule, we have used the most recent available cost report data (FY 2022). This includes all IRFs whose cost reporting periods begin on or after October 1, 2021, and before October 1, 2022. If, for any IRF, the FY 2022 cost report was missing or had an ''as submitted'' status, we used data from a previous FY's (that is, FY 2004 through FY 2021) settled cost report for that IRF. We do not use cost report data from before FY 2004 for any IRF because changes in IRF utilization since FY 2004 resulting from the 60 percent rule and IRF medical review activities suggest that these older data do not adequately reflect the current cost of care. Using updated FY 2022 cost report data for this proposed rule, we estimate a national average CCR of 0.492 for rural IRFs, and a national average CCR of 0.406 for urban IRFs.

In accordance with past practice, we propose to set the national CCR ceiling at 3 standard deviations above the mean CCR. Using this method, we proposed a national CCR ceiling of 1.52 for FY 2025. This means that, if an individual IRF's CCR were to exceed this ceiling of 1.52 for FY 2025, we will replace the IRF's CCR with the appropriate proposed national average CCR (either rural or urban, depending on the geographic location of the IRF). We calculated the proposed national CCR ceiling by:

Step 1. Taking the national average CCR (weighted by each IRF's total costs, as previously discussed) of all IRFs for which we have sufficient cost report data (both rural and urban IRFs combined).

Step 2. Estimating the standard deviation of the national average CCR computed in step 1.

Step 3. Multiplying the standard deviation of the national average CCR computed in step 2 by a factor of 3 to compute a statistically significant reliable ceiling.

Step 4. Adding the result from step 3 to the national average CCR of all IRFs for which we have sufficient cost report data, from step 1.

We also propose that if more recent data become available after the publication of this proposed rule and before the publication of the final rule, we would use such data to determine the FY 2025 national average rural and urban CCRs and the national CCR ceiling in the final rule. Using the FY 2022 cost report data for this proposed rule, we estimate a national average CCR ceiling of 1.52, using the same methodology.

We invite public comment on the proposed update to IRF CCR ceiling and the urban/rural averages for FY 2025.

VII. Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)

A. Background and Statutory Authority

The Inpatient Rehabilitation Facility Quality Reporting Program (IRF QRP) is authorized by section 1886(j)(7) of the Act, and it applies to freestanding IRFs, as well as inpatient rehabilitation units of hospitals or Critical Access Hospitals (CAHs) paid by Medicare under the IRF PPS. Section 1886(j)(7)(A)(i) of the Act requires the Secretary to reduce by 2 percentage points the annual increase factor for discharges occurring during a FY for any IRF that does not submit data in accordance with the IRF QRP requirements set forth in subparagraphs (C) and (F) of section 1886(j)(7) of the Act. We have codified our program requirements in our regulations at § 412.634.

We are proposing to require IRFs to report four new items to the IRF-Patient Assessment Instrument (PAI) and modify one item on the IRF–PAI as described in section VII.C. of this proposed rule. We are also proposing to remove an item from the IRF–PAI as described in section VII.F.3. Finally, we are seeking information on future measure concepts for the IRF QRP and on an IRF star rating system.

B. General Considerations Used for the Selection of Measures for the IRF QRP

For a detailed discussion of the considerations we use for the selection of IRF QRP quality, resource use, or other measures, we refer readers to the FY 2016 IRF PPS final rule (80 FR 47083 through 47084).

1. Quality Measures Currently Adopted for the IRF QRP

The IRF QRP currently has 18 adopted measures, which are listed in Table 13. For a discussion of the factors used to evaluate whether a measure should be removed from the IRF QRP, we refer readers to § 412.634(b)(2).

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TABLE 13: Quality Measures Currently Adopted for the IRF QRP

Short Name	Measure Name & Data Source
Inpatient Rehabilitation Facility – Patient Assessment Instrument (IRF-PAI) Assessment-Based Measures	
Pressure Ulcer/Injury	Changes in Skin Integrity Post-Acute Care: Pressure Ulcer/Injury
Application of Falls	Application of Percent of Residents Experiencing One or More Falls with Major Injury (Long Stay)
Discharge Mobility Score	IRF Functional Outcome Measure: Discharge Mobility Score for Medical Rehabilitation Patients
Discharge Self-Care Score	IRF Functional Outcome Measure: Discharge Self-Care Score for Medical Rehabilitation Patients
DRR	Drug Regimen Review Conducted With Follow-Up for Identified Issues–Post Acute Care (PAC) Inpatient Rehabilitation Facility (IRF) Quality Reporting Program (QRP)
TOH-Provider	Transfer of Health Information to the Provider–Post-Acute Care (PAC)
TOH-Patient	Transfer of Health Information to the Patient–Post-Acute Care (PAC)
DC Function	Discharge Function Score
Patient/Resident COVID-19 Vaccine	COVID-19 Vaccine: Percent of Patients/Residents Who Are Up to Date
National Healthcare Safety Network	
CAUTI	National Healthcare Safety Network (NHSN) Catheter-Associated Urinary Tract Infection Outcome Measure
CDI	National Healthcare Safety Network (NHSN) Facility-wide Inpatient Hospital-onset *Clostridium difficile* Infection (CDI) Outcome Measure
HCP Influenza Vaccine	Influenza Vaccination Coverage among Healthcare Personnel
HCP COVID-19 Vaccine	COVID-19 Vaccination Coverage among Healthcare Personnel (HCP)
Claims-Based	
MSPB IRF	Medicare Spending Per Beneficiary (MSPB)–Post Acute Care (PAC) IRF QRP
DTC	Discharge to Community–PAC IRF QRP
PPR 30 day	Potentially Preventable 30-Day Post-Discharge Readmission Measure for IRF QRP
PPR Within Stay	Potentially Preventable Within Stay Readmission Measure for IRFs

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We are not proposing to adopt any new measures for the IRF QRP.

C. Proposal To Collect Four New Items as Standardized Patient Assessment Data Elements and Modify One Item Collected as a Standardized Patient Assessment Data Element Beginning With the FY 2028 IRF QRP

In this proposed rule, we are proposing to require IRFs to report the following four new items [7] to be collected as standardized patient assessment data elements in the IRF–PAI under the social determinants of health (SDOH) category under the IRF QRP: one item for Living Situation; two items for Food; and one item for Utilities. We are also proposing to modify one of the current items collected as standardized patient assessment data under the SDOH category (the Transportation item), as described in section VII.C.5. of this proposed rule.

1. Definition of Standardized Patient Assessment Data

Section 1886(j)(7)(F)(ii) of the Act requires IRFs to submit standardized patient assessment data required under section 1899B(b)(1) of the Act. Section 1899B(b)(1)(A) of the Act requires post-acute care (PAC) providers to submit standardized patient assessment data under applicable reporting provisions (which, for IRFs, is the IRF QRP) with respect to the admission and discharge of an individual (and more frequently as the Secretary deems appropriate) using a standardized patient assessment instrument. Section 1899B(a)(1)(C) of the Act requires, in part, the Secretary to modify the PAC assessment instruments in order for PAC providers, including IRFs, to submit standardized patient assessment data under the Medicare program. IRFs are currently required to report standardized patient assessment data through the patient assessment instrument, referred to as the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI). Section 1899B(b)(1)(B) of the Act describes standardized patient assessment data as data required for at least the quality measures described in section 1899B(c)(1) of the Act and that is with respect to the following categories: (1) functional status, such as mobility and self-care at admission to a PAC provider and before discharge from a PAC provider; (2) cognitive function, such as ability to express ideas and to understand, and mental status, such as depression and dementia; (3) special services, treatments, and interventions, such as need for ventilator use, dialysis, chemotherapy, central line placement, and total parenteral nutrition; (4) medical conditions and comorbidities, such as diabetes, congestive heart failure, and pressure ulcers; (5) impairments, such as incontinence and an impaired ability to hear, see, or swallow, and (6) other categories deemed necessary and appropriate by the Secretary.

2. Social Determinants of Health Collected as Standardized Patient Assessment Data Elements

Section 1899B(b)(1)(B)(vi) of the Act authorizes the Secretary to collect standardized patient assessment data elements with respect to other categories deemed necessary and appropriate. Accordingly, we finalized the creation of the SDOH category of standardized patient assessment data elements in the FY 2020 IRF PPS final rule (84 FR 39149 through 39161), and defined SDOH as the socioeconomic, cultural, and environmental circumstances in which individuals live that impact their health.[8] According to the World Health Organization, research shows that the SDOH can be more important than health care or lifestyle choices in influencing health, accounting for between 30–55% of health outcomes.[9] This is a part of a growing body of research that highlights the importance of SDOH on health outcomes. Subsequent to the FY 2020 IRF PPS final rule, we expanded our definition of SDOH: SDOH are the conditions in the environments where people are born, live, learn, work, play, worship, and age that affect a wide range of health, functioning, and quality-of-life outcomes and risks.[10] [11] [12] This update will align our definition of SDOH with the definition used by HHS agencies, including OASH, the Centers for Disease Control and Prevention (CDC), and the White House Office of Science and Technology Policy.[13] [14] We currently collect seven items in this SDOH category of standardized patient assessment data elements: ethnicity, race, preferred language, interpreter services, health literacy, transportation, and social isolation (84 FR 39149 through 39161).[15]

In accordance with our authority under section 1899B(b)(1)(B)(vi) of the Act, we similarly finalized the creation of the SDOH category of standardized patient assessment data elements for Skilled Nursing Facilities (SNFs) in the FY 2020 SNF PPS final rule (84 FR 38805 through 38817), for Long-Term Care Hospitals (LTCHs) in the FY 2020 Inpatient Prospective Payment System (IPPS)/LTCH PPS final rule (84 FR 42577 through 42588), and for Home Health Agencies (HHAs) in the Calendar Year (CY) 2020 HH PPS final rule (84 FR 60597 through 60608). We also collect the same seven SDOH items in these PAC providers' respective patient/resident assessment instruments (84 FR 38817, 84 FR 42590, and 84 FR 60610, respectively).

Access to standardized data relating to SDOH on a national level permits us to conduct periodic analyses, and to assess their appropriateness as risk adjustors or in future quality measures. Our ability to perform these analyses and to make adjustments relies on existing data collection of SDOH items from PAC settings. We adopted these SDOH items using common standards and definitions across the four PAC providers to promote interoperable exchange of longitudinal information among these PAC providers, including IRFs, and other providers. We believe this information may facilitate coordinated care, continuity in care planning, and the discharge planning process from PAC settings.

We noted in our FY 2020 IRF PPS final rule that each of the items was identified in the 2016 National Academies of Sciences, Engineering,

[7] Items may also be referred to as ''data elements.''

[8] Office of the Assistant Secretary for Planning and Evaluation (ASPE). Second Report to Congress on Social Risk and Medicare's Value-Based Purchasing Programs. June 28, 2020. Available at: *https://aspe.hhs.gov/reports/second-report-congress-social-risk-medicares-value-based-purchasing-programs.*

[9] World Health Organization. Social determinants of health. Available at: *https://www.who.int/health-topics/social-determinants-of-health#tab=tab_1.*

[10] Using Z Codes: The Social Determinants of Health (SDOH). Data Journey to Better Outcomes. *https://www.cms.gov/files/document/zcodes-infographic.pdf.*

[11] Improving the Collection of Social Determinants of Health (SDOH) Data with ICD–10–CM Z Codes. *https://www.cms.gov/files/document/cms-2023-omh-z-code-resource.pdf.*

[12] *CMS.gov.* Measures Management System (MMS). CMS Focus on Health Equity. Health Equity Terminology and Quality Measures. *https://mmshub.cms.gov/about-quality/quality-at-CMS/goals/cms-focus-on-health-equity/health-equity-terminology.*

[13] Centers for Disease Control and Prevention. Social Determinants of Health (SDOH) and PLACES Data. *https://www.cdc.gov/places/social-determinants-of-health-and-places-data/.*

[14] ''U.S. Playbook To Address Social Determinants Of Health'' from the White House Office Of Science And Technology Policy (November 2023).

[15] These SDOH data are also collected for purposes outlined in section 2(d)(2)(B) of the Improving Medicare Post-Acute Care Transitions Act (IMPACT Act). For a detailed discussion on SDOH data collection under section 2(d)(2)(B) of the IMPACT Act, see the FY 2020 IRF PPS final rule (84 FR 39149 through 39161).

and Medicine (NASEM) report as impacting care use, cost, and outcomes for Medicare beneficiaries (84 FR 39150 through 39151). At that time, we acknowledged that other items may also be useful to understand. The SDOH items we are proposing to adopt as standardized patient assessment data elements under the SDOH category in this proposed rule were also identified in the 2016 NASEM report [16] or the 2020 NASEM report [17] as impacting care use, cost, and outcomes for Medicare beneficiaries. The items have the capacity to take into account treatment preferences and care goals of patients and their caregivers, to inform our understanding of patient complexity and SDOH that may affect care outcomes and ensure that IRFs are in a position to impact through the provision of services and supports, such as connecting patients and their caregivers with identified needs with social support programs.

Health-related social needs (HRSNs) are the resulting effects of SDOH, which are individual-level, adverse social conditions that negatively impact a person's health or health care.[18] Examples of HRSNs include lack of access to food, housing, or transportation, and have been associated with poorer health outcomes, greater use of emergency departments and hospitals, and higher health care costs.[19] Certain HRSNs can lead to unmet social needs that directly influence an individual's physical, psychosocial, and functional status. This is particularly true for food security, housing stability, utilities security, and access to transportation.[20]

We are proposing to require IRFs collect and submit four new items in the IRF–PAI as standardized patient assessment data elements under the SDOH category because these items would collect information not already captured by the current SDOH items. Specifically, we believe the ongoing identification of SDOH would have three significant benefits. First, promoting screening for SDOH could serve as evidence-based building blocks for supporting healthcare providers in actualizing their commitment to address disparities that disproportionately impact underserved communities. Second, screening for SDOH improves health equity through identifying potential social needs so the IRF may address those with the patient, their caregivers, and community partners during the discharge planning process, if indicated.[21] Third, these SDOH items could support our ongoing IRF QRP initiatives by providing data with which to stratify IRFs' performance on measures and or in future quality measures.

Additional collection of SDOH items would permit us to continue developing the statistical tools necessary to maximize the value of Medicare data and improve the quality of care for all beneficiaries. For example, we recently developed and released the Health Equity Confidential Feedback Reports, which provided data to IRFs on whether differences in quality measure outcomes are present for their patients by dual-enrollment status and race and ethnicity.[22] We note that advancing health equity by addressing the health disparities that underlie the country's health system is one of our strategic pillars [23] and a Biden-Harris Administration priority.[24]

3. Proposal To Collect Four New Items as Standardized Patient Assessment Data Elements Beginning With the FY 2028 IRF QRP

We are proposing to require IRFs to collect and submit four new items as standardized patient assessment data elements under the SDOH category using the IRF–PAI: one item for Living Situation, as described in section VII.3.(a) of this proposed rule; two items for Food, as described in section VII.3.(b) of this proposed rule; and one item for Utilities, as described in VII.3.(c) of this proposed rule.

We selected the proposed SDOH items from the Accountable Health Communities (AHC) HRSN Screening Tool developed for the AHC Model. The AHC HRSN Screening Tool is a universal, comprehensive screening for HRSNs that addresses five core domains as follows: (1) housing instability (for example, homelessness, poor housing quality), (2) food insecurity, (3) transportation difficulties, (4) utility assistance needs, and (5) interpersonal safety concerns (for example, intimate-partner violence, elder abuse, child maltreatment).[25]

We believe that requiring IRFs to report new items that are currently included in the AHC HRSN Screening Tool would further standardize the screening of SDOH across quality programs. For example, our proposal would align, in part, with the requirements of the Hospital Inpatient Quality Reporting (IQR) Program and the Inpatient Psychiatric Facility Quality Reporting (IPFQR) Program. As of January 2024, hospitals are required to report whether they have screened patients for the standardized SDOH categories of housing instability, food insecurity, utility difficulties, transportation needs, and interpersonal safety to meet the Hospital IQR Program requirements.[26] Additionally, beginning January 2025, IPFs will also be required

[16] Social Determinants of Health. Healthy People 2020. *https://www.healthypeople.gov/2020/topics-objectives/topic/social-determinants-of-health.* (February 2019).

[17] National Academies of Sciences, Engineering, and Medicine. 2020. Leading Health Indicators 2030: Advancing Health, Equity, and Well-Being. Washington, DC: The National Academies Press. *https://doi.org/10.17226/25682.*

[18] Centers for Medicare & Medicaid Services. ''A Guide to Using the Accountable Health Communities Health-Related Social Needs Screening Tool: Promising Practices and Key Insights.'' August 2022. Available at: *https://www.cms.gov/priorities/innovation/media/document/ahcm-screeningtool-companion.*

[19] Berkowitz, S.A., T.P. Baggett, and S.T. Edwards, ''Addressing Health-Related Social Needs: Value-Based Care or Values-Based Care?'' Journal of General Internal Medicine, vol. 34, no. 9, 2019, pp. 1916–1918, *https://doi.org/10.1007/s11606-019-05087-3.*

[20] Hugh Alderwick and Laura M. Gottlieb, ''Meanings and Misunderstandings: A Social Determinants of Health Lexicon for Health Care Systems: Milbank Quarterly,'' Milbank Memorial Fund, November 18, 2019, *https://www.milbank.org/quarterly/articles/meanings-and-misunderstandings-a-social-determinants-of-health-lexicon-for-health-care-systems/.*

[21] American Hospital Association. (2020). Health Equity, Diversity & Inclusion Measures for Hospitals and Health System Dashboards. December 2020. Accessed: January 18, 2022. Available at: *https://ifdhe.aha.org/system/files/media/file/2020/12/ifdhe_inclusion_dashboard.pdf.*

[22] In October 2023, we released two new annual Health Equity Confidential Feedback Reports to IRFs: The Discharge to Community (DTC) Health Equity Confidential Feedback Report and the Medicare Spending Per Beneficiary (MSPB) Health Equity Confidential Feedback Report. The PAC Health Equity Confidential Feedback Reports stratified the DTC and MSPB measures by dual-enrollment status and race/ethnicity. For more information on the Health Equity Confidential Feedback Reports, please refer to the Education and Outreach materials available on the IRF QRP Training web page at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/irf-quality-reporting/irf-quality-reporting-training.*

[23] Brooks-LaSure, C. (2021). My First 100 Days and Where We Go from Here: A Strategic Vision for CMS. Centers for Medicare & Medicaid. Available at: *https://www.cms.gov/blog/my-first-100-days-and-where-we-go-here-strategic-vision-cms.*

[24] The Biden-Harris Administration's strategic approach to addressing health related social needs can be found in The U.S. Playbook to Address Social Determinants of Health (SDOH) (2023): *https://www.whitehouse.gov/wp-content/uploads/2023/11/SDOH-Playbook-3.pdf.*

[25] More information about the AHC HRSN Screening Tool is available on the website at *https://innovation.cms.gov/Files/worksheets/ahcm-screeningtool.pdf.*

[26] Centers for Medicare & Medicaid Services, FY2023 IPPS/LTCH PPS final rule (87 FR 49191 through 49194).

to report whether they have screened patients for the same set of SDOH categories.[27] As we continue to standardize data collection across PAC settings, we believe using common standards and definitions for new items is important to promote interoperable exchange of longitudinal information between IRFs and other providers to facilitate coordinated care, continuity in care planning, and the discharge planning process.

Below we describe each of the four proposed items in more detail.

(a) Living Situation

Healthy People 2030 prioritizes economic stability as a key SDOH, of which housing stability is a component.[28] [29] Lack of housing stability encompasses several challenges, such as having trouble paying rent, overcrowding, moving frequently, or spending the bulk of household income on housing.[30] These experiences may negatively affect one's physical health and access to health care. Housing instability can also lead to homelessness, which is housing deprivation in its most severe form.[31] On a single night in 2023, roughly 653,100 people, or 20 out of every 10,000 people in the United States, were experiencing homelessness.[32] Studies also found that people who are homeless have an increased risk of premature death and experience chronic disease more often than among the general population.[33]

We believe that IRFs can use information obtained from the Living Situation item during a patient's discharge planning. For example, IRFs could work in partnership with community care hubs and community-based organizations to establish new care transition workflows, including referral pathways, contracting mechanisms, data sharing strategies, and implementation training that can track HRSNs to ensure unmet needs, such as housing, are successfully addressed through closed loop referrals and follow-up.[34] IRFs could also take action to help alleviate a patient's other related costs of living, like food, by referring the patient to community-based organizations that would allow the patient's additional resources to be allocated towards housing without sacrificing other needs.[35] Finally, IRFs could use the information obtained from the Living Situation item to better coordinate with other healthcare providers, facilities, and agencies during transitions of care, so that referrals to address a patient's housing stability are not lost during vulnerable transition periods.

Due to the potential negative impacts housing instability can have on a patient's health, we are proposing to adopt the Living Situation item as a new standardized patient assessment data element under the SDOH category. This proposed Living Situation item is based on the Living Situation item currently collected in the AHC HRSN Screening Tool,[36] [37] and was adapted from the Protocol for Responding to and Assessing Patients' Assets, Risks, and Experiences (PRAPARE) tool.[38] The proposed Living Situation item asks, ''What is your living situation today?'' The proposed response options are: (1) I have a steady place to live; (2) I have a place to live today, but I am worried about losing it in the future; (3) I do not have a steady place to live; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed Living Situation item to be adopted as a standardized patient assessment data element under the SDOH category can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

(b) Food

The U.S. Department of Agriculture, Economic Research Service defines a lack of food security as a household-level economic and social condition of limited or uncertain access to adequate food.[39] Adults who are food insecure may be at an increased risk for a variety of negative health outcomes and health disparities. For example, a study found that food-insecure adults may be at an increased risk for obesity.[40] Another study found that food-insecure adults have a significantly higher probability of death from any cause or cardiovascular disease in long-term follow-up care, in comparison to adults that are food secure.[41]

While having enough food is one of many predictors for health outcomes, a diet low in nutritious foods is also a factor.[42] The United States Department of Agriculture (USDA) defines nutrition security as ''consistent and equitable access to healthy, safe, affordable foods essential to optimal health and well-

[27] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

[28] *https://health.gov/healthypeople/priority-areas/social-determinants-health.*

[29] Healthy People 2030 is a long-term, evidence-based effort led by the U.S. Department of Health and Human Services (HHS) that aims to identify nationwide health improvement priorities and improve the health of all Americans.

[30] Kushel, M.B., Gupta, R., Gee, L., & Haas, J.S. (2006). Housing instability and food insecurity as barriers to health care among low-income Americans. *Journal of General Internal Medicine, 21*(1), 71–77. doi: *https://doi.org/10.1111/j.1525-1497.2005.00278.x.*

[31] Homelessness is defined as ''lacking a regular nighttime residence or having a primary nighttime residence that is a temporary shelter or other place not designed for sleeping.'' Crowley, S. (2003). The affordable housing crisis: Residential mobility of poor families and school mobility of poor children. Journal of Negro Education, *72*(1), 22–38. doi: *https://doi.org/10.2307/3211288.*

[32] The 2023 Annual Homeless Assessment Report (AHAR) to Congress. The U.S. Department of Housing and Urban Development 2023. *https://www.huduser.gov/portal/sites/default/files/pdf/2023-AHAR-Part-1.pdf.*

[33] Baggett, T.P., Hwang, S.W., O'Connell, J.J., Porneala, B.C., Stringfellow, E.J., Orav, E.J., Singer, D.E., & Rigotti, N.A. (2013). Mortality among homeless adults in Boston: Shifts in causes of death over a 15-year period. JAMA Internal Medicine, 173(3), 189–195. doi: *https://doi.org/10.1001/jamainternmed.2013.1604.* Schanzer, B., Dominguez, B., Shrout, P.E., & Caton, C.L. (2007). Homelessness, health status, and health care use. American Journal of Public Health, 97(3), 464–469. doi: *https://doi.org/10.2105/ajph.2005.076190.*

[34] U.S. Department of Health & Human Services (HHS), Call to Action, ''Addressing Health Related Social Needs in Communities Across the Nation.'' November 2023. *https://aspe.hhs.gov/sites/default/files/documents/3e2f6140d0087435cc6832bf8cf32618/hhs-call-to-action-health-related-social-needs.pdf.*

[35] Henderson, K.A., Manian, N., Rog, D.J., Robison, E., Jorge, E., AlAbdulmunem, M. ''Addressing Homelessness Among Older Adults'' (Final Report). Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. October 26, 2023.

[36] More information about the AHC HRSN Screening Tool is available on the website at *https://innovation.cms.gov/Files/worksheets/ahcm-screeningtool.pdf.*

[37] The AHC HRSN Screening Tool Living Situation item includes two questions. In an effort to limit IRF burden, we are only proposing the first question.

[38] National Association of Community Health Centers and Partners, National Association of Community Health Centers, Association of Asian Pacific Community Health Organizations, Association OPC, Institute for Alternative Futures. ''PRAPARE.'' 2017. *https://prapare.org/the-prapare-screening-tool/.*

[39] U.S. Department of Agriculture, Economic Research Service. (n.d.). *Definitions of food security.* Retrieved March 10, 2022, from *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/definitions-of-food-security/.*

[40] Hernandez, D.C., Reesor, L.M., & Murillo, R. (2017). Food insecurity and adult overweight/obesity: Gender and race/ethnic disparities. *Appetite, 117,* 373–378.

[41] Banerjee, S., Radak, T., Khubchandani, J., & Dunn, P. (2021). Food Insecurity and Mortality in American Adults: Results From the NHANES-Linked Mortality Study. Health promotion practice, 22(2), 204–214. *https://doi.org/10.1177/1524839920945927.*

[42] National Center for Health Statistics. (2022, September 6). Exercise or Physical Activity. Retrieved from Centers for Disease Control and Prevention: *https://www.cdc.gov/nchs/fastats/exercise.htm.*

being.'' [43] Nutrition security builds on and complements long standing efforts to advance food security. Studies have shown that older adults struggling with food insecurity consume fewer calories and nutrients and have lower overall dietary quality than those who are food secure, which can put them at nutritional risk.[44] Older adults are also at a higher risk of developing malnutrition, which is considered a state of deficit, excess, or imbalance in protein, energy, or other nutrients that adversely impacts an individual's own body form, function, and clinical outcomes.[45] About 50 percent of older adults are affected by malnutrition, which is further aggravated by a lack of food security and poverty.[46] These facts highlight why the Biden-Harris Administration launched the White House Challenge to End Hunger and Build Health Communities.[47]

We believe that adopting items to collect and analyze information about a patient's food security at home could provide additional insight to their health complexity and help facilitate coordination with other healthcare providers, facilities, and agencies during transitions of care, so that referrals to address a patient's food security are not lost during vulnerable transition periods. For example, an IRF's dietitian or other clinically qualified nutrition professional could work with the patient and their caregiver to plan healthy, affordable food choices prior to discharge.[48] IRFs could also refer a patient that indicates lack of food security to government initiatives such as the Supplemental Nutrition Assistance Program (SNAP) and food pharmacies (programs to increase access to healthful foods by making them affordable), two initiatives that have been associated with lower health care costs and reduced hospitalization and emergency department visits.[49]

We are proposing to adopt two Food items as new standardized patient assessment data elements under the SDOH Category. These proposed items are based on the Food items currently collected in the AHC HRSN Screening Tool, and were adapted from the USDA 18-item Household Food Security Survey (HFSS).[50] The first proposed Food item states, ''Within the past 12 months, you worried that your food would run out before you got money to buy more.'' The second proposed Food item states, ''Within the past 12 months, the food you bought just didn't last and you didn't have money to get more.'' We propose the same response options for both items: (1) Often true; (2) Sometimes true; (3) Never True; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed Food items to be adopted as standardized patient assessment data elements under the SDOH category can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

(c) Utilities

A lack of energy (utility) security can be defined as an inability to adequately meet basic household energy needs.[51] According to the United States Department of Energy, one in three households in the U.S. are unable to adequately meet basic household energy needs.[52] The consequences associated with a lack of utility security are represented by three primary dimensions: economic, physical, and behavioral. Patients with low incomes are disproportionately affected by high energy costs, and they may be forced to prioritize paying for housing and food over utilities.[53] Some patients may face limited housing options and therefore are at increased risk of living in lower-quality physical conditions with malfunctioning heating and cooling systems, poor lighting, and outdated plumbing and electrical systems.[54] Patients with a lack of utility security may use negative behavioral approaches to cope, such as using stoves and space heaters for heat.[55] In addition, data from the Department of Energy's U.S. Energy Information Administration confirm that a lack of energy security disproportionately affects certain populations, such as low-income and African American households.[56] The effects of a lack of utility security include vulnerability to environmental exposures such as dampness, mold, and thermal discomfort in the home, which have a direct impact on a person's health.[57] For example, research has shown associations between a lack of energy security and respiratory conditions as well as mental health–related disparities and poor sleep quality in vulnerable populations such as the elderly, children, the socioeconomically disadvantaged, and the medically vulnerable.[58]

We believe adopting an item to collect information upon a patient's admission to an IRF about their utility security

[43] Ziliak, J.P., & Gundersen, C. (2019). The State of Senior Hunger in America 2017: An Annual Report. Prepared for Feeding America. Available at *https://www.feedingamerica.org/research/senior-hunger-research/senior.*

[44] Ziliak, J.P., & Gundersen, C. (2019). The State of Senior Hunger in America 2017: An Annual Report. Prepared for Feeding America. Available at: *https://www.feedingamerica.org/research/senior-hunger-research/senior.*

[45] The Malnutrition Quality Collaborative. (2020). National Blueprint: Achieving Quality Malnutrition Care for Older Adults, 2020 Update. Washington, DC: Avalere Health and Defeat Malnutrition Today. Available at: *https://defeatmalnutrition.today/advocacy/blueprint/.*

[46] Food Research & Action Center (FRAC). ''Hunger is a Health Issue for Older Adults: Food Security, Health, and the Federal Nutrition Programs.'' December 2019. *https://frac.org/wp-content/uploads/hunger-is-a-health-issue-for-older-adults-1.pdf.*

[47] The White House Challenge to End Hunger and Build Health Communities (Challenge) was a nationwide call-to-action released on March 24, 2023, to stakeholders across all of society to make commitments to advance President Biden's goal to end hunger and reduce diet-related diseases by 2030—all while reducing disparities. More information on the White House Challenge to End Hunger and Build Health Communities can be found: *https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/24/fact-sheet-biden-harris-administration-launches-the-white-house-challenge-to-end-hunger-and-build-healthy-communities-announces-new-public-private-sector-actions-to-continue-momentum-from-hist/.*

[48] Schroeder K., Smaldone A., Food Insecurity: A Concept Analysis. Nurse Forum. 2015 Oct–Dec; 50(4):274–84. doi: 10.1111/nuf.12118. Epub 2015 Jan 21. PMID: 25612146; PMCID: PMC4510041.

[49] Tsega M., Lewis C., McCarthy D., Shah T., Coutts K., Review of Evidence for Health-Related Social Needs Interventions. July 2019. The Commonwealth Fund. *https://www.commonwealthfund.org/sites/default/files/2019-07/COMBINED_ROI_EVIDENCE_REVIEW_7.15.19.pdf.*

[50] More information about the HFSS tool can be found at *https://www.ers.usda.gov/topics/food-nutrition-assistance/food-security-in-the-u-s/survey-tools/.*

[51] Hernández D., Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. Doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[52] U.S. Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[53] Hernández D., ''Understanding 'energy insecurity' and why it matters to health.'' Soc Sci Med. 2016; 167:1–10.

[54] Hernández D., Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[55] Hernández D., ''What 'Merle' Taught Me About Energy Insecurity and Health.'' Health Affairs, VOL.37, NO.3: Advancing Health Equity Narrative Matters. March 2018. *https://doi.org/10.1377/hlthaff.2017.1413.*

[56] U.S. Energy Information Administration. ''One in Three U.S. Households Faced Challenges in Paying Energy Bills in 2015.'' 2017 Oct 13. *https://www.eia.gov/consumption/residential/reports/2015/energybills/.*

[57] Hernández D., Understanding 'energy insecurity' and why it matters to health. Soc Sci Med. 2016 Oct; 167:1–10. doi: 10.1016/j.socscimed.2016.08.029. Epub 2016 Aug 21. PMID: 27592003; PMCID: PMC5114037.

[58] Hernández D., Siegel E., Energy insecurity and its ill health effects: A community perspective on the energy-health nexus in New York City. Energy Res Soc Sci. 2019 Jan; 47:78–83. doi: 10.1016/j.erss.2018.08.011. Epub 2018 Sep 8. PMID: 32280598; PMCID: PMC7147484.

would facilitate the identification of patients who may not have utility security and who may benefit from engagement efforts. For example, IRFs may be able to use the information on utility security to help connect some patients in need to programs that can help older adults pay for their home energy (heating/cooling) costs, like the Low-Income Home Energy Assistance Program (LIHEAP).[59] IRFs may also be able to partner with community care hubs and community-based organizations to assist the patient in applying for these and other local utility assistance programs, as well as helping them navigate the enrollment process.[60]

We are proposing to adopt a new item, Utilities, as a new standardized patient assessment data element under the SDOH category. This proposed item is based on the Utilities item currently collected in the AHC HRSN Screening Tool and was adapted from the Children's Sentinel Nutrition Assessment Program (C–SNAP) survey.[61] The proposed Utilities item asks, ''In the past 12 months, has the electric, gas, oil, or water company threatened to shut off services in your home?'' The proposed response options are: (1) Yes; (2) No; (3) Already shut off; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed Utilities item to be adopted as a standardized patient assessment data element under the SDOH category can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

4. Stakeholder Input

We developed our proposal to add these items after considering feedback we received in response to our Health Equity Update in the FY 2024 IRF PPS final rule. While there were commenters who urged CMS to balance reporting requirements so as not to create undue administrative burden and avoid making generalizations about differences in health and health care on certain data elements, it was also suggested CMS incentivize collection of data on SDOH such as housing stability and food security. Two commenters emphasized that any additional stratification of quality measures, including social risk factors and SDOH, would be of value to PAC providers, including IRFs. The FY 2024 IRF PPS final rule (88 FR 51037 through 51039) includes a summary of the public comments that we received in response to the Health Equity Update and our responses to those comments.

Additionally, we considered feedback we received when we proposed the creation of the SDOH category of standardized patient assessment data elements in the FY 2020 IRF PPS proposed rule (84 FR 17319 through 17326). Commenters were generally in favor of the concept of collecting SDOH items and stated that if implemented appropriately the data could be useful in identifying and addressing health care disparities, as well as refining the risk adjustment of outcome measures. One commenter specifically recommended CMS consider including data collection of housing status, since unmet housing needs can put patients at higher risk for readmission. The FY 2020 IRF PPS final rule (84 FR 39149 through 39161) includes a summary of the public comments that we received and our responses to those comments. We incorporated this input into the development of this proposal.

We invite comment on the proposal to adopt four new items as standardized patient assessment data elements in the IRF–PAI under the SDOH category beginning with the FY 2028 IRF QRP: one Living Situation item; two Food items; and one Utilities item.

5. Proposal To Modify the Transportation Item Beginning With the FY 2028 IRF QRP

Beginning October 1, 2022, IRFs began collecting seven items adopted as standardized patient assessment data elements under the SDOH category on the IRF–PAI.[62] One of these items, A1250. Transportation, collects data on whether a lack of transportation has kept a patient from getting to and from medical appointments, meetings, work, or from getting things they need for daily living. This item was adopted as a standardized patient assessment data element under the SDOH category in the FY 2020 IRF PPS final rule (84 FR 39160 through 39161). As we discussed in the FY 2020 IRF PPS final rule (84 FR 39158), we continue to believe that access to transportation for ongoing health care and medication access needs, particularly for those with chronic diseases, is essential to successful chronic disease management and the collection of a Transportation item would facilitate the connection to programs that can address identified needs.

As part of our routine item and measure monitoring work, we continually assess the implementation of the new SDOH items. We have identified an opportunity to improve the data collection for A1250. Transportation in the IRF–PAI by aligning it with the Transportation category collected in our other programs.[63] [64] Specifically, we are proposing to modify the current Transportation item in the IRF–PAI so that it aligns with a Transportation item collected on the AHC HRSN Screening Tool available to the IPFQR and Hospital IQR Programs.

A1250. Transportation currently collected in the IRF–PAI asks: ''Has lack of transportation kept you from medical appointments, meetings, work, or from getting things needed for daily living?'' The response options are: (A) Yes, it has kept me from medical appointments or from getting my medications; (B) Yes, it has kept me from non-medical meetings, appointments, work, or from getting things that I need; (C) No; (X) Patient unable to respond; and (Y) Patient declines to respond. The Transportation item collected in the AHC HRSN Screening Tool asks, ''In the past 12 months, has lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?'' The two response options are: (1) Yes; and (2) No. Consistent with the AHC HRSN Screening Tool, we are proposing to modify the A1250. Transportation item currently collected in the IRF–PAI in two ways: (1) revise the look-back period for when the patient experienced lack of reliable transportation; and (2) simplify the response options.

First, the proposed modification of the Transportation item would use a defined 12-month look back period, while the current Transportation item uses a look back period of six to 12 months. We believe the distinction of a 12-month look back period would reduce ambiguity for both patients and

[59] *https://www.fcc.gov/broadbandbenefit.*

[60] National Council on Aging (NCOA). ''How to Make It Easier for Older Adults to Get Energy and Utility Assistance.'' Promising Practices Clearinghouse for Professionals. Jan 13, 2022. *https://www.ncoa.org/article/how-to-make-it-easier-for-older-adults-to-get-energy-and-utility-assistance.*

[61] This validated survey was developed as a clinical indicator of household energy security among pediatric caregivers. Cook, J.T., D.A. Frank., P.H. Casey, R. Rose-Jacobs, M.M. Black, M. Chilton, S. Ettinger de Cuba, et al. ''A Brief Indicator of Household Energy Security: Associations with Food Security, Child Health, and Child Development in US Infants and Toddlers.'' Pediatrics, vol. 122, no. 4, 2008, pp. e874–e875. *https://doi.org/10.1542/peds.2008-0286.*

[62] The seven SDOH items are ethnicity, race, preferred language, interpreter services, health literacy, transportation, and social isolation (84 FR 39149 through 39161).

[63] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

[64] Centers for Medicate & Medicaid Services, FY2023 IPPS/LTCH PPS Final rule (87 FR 49202 through 49215).

clinicians, and therefore improve the validity of the data collected. Second, we are proposing to simplify the response options. Currently, IRFs separately collect information on whether a lack of transportation has kept the patient from medical appointments or from getting medications, and whether a lack of transportation has kept the patient from non-medical meetings, appointments, work, or from getting things they need. Although transportation barriers can directly affect a person's ability to attend medical appointments and obtain medications, a lack of transportation can also affect a person's health in other ways, including accessing goods and services, obtaining adequate food and clothing, and social activities.[65] The proposed modified Transportation item would collect information on whether a lack of reliable transportation has kept the patient from medical appointments, meetings, work, *or* from getting things needed for daily living, rather than collecting the information separately. As discussed previously, we believe reliable transportation services are fundamental to a person's overall health, and as a result, the burden of collecting this information separately outweighs its potential benefit.

For the reasons stated previously, we are proposing to modify A1250. Transportation based on the Transportation item adopted for use in the AHC HRSN Screening Tool and adapted from the PRAPARE tool. The proposed Transportation item asks, ''In the past 12 months, has a lack of reliable transportation kept you from medical appointments, meetings, work or from getting things needed for daily living?'' The proposed response options are: (0) Yes; (1) No; (7) Patient declines to respond; and (8) Patient unable to respond. A draft of the proposed modified Transportation item can be found in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

We invite comment on the proposal to modify the current Transportation item previously adopted as a standardized patient assessment data element under the SDOH category beginning with the FY 2028 IRF QRP.

D. IRF QRP Quality Measure Concepts Under Consideration for Future Years—Request for Information (RFI)

We are seeking input on the importance, relevance, appropriateness, and applicability of each of the concepts under consideration listed in Table 13 for future years in the IRF QRP. In the FY 2024 IRF PPS proposed rule (88 FR 21000 through 21003), we published a request for information (RFI) on a set of principles for selecting and prioritizing IRF QRP measures, identifying measurement gaps, and suitable measures for filling these gaps. Within this proposed rule, we also sought input on data available to develop measures, approaches for data collection, perceived challenges or barriers, and approaches for addressing identified challenges. We refer readers to the FY 2024 IRF PPS final rule (88 FR 51036 through 51037) for a summary of the public comments we received in response to the RFI.

Subsequently, our measure development contractor convened a Technical Expert Panel (TEP) on December 15, 2023 to obtain expert input on the future measure concepts that could fill the measurement gaps identified in our FY 2024 RFI.[66] The TEP discussed the alignment of PAC and Hospice measures with CMS' ''Universal Foundation'' of quality measures.[67] The Universal Foundation aims to focus provider attention, reduce burden, identify disparities in care, prioritize development of interoperable, digital quality measures, allow for comparisons across programs, and help identify measurement gaps.

In consideration of the feedback, we have received from interested parties through these activities, we are seeking input on three concepts for the IRF QRP. One is a composite of vaccinations,[68] which could represent overall immunization status of patients such as the Adult Immunization Status measure[69] in the Universal Foundation. A second concept on which we are seeking feedback is the concept of depression for the IRF QRP, which may be similar to the Clinical Screening for Depression and Follow-up measure[70] in the Universal Foundation. Finally, we are seeking feedback on the concept of pain management.

TABLE 14: Future Measure Concepts Under Consideration for the IRF QRP

Quality Measure Concepts
Vaccination Composite
Pain Management
Depression

[65] Centers for Medicare & Medicaid Services, FY2024 Inpatient Psychiatric Prospective Payment System—Rate Update (88 FR 51107 through 51121).

[66] The Post-Acute Care (PAC) and Hospice Quality Reporting Program Cross-Setting TEP summary report will be published in early summer or as soon as technically feasible. IRFs can monitor the Partnership for Quality Measurement website at *https://mmshub.cms.gov/get-involved/technical-expert-panel/updates for updates.*

[67] Centers for Medicare & Medicaid Services. Aligning Quality Measures Across CMS—the Universal Foundation. November 17, 2023. *https://www.cms.gov/aligning-quality-measures-across-cms-universal-foundation.*

[68] A composite measure can summarize multiple measures through the use of one value or piece of information. More information can be found at *https://www.cms.gov/medicare/quality-initiatives-patient-assessment-instruments/mms/downloads/composite-measures.pdf.*

[69] CMS Measures Inventory Tool. Adult immunization status measure found at *https://cmit.cms.gov/cmit/#/FamilyView?familyId=26.*

[70] CMS Measures Inventory Tool. Clinical Depression Screening and Follow-Up measure found at *https://cmit.cms.gov/cmit/#/FamilyView?familyId=672.*

While we will not be responding to specific comments in response to this RFI in the FY 2025 IRF PPS final rule, we intend to use this input to inform our future measure development efforts.

E. Future IRF Star Rating System: Request for Information (RFI)

Section 1886(j)(7)(E) of the Act requires that the Secretary establish procedures for making data submitted under the IRF QRP available to the public. Such procedures must ensure the IRFs participating in the IRF QRP have the opportunity to review the IRF-submitted data prior to such data being made public. The Secretary must publicly report quality measures that relate to services furnished in IRFs on the CMS website. We currently publicly report data we receive on measures under the IRF QRP on our Care Compare website.[71]

Care Compare displays star ratings for many provider types, specifically: doctors and clinicians, hospitals, nursing homes, home health, hospice, and dialysis facilities. Rating methodologies vary by provider type. Star ratings summarize performance using symbols to help consumers quickly and easily understand quality of care information. Star ratings are designed to enhance and supplement existing publicly reported quality information, and also serve to spotlight differences in health care quality and identify areas for improvement.[72] Some providers receive ''overall star ratings,'' which are a composite score calculated using different data sources, such as quality measures or survey results. Others receive ''patient survey star ratings,'' a composite score derived from patient experience of care surveys. Depending on the provider type, some utilize one—or both—of these rating methodologies.

Star ratings serve an important function for patients, caregivers, and families, helping them to more quickly comprehend complex information about a health care providers' care quality and to easily assess differences among providers. This transparency serves an important educational function, while also helping to promote competition in health care markets. Informed patients and consumers are more empowered to select among health care providers, fostering continued quality improvement. CMS' commitment to establishing star ratings systems across health care settings is consistent with the Biden-Harris Administration's goal to promote an open, transparent, and competitive economy as outlined in Executive Order 14036, Promoting Competition in the American Economy (86 FR 36987, July 14, 2021).[73]

We are seeking feedback on the development of a five-star methodology for IRFs that can meaningfully distinguish between quality of care offered by IRFs. Star ratings for IRFs would be designed to help consumers quickly identify differences in quality when selecting a provider. We are committed to developing a well-tested, data-driven methodology that encourages continuous quality improvement. We plan to engage with the IRF community and provide multiple opportunities for IRFs and other interested parties to give input on the development of a star rating system for IRFs. We note that IRFs would have the ability to preview their own facility's quality data before public posting of the IRF's star rating on the Care Compare website in accordance with section 1886(j)(7)(E) of the Act.

Specifically, we invite public comment on the following questions:

1. Are there specific criteria CMS should use to select measures for an IRF star rating system?

2. How should CMS present IRF star ratings information in a way that it is most useful to consumers?

While we will not be responding to specific comments in response to this RFI in the FY 2025 IRF PPS final rule, we intend to use this input to inform our future star rating development efforts. We intend to consider how a rating system would determine an IRF's star rating, the methods used for such calculations, and an anticipated timeline for implementation. We will consider comments in response to this RFI for future rulemaking.

F. Form, Manner, and Timing of Data Submission Under the IRF QRP

1. Background

We refer readers to the regulatory text at § 412.634(b)(1) for information regarding the current policies for reporting specified data for the IRF QRP.

2. Proposed Reporting Schedule for the Submission of Proposed New Items as Standardized Patient Assessment Data Elements and the Transportation Item Beginning With the FY 2028 IRF QRP

As discussed in sections VII.C.3. and VII.C.5. of this proposed rule, we are proposing to adopt four new items as standardized patient assessment data elements under the SDOH category (one Living Situation item, two Food items, and one Utilities item) and to modify the Transportation standardized patient assessment data element previously adopted under the SDOH category beginning with the FY 2028 IRF QRP.

We are proposing that IRFs would be required to report these new items and the transportation item using the IRF–PAI beginning with patients admitted on October 1, 2026, for purposes of the FY 2028 IRF QRP. Starting in CY 2027, IRFs would be required to submit data for the entire calendar year with the FY 2029 IRF QRP.

We are also proposing that IRFs that submit the Living Situation, Food, and Utilities items proposed for adoption as standardized patient assessment data elements under the SDOH category with respect to admission only would be deemed to have submitted those items with respect to both admission and discharge. We propose that IRFs would be required to submit these items at admission only (and not at discharge) because it is unlikely that the assessment of those items at admission would differ from the assessment of the same item at discharge. This would align the data collection for these proposed items with other SDOH items (that is, Race, Ethnicity, Preferred Language, and Interpreter Services) which are only collected at admission.[74] A draft of the proposed items is available in the Downloads section of the IRF–PAI and IRF–PAI Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.*

As we noted in section VII.C.5. of this proposed rule, we continually assess the implementation of the new SDOH items, including A1250. Transportation, as part of our routine item and measure monitoring work. We received feedback from stakeholders in response to the FY 2020 IRF PPS proposed rule (84 FR 39149 through 39161) noting their concern with the burden of collecting the Transportation item at admission and discharge. Specifically, commenters stated that a patient's access to transportation is unlikely to change between admission and discharge (84

[71] Centers for Medicare & Medicaid Services (CMS). Care Compare. 2023. *https://www.medicare.gov/care-compare.*

[72] Centers for Medicare & Medicaid Services (CMS). *Home Health Star Ratings.* 2023. *https://www.cms.gov/medicare/quality/home-health/home-health-star-ratings.*

[73] The White House. Executive Order on Promoting Competition in the American Economy. 2023. *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.*

[74] FY 2020 IRF PPS final rule (84 FR 39161 through 39162).

FR 39159). We analyzed the data IRFs reported from October 1, 2022, through June 30, 2023 (Quarter 4 CY 2022 through Quarter 2 CY 2023), and found that patient responses do not significantly change from admission to discharge.[75] Specifically, the proportion of patients [76] who responded ''Yes'' to the Transportation item at admission versus at discharge differed by only 0.19 percentage points during this period. We find these results convincing, and therefore are proposing to require IRFs to collect and submit the proposed modified standardized patient assessment data element, Transportation, at admission only.

We invite public comment on our proposal to collect data on the following items proposed as standardized patient assessment data elements under the SDOH category at admission beginning October 1, 2026 with the FY 2028 IRF QRP: (1) Living Situation as described in section VII.C.3.(a) of this proposed rule; (2) Food as described in section VII.C.3.(b) of this proposed rule; and (3) Utilities as described in section VII.C.3.(c) of this proposed rule. We also invite comment on our proposal to submit the proposed modified standardized patient assessment data element, Transportation, at admission only beginning October 1, 2026, with the FY 2028 IRF QRP as described in section VII.C.5. of this proposed rule.

3. Proposal To Remove the Admission Class Item From the IRF–PAI Beginning October 1, 2026

(a) Background

In the CY 2002 PPS for IRFs final rule (66 FR 41324 through 41342), we finalized the use of the IRF–PAI, through which IRFs are now required to collect and electronically submit patient data for all Medicare Part A FFS and Medicare Part C (Medicare Advantage) patients admitted and discharged from an IRF through September 30, 2024 [77] and for all patients regardless of payer beginning October 1, 2024.[78] Item 14–Admission Class has been included on the IRF–PAI since the IRF–PAI was first implemented and is completed only at admission. The most recent version of the IRF–PAI is available for reference on the IRF–PAI and IRF QRP Manual web page at *https://www.cms.gov/medicare/quality/inpatient-rehabilitation-facility/irf-pai-and-irf-qrp-manual.* Item 14, Admission Class, includes the following response options: (i) Initial Rehab; (iii) Readmission; (iv) Unplanned Discharge; and (v) Continuing Rehabilitation.

(b) Removal of Item

We routinely review item sets for redundancies and identify opportunities to simplify data submission requirements. We propose to remove Item 14 entirely from the IRF–PAI, beginning October 1, 2026. We have identified this item is currently not used in the calculation of quality measures already adopted in the IRF QRP. It is also not used for previously established purposes unrelated to the IRF QRP, such as payment, survey, or care planning.

We invite public comment on our proposal to remove Item 14–Admission Class from the IRF–PAI, effective October 1, 2026.

G. Policies Regarding Public Display of Measure Data for the IRF QRP

We are not proposing any new policies regarding the public display of measure data at this time. For a more detailed discussion about our policies regarding public display of IRF QRP measure data and procedures for the opportunity to review and correct data and information, we refer readers to the FY 2017 IRF PPS final rule (81 FR 52125 through 52131).

VIII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

This proposed rule refers to associated information collections that are not discussed in the regulation text contained in this document.

A. Requirements for Updates Related to the IRF QRP Beginning With the FY 2028 IRF QRP

An IRF that does not meet the requirements of the IRF QRP for a fiscal year will receive a 2-percentage point reduction to its otherwise applicable annual increase factor for that fiscal year.

In section VII.C. of the proposed rule, we are proposing to adopt four items as standardized patient assessment data elements and modify one item collected as a standardized patient assessment data element beginning with the FY 2028 IRF QRP. In section VII.F.3. of the proposed rule, we are proposing to remove one item, Admission Class, from the IRF–PAI.

As stated in sections VII.C.3. and VII.C.5. of the preamble of this proposed rule, we are proposing to adopt four items as standardized patient assessment data elements and modify one item collected as a standardized patient assessment data element beginning with the FY 2028 IRF QRP. The proposed and modified items would be collected using the IRF–PAI. The IRF–PAI, in its current form, has been approved under OMB control number 0938–0842.[79] Four items would need to be added to the IRF–PAI at admission to allow for collection of these data, and one item would be modified. Additionally, as stated in section VII.F.2. of this proposed rule, we are proposing that IRFs would submit the four new items and one modified item at admission only. The net result of collecting four new items at admission, modifying one item currently collected at admission, and removing the collection of one item at discharge is an increase of 0.9 minutes or 0.015 hour of clinical staff time at admission [(4 items × 0.005 hour) minus (1 item × 0.005 hour)]. We identified the staff type based on past IRF burden calculations, and our assumptions are based on the categories generally necessary to perform an assessment. We believe that the items would be completed equally by a Registered Nurse (RN) (50 percent of the time) and a Licensed Practical and Licensed Vocational Nurse (LPN/LVN) (50 percent of the time). However, IRFs determine the staffing resources necessary.

[75] Due to data availability of IRF SDOH standardized patient assessment data elements, this is based on three quarters of Transportation data.

[76] The analysis is limited to patients who responded to the Transportation item at both admission and discharge.

[77] In the FY 2010 IRF PPS final rule (74 FR 39798 through 39800), CMS revised the regulation text in §§ 412.604, 412.606, 412.610, 412.614, and 412.618 to require that all IRFs submit IRF–PAI data on all of their Medicare Part C patients.

[78] In the FY 2023 IRF PPS final rule (87 FR 47073 through 47092), CMS revised the regulation text in §§ 412.604, 412.606, 412.610, 412.614, and 412.618 to require that all IRFs submit IRF–PAI data on each patient receiving care in an IRF, regardless of payer.

[79] *https://www.reginfo.gov/public/do/DownloadNOA?requestID=494186.*

For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates.[80] To account for other indirect costs and fringe benefits, we doubled the hourly wage. These amounts are detailed in Table 15. We established a composite cost estimate using our adjusted wage estimates. The composite estimate of $65.31/hr was calculated by weighting each adjusted hourly wage equally (that is, 50%) [($78.10/hr × 0.5) + ($52.52/hr × 0.5) = $65.31].

TABLE 15: U.S. Bureau of Labor and Statistics' May 2022 National Occupational Employment and Wage Estimates

Occupation Title	Occupation Code	Median Hourly Wage ($/hr)	Other Indirect Costs and Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Registered Nurse (RN)	29-1141	$39.05	$39.05	$78.10
Licensed Practical and Licensed Vocational Nurse (LPN/LVN)	29-2061	$26.26	$26.26	$52.52

We estimate that the burden and cost for IRFs for complying with requirements of the FY 2028 IRF QRP would increase under this proposal. Using FY 2023 data, we estimate a total of 571,151 admissions to and 512,677 planned discharges from 1,154 IRFs annually for an increase of 8,859.64 hours in burden for all IRFs [(571,151 × 0.02 hour) admissions − (512,677 × 0.005 hour) planned discharges]. Given 0.02 hour at $65.31 per hour to complete an average of 500 IRF–PAI admission assessments per IRF per year minus 0.005 at $65.31 per hour to complete an average of 449 IRF–PAI Planned Discharge assessments per IRF per year, we estimate the total cost would be increased by $501.41 per IRF annually, or $578,622.76 for all IRFs annually.

In section VII.F.3. of this proposed rule, we are proposing to remove one item, Admission Class, from the IRF–PAI beginning October 1, 2026. We believe that the removal of Admission Class will result in a decrease of 18 seconds (0.3 minutes or 0.005 hours) of clinical staff time at admission beginning with the FY 2028 IRF QRP. We believe the IRF–PAI item, Admission Class, is completed equally by a Registered Nurse (RN) and a Licensed Practical and Licensed Vocational Nurse (LPN/LVN). Individual IRFs determine the staffing resources necessary.

We estimate that the burden and cost for IRFs for complying with requirements of the FY 2028 IRF QRP would decrease under this proposal in section VII.F.3. Specifically, we believe that there will be a 2.47 hour decrease in clinical staff time to report data for each IRF–PAI completed at admission. Using data from FY 2023, we estimate 571,151 admission assessments from 1,154 IRFs annually. This equates to a decrease of 2,855.76 hours in burden at admission for all IRFs (0.005 hour × 571,151 admissions). Given 0.005 hour at $65.31 per hour to complete an average of 500 IRF–PAI admission assessments per IRF per year, we estimate the total cost will be decreased by $161.62 ($186,509.36 total decrease/1,154 IRFs) per IRF annually, or $186,509.36 for all IRFs annually, based on the proposal to remove one item from the IRF–PAI.

In summary, under OMB control number 0938–0842, the changes to the IRF QRP will result in a burden increase of $339.79 per IRF ($392,113.40/1,154 IRFs). The total cost increase related to this proposed information collection is approximately $392,113.40 and is summarized in Table 16.

[80] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

TABLE 16: Estimated Change in Burden Associated with OMB Control Number 0938-0842

Proposals	Per IRF		All IRFs	
	Estimated change in annual burden hours	Estimated change in annual cost	Estimated change in annual burden hours	Estimated change in annual cost
Estimated Change in Burden associated with Proposal to Collect Four New Items as Standardized Patient Assessment Data Elements and Modify One Item Collected as a Standardized Patient Assessment Data Element beginning with the FY 2028 IRF QRP	+7.68	+$501.41	+8,859.64	+$578,622.76
Estimated Change in Burden associated with Removal of the Admission Class item effective October 1, 2026	-2.47	-$161.62	-2,855.76	-$186,509.36
Estimated Change in burden for the IRF QRP associated with 0938-0842	**5.20**	**$339.79**	**6,003.88**	**$392,113.40**

We invite public comments on the proposed information collection requirements.

IX. Regulatory Impact Analysis

A. Statement of Need

This proposed rule updates the IRF prospective payment rates for FY 2025 as required under section 1886(j)(3)(C) of the Act and in accordance with section 1886(j)(5) of the Act, which requires the Secretary to publish in the **Federal Register** on or before August 1 before each FY, the classification and weighting factors for CMGs used under the IRF PPS for such FY and a description of the methodology and data used in computing the prospective payment rates under the IRF PPS for that FY. This proposed rule would also implement section 1886(j)(3)(C) of the Act, which requires the Secretary to apply a productivity adjustment to the market basket percentage increase for FY 2012 and subsequent years.

Furthermore, this proposed rule proposes to adopt policy changes to the IRF QRP under the statutory discretion afforded to the Secretary under section 1886(j)(7) of the Act. This rule proposes updates to the IRF QRP requirements beginning with the FY 2028 IRF QRP.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), Executive Order 14094 on Modernizing Regulatory Review (April 6, 2023), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Orders 12866 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, distributive impacts, and equity). Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f)(1) of Executive Order 12866 (Regulatory Planning and Review). The amended section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $200 million or more in any 1 year (adjusted every 3 years by the Administrator of OMB's Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product), or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities; (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in the Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

A regulatory impact analysis (RIA) must be prepared for major rules with significant regulatory action/s and/or with significant effects as per section 3(f)(1) ($200 million or more in any 1 year). We estimate the total impact of the policy updates described in this proposed rule by comparing the estimated payments in FY 2025 with those in FY 2024. This analysis results

in an estimated $255 million increase for FY 2025 IRF PPS payments. Additionally, we estimate that costs associated with updating the reporting requirements under the IRF QRP result in an estimated $392,113.40 additional cost for IRFs in FY 2026 for purposes of meeting the FY 2028 IRF QRP. Based on our estimates, OMB's Office of Information and Regulatory Affairs has determined this rulemaking is significant per section 3(f)(1) as measured by the $200 million or more in any 1 year, and hence also a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act). Accordingly, we have prepared an RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

C. Anticipated Effects

1. Effects on IRFs

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by having revenues of $ 9.0 million to $ 47.0million or less in any 1 year depending on industry classification, or by being nonprofit organizations that are not dominant in their markets. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432 at *https://www.sba.gov/sites/default/files/2019-08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019_Rev.pdf,* effective January 1, 2017, and updated on August 19, 2019.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,154 IRFs, of which approximately 50 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. HHS generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 17, we estimate that the net revenue impact of the proposed rule on all IRFs is to increase estimated payments by approximately 2.5 percent. The rates and policies proposed in this rule would not have a significant impact (not greater than 5 percent) on a substantial number of small entities. The estimated impact on small entities is shown in Table 17. MACs are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare an RIA if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table 17, we estimate that the net revenue impact of this proposed rule on rural IRFs is to increase estimated payments by approximately 4.6 percent based on the data of the 130 rural units and 13 rural hospitals in our database of 1,154 IRFs for which data were available. We estimate an overall impact for rural IRFs in all areas between 0.8 percent and 10.4 percent. As a result, we anticipate that this proposed rule will not have a significant negative impact on a substantial number of small entities.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–04, enacted March 22, 1995) (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2024, that threshold is approximately $183 million. This proposed rule does not mandate any requirements for State, local, or Tribal governments, or for the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has federalism implications. As stated, this proposed rule will not have a substantial effect on State and local governments, preempt State law, or otherwise have a federalism implication.

2. Detailed Economic Analysis

This rule proposes updates to the IRF PPS rates contained in the FY 2024 IRF PPS final rule (88 FR 509564). Specifically, this proposed rule proposes updates to the CMG relative weights and ALOS values, the wage index, and the outlier threshold for high-cost cases. This proposed rule would apply a productivity adjustment to the FY 2025 IRF market basket percentage increase in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.

We estimate that the impact of the changes and updates described in this proposed rule would be a net estimated increase of $255 million in payments to IRFs. The impact analysis in Table 17 of this proposed rule represents the projected effects of the proposed updates to IRF PPS payments for FY 2025 compared with the estimated IRF PPS payments in FY 2024. We determine the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as number of discharges or case-mix.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors because of other changes in the forecasted impact time period. Some examples could be legislative changes made by the Congress to the Medicare program that would impact program funding, or changes specifically related to IRFs. Although some of these changes may not necessarily be specific to the IRF PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon IRFs.

In updating the rates for FY 2025, we are proposing to implement the standard annual revisions described in this proposed rule (for example, the update to the wage index and market basket percentage increase used to adjust the Federal rates). We are also reducing the FY 2025 IRF market basket percentage increase by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act. We propose the estimate of the total increase in payments to IRFs in FY 2025, relative to FY 2024, would be approximately $255 million.

This estimate is derived from the application of the FY 2025 IRF market basket percentage increase, reduced by a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act, which yields an estimated increase in aggregate payments to IRFs of $280 million. However, there is an estimated $25 million decrease in aggregate payments to IRFs due to the update to the outlier threshold amount. Therefore,

we estimate that these proposed updates would result in a net increase in estimated payments of $255 million from FY 2024 to FY 2025.

The effects of the proposed updates that impact IRF PPS payment rates are shown in Table 17. The following proposed updates that affect the IRF PPS payment rates are discussed separately below:

- The effects of the proposed update to the outlier threshold amount, from approximately 3.2 percent to 3.0 percent of total estimated payments for FY 2025, consistent with section 1886(j)(4) of the Act.
- The effects of the proposed annual market basket update (using the 2021-based IRF market basket) to IRF PPS payment rates, as required by sections 1886(j)(3)(A)(i) and (j)(3)(C) of the Act, including a productivity adjustment in accordance with section 1886(j)(3)(C)(ii)(I) of the Act.
- The effects of applying the proposed budget-neutral labor-related share and wage index adjustment, as required under section 1886(j)(6) of the Act, accounting for the permanent cap on wage index decreases when applicable.
- The effects of the proposed budget-neutral changes to the CMG relative weights and ALOS values under the authority of section 1886(j)(2)(C)(i) of the Act.
- The total change in proposed estimated payments based on the FY 2025 payment changes relative to the estimated FY 2024 payments.

3. Description of Table 17

Table 17 shows the overall impact on the 1,154 IRFs included in the analysis.

The next 12 rows of Table 17 contain IRFs categorized according to their geographic location, designation as either a freestanding hospital or a unit of a hospital, and by type of ownership; all urban, which is further divided into urban units of a hospital, urban freestanding hospitals, and by type of ownership; and all rural, which is further divided into rural units of a hospital, rural freestanding hospitals, and by type of ownership. There are 1,011 IRFs located in urban areas included in our analysis. Among these, there are 651 IRF units of hospitals located in urban areas and 360 freestanding IRF hospitals located in urban areas. There are 143 IRFs located in rural areas included in our analysis. Among these, there are 130 IRF units of hospitals located in rural areas and 13 freestanding IRF hospitals located in rural areas. There are 494 for-profit IRFs. Among these, there are 459 IRFs in urban areas and 35 IRFs in rural areas. There are 564 non-profit IRFs. Among these, there are 475 urban IRFs and 89 rural IRFs. There are 96 government-owned IRFs. Among these, there are 77 urban IRFs and 19 rural IRFs.

The remaining four parts of Table 17 show IRFs grouped by their geographic location within a region, by teaching status, and by DSH patient percentage (PP). First, IRFs located in urban areas are categorized for their location within a particular one of the nine Census geographic regions. Second, IRFs located in rural areas are categorized for their location within a particular one of the nine Census geographic regions. In some cases, especially for rural IRFs located in the New England, Mountain, and Pacific regions, the number of IRFs represented is small. IRFs are then grouped by teaching status, including non-teaching IRFs, IRFs with an intern and resident to average daily census (ADC) ratio less than 10 percent, IRFs with an intern and resident to ADC ratio greater than or equal to 10 percent and less than or equal to 19 percent, and IRFs with an intern and resident to ADC ratio greater than 19 percent. Finally, IRFs are grouped by DSH PP, including IRFs with zero DSH PP, IRFs with a DSH PP less than 5 percent, IRFs with a DSH PP between 5 and less than 10 percent, IRFs with a DSH PP between 10 and 20 percent, and IRFs with a DSH PP greater than 20 percent.

The estimated impacts of each policy described in this proposed rule to the facility categories listed are shown in the columns of Table 17. The description of each column is as follows:

- Column (1) shows the facility classification categories.
- Column (2) shows the number of IRFs in each category in our FY 2025 analysis file.
- Column (3) shows the number of cases in each category in our FY 2025 analysis file.
- Column (4) shows the estimated effect of the adjustment to the outlier threshold amount.
- Column (5a) shows the estimated effect of the FY 2025 update to the IRF labor-related share, the FY 2024 CBSA delineations, and FY 2025 wage index with the 5 percent cap, in a budget-neutral manner.
- Column (5b) shows the estimated effect of the update to the IRF labor-related share, FY2025 CBSA delineations and wage index with the 5 percent cap, in a budget-neutral manner.
- Column (6) shows the estimated effect of the update to the CMG relative weights and ALOS values, in a budget-neutral manner.
- Column (7) compares our estimates of the payments per discharge, incorporating all of the policies reflected in this proposed rule for FY 2025 to our estimates of payments per discharge in FY 2024.

The average estimated increase for all IRFs is approximately 2.5 percent. This estimated net increase includes the effects of the IRF market basket update for FY 2025 of 2.8 percent, which is based on a IRF market basket percentage increase of 3.2 percent, less a 0.4 percentage point productivity adjustment, as required by section 1886(j)(3)(C)(ii)(I) of the Act. It also includes the approximate 0.2 percent overall decrease in estimated IRF outlier payments from the update to the outlier threshold amount. Since we are proposing to make updates to the IRF wage index, labor-related share and the CMG relative weights in a budget-neutral manner, we estimate there is no expected impact to total estimated IRF payments in aggregate. However, as described in more detail in each section, we estimate there will be expected impacts to the estimated distribution of payments among providers.

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TABLE 17: IRF Impact for FY 2025 (Columns 4 through 7 in percentage)

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2025 Wage Index (5% cap), FY 2024 CBSA delineations, and Labor-Related Share	FY 2025 Wage Index (5% cap), FY 2025 CBSA delineations, and Labor-Related Share	CMG Weights	Total Percent Change [1]
(1)	(2)	(3)	(4)	(5a)	(5b)	(6)	(7)
Total	1,154	413,171	-0.2	0.0	0.0	0.0	2.5
Urban unit	651	141,326	-0.5	-0.5	0.0	0.0	1.8
Rural unit	130	17,792	-0.4	1.8	0.3	0.0	4.6
Urban hospital	360	247,531	-0.1	0.1	0.0	0.0	2.8
Rural hospital	13	6,522	0.0	1.5	0.5	-0.1	4.7
Urban For-Profit	459	245,730	-0.1	0.1	-0.1	0.0	2.7
Rural For-Profit	35	9,689	-0.1	0.9	0.4	0.0	4.0
Urban Non-Profit	475	125,194	-0.4	-0.4	0.0	0.0	2.0
Rural Non-Profit	89	12,682	-0.5	2.3	0.3	0.0	5.1
Urban Government	77	17,933	-0.5	0.2	0.0	0.0	2.5
Rural Government	19	1,943	-0.4	1.4	0.4	0.1	4.3
Urban	1,011	388,857	-0.2	-0.1	0.0	0.0	2.4
Rural	143	24,314	-0.3	1.7	0.3	0.0	4.6
Urban by region							
Urban New England	30	14,274	-0.2	-1.6	0.1	0.1	1.1
Urban Middle Atlantic	116	41,445	-0.3	-0.8	0.0	0.0	1.7
Urban South Atlantic	180	90,206	-0.3	0.3	-0.2	0.0	2.7
Urban East North Central	164	46,765	-0.3	-0.4	0.1	0.0	2.2
Urban East South Central	56	27,196	-0.1	1.3	0.0	0.0	4.0
Urban West North Central	78	23,171	-0.3	-0.1	0.0	0.0	2.4
Urban West South Central	210	89,840	-0.1	0.4	0.0	0.0	3.1
Urban Mountain	79	31,110	-0.2	0.3	0.0	0.0	2.9

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2025 Wage Index (5% cap), FY 2024 CBSA delineations, and Labor-Related Share	FY 2025 Wage Index (5% cap), FY 2025 CBSA delineations, and Labor-Related Share	CMG Weights	Total Percent Change [1]
Urban Pacific	98	24,850	-0.5	-1.6	-0.1	0.0	0.6
Rural by region							
Rural New England	5	1,108	-0.4	0.0	0.0	-0.1	2.3
Rural Middle Atlantic	11	1,472	-0.4	8.8	-1.0	0.0	10.4
Rural South Atlantic	17	5,819	-0.2	2.2	1.6	0.0	6.5
Rural East North Central	22	2,871	-0.3	1.4	-0.2	0.0	3.7
Rural East South Central	19	3,300	-0.3	1.1	-0.2	0.0	3.5
Rural West North Central	18	2,250	-0.5	1.4	0.0	0.1	3.8
Rural West South Central	43	6,763	-0.3	0.7	0.2	0.1	3.5
Rural Mountain	6	423	-0.7	2.5	0.2	0.1	4.9
Rural Pacific	2	308	-1.3	-0.7	0.0	0.1	0.8
Teaching status							
Non-teaching	1,051	365,667	-0.2	0.1	0.0	0.0	2.7
Resident to ADC less than 10%	55	34,285	-0.3	-0.4	0.1	0.0	2.2
Resident to ADC 10%-19%	37	11,749	-0.5	-1.8	0.0	0.1	0.6
Resident to ADC greater than 19%	11	1,470	-0.5	-1.6	0.0	-0.1	0.6
Disproportionate share patient percentage (DSH PP)							
DSH PP = 0%	72	14,302	-0.5	0.7	0.4	0.0	3.3
DSH PP <5%	130	64,148	-0.1	0.3	0.0	0.0	3.0
DSH PP 5%-10%	229	98,988	-0.2	0.4	-0.1	0.0	2.9

Facility Classification	Number of IRFs	Number of Cases	Outlier	FY 2025 Wage Index (5% cap), FY 2024 CBSA delineations, and Labor-Related Share	FY 2025 Wage Index (5% cap), FY 2025 CBSA delineations, and Labor-Related Share	CMG Weights	Total Percent Change [1]
DSH PP 10%-20%	418	152,107	-0.3	-0.3	0.0	0.0	2.2
DSH PP greater than 20%	305	83,626	-0.3	-0.2	0.1	0.0	2.3

[1]This column includes the impact of the updates in columns (4), (5a), (5b) and (6) above, and of the IRF market basket update for FY 2025 of 3.2 percent, reduced by 0.4 percentage point for the productivity adjustment as required by section 1886(j)(3)(C)(ii)(I) of the Act. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

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4. Impact of the Update to the Outlier Threshold Amount

The estimated effects of the update to the outlier threshold adjustment are presented in column 4 of Table 17.

For the FY 2025 proposed rule, we used FY 2023 IRF claims data and based on that analysis, we estimated that IRF outlier payments as a percentage of total estimated IRF payments would be 3.2 percent in FY 2024. Thus, we are adjusting the outlier threshold amount in this proposed rule to maintain total estimated outlier payments equal to 3 percent of total estimated payments in FY 2025.

The estimated change in total IRF payments for FY 2025, therefore, includes an approximate 0.2 percentage point decrease in payments because the estimated outlier portion of total payments is estimated to decrease from approximately 3.2 percent to 3.0 percent.

The impact of this update to the outlier threshold amount (as shown in column 4 of Table 17) is to decrease estimated overall payments to IRFs by 0.2 percentage point.

5. Impact of the Wage Index, Labor-Related Share, and Wage Index Cap

In column 5a of Table 17, we present the effects of the budget-neutral update of the wage index and labor-related share, taking into account the permanent 5 percent cap on wage index decreases when applicable, without taking into account the updated FY2025 CBSA delineations, which are presented separately in the next column. The changes to the wage index and the labor-related share are discussed together because the wage index is applied to the labor-related share portion of payments, so the changes in the two have a combined effect on payments to providers. As discussed in section VI.E. of this proposed rule, we update the FY 2025 labor-related share from 74.1 percent in FY 2024 to 74.2 percent in FY 2025.

6. Impact of the Updated CBSA Delineations

In column 5b of Table 17, we present the effects of the revised FY2025 CBSA delineations. In aggregate, we do not estimate that these updates will affect overall estimated payments to IRFs. However, we do expect these updates to have small distributional effects. We estimate the largest decrease in payment from the update to the FY 2025 CBSA delineation and wage index and labor-related share (column 5b of Table 17) to be a 1.0 percent decrease for IRFs in the Rural Middle Atlantic and the largest increase in payment to be a 1.6 percent increase for IRFs in the Rural South Atlantic.

7. Impact of the Update to the CMG Relative Weights and ALOS Values

In column 6 of Table 17, we present the effects of the budget-neutral update of the CMG relative weights and ALOS values. In the aggregate, we do not estimate that these updates will affect overall estimated payments of IRFs. However, we do expect these updates to have small distributional effects between −0.1 to 0.1.

8. Effects of Requirements for the IRF QRP Beginning With the FY 2028 IRF QRP

In accordance with section 1886(j)(7)(A) of the Act, the Secretary must reduce by 2 percentage points the annual market basket increase factor otherwise applicable to an IRF for a fiscal year if the IRF does not comply with the requirements of the IRF QRP for that fiscal year. In section IX.A. of the proposed rule, we discussed the method for applying the 2 percentage points reduction to IRFs that fail to meet the IRF QRP requirements.

As discussed in sections VII.C.3. and VII.C.5. of the preamble of this proposed rule, we are proposing to adopt four new items as standardized patient assessment data elements under the SDOH category and to modify one item currently collected as a standardized patient assessment data element. Although the proposed increase in burden will be accounted for in a revised information collection request under OMB control number (0938–0842), we are providing impact information. We believe the proposed items would be completed equally by a Registered Nurse (RN) (50 percent of the time) and a Licensed Practical and Vocational Nurses (LPN/LVN) (50 percent of the time). For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage

Estimates.[81] To account for other indirect costs and fringe benefits, we doubled the hourly wage. These amounts are detailed in Table 18.

TABLE 18: U.S. Bureau of Labor and Statistics' May 2022 National Occupational Employment and Wage Estimates

Occupation title	Occupation code	Median Hourly Wage ($/hr)	Other Indirect Costs and Fringe Benefit ($/hr)	Adjusted Hourly Wage ($/hr)
Registered Nurse (RN)	29-1141	$39.05	$39.05	$78.10
Licensed Practical and Licensed Vocational Nurse (LPN/LVN)	29-2061	$26.26	$26.26	$ 52.52

With 571,151 admissions from 1,154 IRFs annually, we estimated an annual burden increase of 8,859.64 hours [(571,151 × 0.02 hour) admissions − (512,677 × 0.005 hour) planned discharges] and an increase of $578,622.76 [8,859.64 hours × $65.31/hr)]. For each IRF, we estimate an annual burden increase of 7.68 hours (8,859.64 hours/1,154 IRFs) for an annual increase of $501.41 ($578,622.76/1,154 IRFs).

As discussed in section VII.F.3. of this proposed rule, we are proposing to remove one item, Admission Class, from the IRF–PAI beginning October 1, 2026. We estimate the removal of this item would result in a decrease of 0.005 hour of clinical staff time beginning with admission assessments completed on October 1, 2026. Although the proposed decrease in burden will be accounted for in a revised information collection request under OMB control number 0938–0842, we are providing impact information. We estimate this item is completed equally by an RN (50 percent of the time) and by an LPN/LVN (50 percent of the time). For the purposes of calculating the costs associated with the collection of information requirements, we obtained median hourly wages for these staff from the U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates.[82] To account for other indirect costs and fringe benefits, we doubled the hourly wage. These amounts are detailed in Table 18. With 571,151 admissions from 1,154 IRFs annually, we estimate an annual burden decrease of 2,855.76 hours (571,151 admissions × 0.005 hour) and a decrease of $186,509.36 [2,855.76 hours × $65.31/hr)]. For each IRF we estimate an annual burden decrease of 2.47 hours (2,855.76 hours/1,154 IRFs) for an annual decrease of $161.62 ($186,509.36/1,154 IRFs).

In summary, under OMB control number 0938–0842, the proposed changes to the IRF QRP would result in an estimated increase in programmatic burden for 1,154 IRFs. The total burden increase is approximately $392,113.40 for all IRFs and $339.79 per IRF and is summarized in Table 19.

[81] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

[82] U.S. Bureau of Labor Statistics' (BLS) May 2022 National Occupational Employment and Wage Estimates. *https://www.bls.gov/oes/current/oes_nat.htm.*

TABLE 19: Estimated IRF QRP Program Impacts for FY 2028

Proposals	Per IRF		All IRFs	
	Estimated change in annual burden hours	Estimated change in annual cost	Estimated change in annual burden hours	Estimated change in annual cost
Estimated change in burden associated with Proposal to Collect Four New Items as Standardized Patient Assessment Data Elements and Modify One Item Collected as a Standardized Patient Assessment Data Element beginning with the FY 2028 IRF QRP	+7.68	+$501.41	+8,859.64	+$578,622.76
Estimated change in burden associated with Removal of the Admission Class item effective October 1, 2026	-2.47	-$161.62	-2,855.76	-$186,509.36
Estimated total increase in burden for the IRF QRP if finalized	**5.20**	**$339.79**	**6,003.88**	**$392,113.40**

We invite public comments on the overall impact of the IRF QRP proposals for FY 2028.

D. Alternatives Considered

The following is a discussion of the alternatives considered for the IRF PPS updates contained in this proposed rule.

As noted previously in the proposed rule, section 1886(j)(3)(C) of the Act requires the Secretary to update the IRF PPS payment rates by an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services and section 1886(j)(3)(C)(ii)(I) of the Act requires the Secretary to apply a productivity adjustment to the market basket percentage increase for FY 2025. Thus, in accordance with section 1886(j)(3)(C) of the Act, we are updating the IRF prospective payments in this proposed rule by 2.8 percent (which equals the 3.2 percent proposed IRF market basket percentage increase for FY 2025 reduced by a proposed 0.4 percentage point productivity adjustment as determined under section 1886(b)(3)(B)(xi)(II) of the Act (as required by section 1886(j)(3)(C)(ii)(I) of the Act)).

We considered maintaining the existing CMG relative weights and average length of stay values for FY 2025. However, in light of recently available data and our desire to ensure that the CMG relative weights and average length of stay values are as reflective as possible of recent changes in IRF utilization and case mix, we believe that it is appropriate to propose updates to the CMG relative weights and average length of stay values at this time to ensure that IRF PPS payments continue to reflect as accurately as possible the current costs of care in IRFs.

We considered maintaining the existing outlier threshold amount for FY 2025. However, analysis of updated FY 2024 data indicates that estimated outlier payments would be more than 3 percent of total estimated payments for FY 2025, unless we updated the outlier threshold amount. Consequently, we are proposing to adjust the outlier threshold amount to maintain estimated outlier payments at 3 percent of estimated aggregate payments in FY 2025.

With regard to the proposal to collect four new items as standardized patient assessment data elements under the SDOH category and modify one item collected as a standardized patient assessment data element under the SDOH category beginning with the FY 2028 IRF QRP, we believe these proposals would advance the CMS National Quality Strategy Goals of equity and engagement. We considered the alternative of delaying the proposal to collect these assessment items but given the fact they would encourage meaningful collaboration among healthcare providers, caregivers, and community-based organizations to address SDOH prior to discharge from the IRF, we believe further delay is unwarranted.

With regard to the proposal to remove one item, Admission Class, from the IRF–PAI, we routinely review the IRF–PAI for redundancies and opportunities to simplify data submission requirements. We have identified that this item is currently not used in the calculation of quality measures already adopted in the IRF QRP, payment, survey, or care planning, and therefore no alternatives were considered.

E. Regulatory Review Costs

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the rule, we assume that the total number of unique commenters on the FY 2025 IRF PPS proposed rule will be the number of reviewers of last year's proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters reviewed the FY 2024 IRF PPS proposed rule in detail, and it is also possible that some reviewers chose not to comment

on the FY 2024 proposed rule. For these reasons, we thought that the number of commenters would be a fair estimate of the number of reviewers of this proposed rule.

We also recognize that different types of entities are in many cases affected by mutually exclusive sections of this proposed rule, and therefore, for the purposes of our estimate we assume that each reviewer reads approximately 50 percent of the rule.

Using the national mean hourly wage data from the May 2022 BLS for Occupational Employment Statistics (OES) for medical and health service managers (SOC 11–9111), we estimate that the cost of reviewing this rule is $123.06 per hour, including overhead and fringe benefits (*https://www.bls.gov/oes/current/oes_nat.htm*). Assuming an average reading speed, we estimate that it would take approximately 3 hours for the staff to review half of proposed rule. For each reviewer of the rule, the estimated cost is $369.18 (3 hours × $123.06). Therefore, we estimate that the total cost of reviewing this regulation is $16,613.10 ($369.18 × 45 reviewers).

F. Accounting Statement and Table

As required by OMB Circular A–4 (available at *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A4/a-4.pdf*), in Table 20 we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this proposed rule. Table 20 provides our best estimate of the increase in Medicare payments under the IRF PPS as a result of the updates presented in this proposed rule based on the data for 1,154 IRFs in our database.

TABLE 20: Accounting Statement: Classification of Estimated Expenditure

	Category	Transfers
Change in Estimated Transfers from FY 2024 IRF PPS to FY 2025 IRF PPS	Annualized Monetized Transfers	$255 million
	From Whom to Whom?	Federal Government to IRF Medicare Providers
Estimated Costs Associated with the FY 2028 IRF QRP Proposals	Annualized monetized cost in FY 2028 due to proposed data collection requirements	$392,113.40
Estimated Costs Associated with Review Cost for FY 2025 IRF PPS	Cost associated with regulatory review cost	$16,613.10

G. Conclusion

Overall, the estimated payments per discharge for IRFs in FY 2025 are projected to increase by 2.5 percent, compared with the estimated payments in FY 2024, as reflected in column 7 of Table 17.

IRF payments per discharge are estimated to increase by 2.4 percent in urban areas and 4.6 percent in rural areas, compared with estimated FY 2024 payments. Payments per discharge to rehabilitation units are estimated to increase 1.8 percent in urban areas and 4.6 percent in rural areas. Payments per discharge to freestanding rehabilitation hospitals are estimated to increase 2.8 percent in urban areas and 4.7 percent in rural areas.

Overall, IRFs are estimated to experience a net increase in payments as a result of the policies in this proposed rule. The largest payment increase is estimated to be a 10.4 percent increase for IRFs located in the Rural Middle Atlantic region. The analysis above, together with the remainder of this preamble, provides an RIA.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by OMB.

Chiquita Brooks-LaSure, Administrator of the Centers for Medicare & Medicaid Services, approved this document on March 19, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–06550 Filed 3–27–24; 4:15 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 89 Friday,
No. 62 March 29, 2024

Part III

Securities and Exchange Commission

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Adopt Rules To List and Trade FLEX Options; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99825; File No. SR–ISE–2024–12]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing of Proposed Rule Change To Adopt Rules To List and Trade FLEX Options

March 21, 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, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules that will govern the listing and trading of flexible exchange options (''FLEX Options'').

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 adopt rules in new Options 3A that will govern the listing and trading of FLEX Options on the Exchange's electronic market.

The Exchange is proposing this new functionality be implemented in connection with a technology migration to enhanced Nasdaq, Inc. (''Nasdaq'') functionality that will result in higher performance, scalability, and more robust architecture.[3] The Exchange intends to begin implementation of the proposed rule change before December 20, 2024. The Exchange will issue a public notice to Members to provide notification of the FLEX implementation date.

As proposed, FLEX Options will be customized options contracts that will allow investors to tailor contract terms for exchange-listed equity and index options. FLEX Options will be designed to meet the needs of investors for greater flexibility in selecting the terms of options within the parameters of the Exchange's proposed rules. FLEX Options will not be preestablished for trading and will not be listed individually for trading on the Exchange. Rather, investors will select FLEX Option terms and will be limited by the parameters detailed below in their selection of those terms. As a result, FLEX Options would allow investors to specify more specific, individualized investment objectives than may be available to them in the standardized options market.

Some key features of the new electronic FLEX Options functionality are as follows:

- *System Availability:* The Exchange will not conduct an Opening Process pursuant to Options 3, Section 8 in FLEX Options.[4] Orders in FLEX Options may only be submitted through an electronic FLEX Auction, a FLEX Price Improvement Auction (''FLEX PIM''), or a FLEX Solicited Order Mechanism (''FLEX SOM''), each as discussed in detail below.[5] Accordingly, the Exchange's simple and complex order books will not be available for transactions in FLEX Options.[6]
- *Terms:* FLEX Options will be a type of put or call, and will allow investors the flexibility to choose an exercise style of American or European, an expiration date, a settlement type, and an exercise price, all within the parameters specified in the proposed rules.[7] As discussed further below, FLEX Options will not be permitted with identical terms as an existing non-FLEX Option series listed on the Exchange.[8]

Because of their composition, the Exchange believes that FLEX Options may allow investors to more closely meet their individual investment and hedging objectives by customizing options contracts for the purpose of satisfying particular investment objectives that could not be met by the standardized markets.

Background

The Commission approved the trading of FLEX Options in 1993.[9] At the time, the Chicago Board Options Exchange, Inc., now Cboe Exchange, Inc. (''Cboe'') proposed FLEX options based on the Standard and Poor's Corporation 500 and 100 Stock Indexes.[10] These FLEX Options were offered as an alternative to an over-the-counter (''OTC'') market in customized equity options.[11] Several years after the initial approval, the Commission approved the trading of additional FLEX Options on specified equity securities.[12] In its order, the Commission provided: ''The benefits of the Exchanges' options markets include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, parameters and procedures for clearance and settlement, and the guarantee of the OCC [Options Clearing Corporation] for all contracts traded on the Exchange.'' [13]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange is separately proposing a number of rule filings in connection with this technology migration. *See, e.g.,* Securities Exchange Act Release No. 97605 (May 26, 2023), 88 FR 36350 (June 2, 2023) (SR–ISE–2023–10).

[4] *See* proposed Options 3A, Section 8(a). Rather, Members may begin submitting orders in FLEX Options into one of the proposed auction mechanisms (*i.e.,* electronic FLEX Auction, FLEX Price Improvement Mechanism, and FLEX Solicited Order Mechanism) once the underlying security is open for trading. *See* proposed Options 3A, Section 8(b).

[5] *See* proposed Options 3A, Section 11(a).

[6] *See* proposed Options 3A, Section 10(a).

[7] As discussed later in this filing, proposed Options 3A, Section 3(c) will govern FLEX Options terms.

[8] At least one of the following terms must differ between FLEX Options and non-FLEX Options on the same underlying security: exercise date, exercise price, or exercise style. *See* proposed Options 3A, Section 3(c).

[9] *See* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17) (Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc., Relating to FLEX Options).

[10] *Id.*

[11] *Id.*

[12] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Options on Specified Equity Securities).

[13] *Id.* The Exchange notes that the Commission found pursuant to Rule 9b–1 under the Act, that FLEX Options, including FLEX Equity Options, are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. *Id.*

The Exchange notes that FLEX Options are currently traded on Cboe, NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and Nasdaq PHLX LLC (''Phlx'').[14] The Exchange further notes that Cboe offers electronic and open outcry FLEX Options trading while NYSE American, NYSE Arca, and Phlx offer only open outcry trading of FLEX Options on their respective trading floors. The Exchange now proposes to allow for the trading of FLEX Options on its electronic market[15] in a substantially similar manner as Cboe's electronic FLEX Options, with certain intended differences primarily to align to current System[16] behavior (and especially current auction behavior) to provide increased consistency for Members trading FLEX Options and non-FLEX Options on ISE, as discussed in detail below. Further, the Exchange has omitted certain Cboe rules from the proposed rules due to differences in scope and operation of FLEX trading at Cboe compared to the proposed scope and operation of FLEX trading on ISE, each as noted below. For example, the Exchange will not include Cboe rule provisions related to open outcry trading, Asian- or Cliquet-settled FLEX index options, or FLEX index options with an index multiplier of one (''Micro FLEX Index Options'') as it does not offer these capabilities today. For the same reason, the Exchange will not allow prices in FLEX trading to be expressed as percentages under this proposal.

Proposal

Transactions in FLEX Options traded on the Exchange will generally be subject to the same rules that apply to the trading of equity options and index options. In order, however, to provide investors with the flexibility to designate certain of the terms of the options, and to accommodate other special features of FLEX Options and the way in which they are traded, the Exchange proposes new rules applicable to FLEX Options in new Options 3A, Sections 1–19.

A. General Provisions (Section 1)

Proposed Section 1(a) will set forth the applicability of Exchange Rules, and will provide that Options 3A Rules will apply only to FLEX Options and that trading of FLEX Options will be subject to all other Rules applicable to the trading of options on the Exchange, unless otherwise provided in Options 3A.

Proposed Section 1(b) will set forth the definitions used specifically in Options 3A, namely that the term ''FLEX Option'' means a flexible exchange option. A FLEX Option on an equity security may be referred to as a ''FLEX Equity Option,'' and a FLEX Option on an index may be referred to as a ''FLEX Index Option.'' Further, the term ''FLEX Order'' means an order submitted in a FLEX Option pursuant to Options 3A.

The Exchange also proposes to add the definition of ''FLEX Order'' in Options 3, Section 7 (Order Types) in new paragraph (z). While FLEX Orders will also be defined in (and governed by) Options 3A, the Exchange believes that it will be useful to market participants to have the order types available on ISE centralized within one rule. Lastly, the Exchange proposes a non-substantive change to paragraph (y) in Options 3, Section 7 to fix a typo.

B. Hours of Business (Section 2)

Proposed Section 2(a) will provide that the trading hours for FLEX Options will be the same as the trading hours for corresponding non-FLEX Options as set forth in Options 3, Section 1, except the Exchange may determine to narrow or otherwise restrict the trading hours for FLEX Options.[17] Therefore, the trading hours for FLEX Options will generally be 9:30 a.m. to 4:00 p.m. Eastern time (or 4:15 p.m. Eastern time for Fund Shares, as defined in Options 4, Section 3(h), Index-Linked Securities, as defined in Options 4, Section 3(k)(1), or certain broad-based indexes).[18]

C. FLEX Option Classes and Permissible Series (Section 3(a) and (b))

Pursuant to proposed Section 3(a), the Exchange may authorize for trading a FLEX Option class on any equity security or index if it may authorize for trading a non-FLEX Option class on that equity security or index pursuant to Options 4, Section 3 and Options 4A, Section 3,[19] respectively, even if the Exchange does not list that non-FLEX Option class for trading.[20]

Proposed Section 3(b) will provide that the Exchange may approve a FLEX Option series for trading in any FLEX Option class it may authorize for trading pursuant to proposed Section 3(a). FLEX Option series are not pre-established. A FLEX Option series is eligible for trading on the Exchange upon submission to the System of a FLEX Order for that series pursuant to proposed Sections 11 through 13,[21] subject to the following stipulations.[22] First, the Exchange will only permit trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading. This would include permitting trading in a FLEX Option series before a series with identical terms is listed for trading as a non-FLEX Option series. If the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, the FLEX Option series will become fungible with the non-FLEX Option series pursuant to proposed paragraph (d) of Section 3. The System would not accept a FLEX Order for a put or call FLEX Option series if a non-FLEX Option series on the same underlying security or index with the same expiration date, exercise price, and exercise style is already listed for trading.[23] Second, a FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date.[24]

D. FLEX Options Terms (Section 3(c))

Proposed Section 3(c) will specify the terms that must be included in a FLEX Order.[25] Specifically, when submitting a

[14] *See* Cboe Rules 4.20–4.22 and 5.70–5.75, NYSE American Rules 900G–910G, NYSE Arca Rules 5.30–O–5.41–O, and Phlx Options 8, Section 34. The Exchange also notes that another options exchange, BOX Exchange LLC (''BOX''), recently filed a rule change with the Commission to allow for the trading of FLEX equity options on the BOX trading floor. *See* Securities Exchange Act Release No. 99192 (December 15, 2023), 88 FR 88437 (December 21, 2023) (SR–BOX–2023–20).

[15] The Exchange is not proposing to add open outcry FLEX Options trading as it does not have a trading floor.

[16] The term ''System'' means the electronic system operated by the Exchange that receives and disseminates quotes, executes orders and reports transactions. *See* Options 1, Section 1(a)(50).

[17] *See* Cboe Rule 5.1(b)(3)(A) for materially identical provisions.

[18] *See* Options 3, Section 1(c)–(e).

[19] Options 4, Section 3 provides the criteria for the listing of options on several different underlying types of securities, including, for example, securities registered with the SEC under Regulation NMS of the Act (''NMS stock'') and exchange-traded funds (''ETFs''). Options 4A, Section provides the criteria for the listing of options on indexes.

[20] *See* Cboe Rule 4.20 for materially identical provisions.

[21] Proposed Sections 11 through 13 of Options 3A will govern the electronic FLEX Auction, FLEX PIM, and FLEX SOM, respectively. As discussed later in this filing, FLEX Orders may only be submitted through an electronic FLEX Auction, FLEX PIM, or FLEX SOM.

[22] *See* proposed Options 3A, Section 3(b), which is based on Cboe Rule 4.21(a).

[23] *See* proposed Options 3A, Section 3(b)(1), which is based on Cboe Rule 4.21(a)(1).

[24] *See* proposed Options 3A, Section 3(b)(2), which is based on Cboe Rule 4.21(a)(2).

[25] *See* Cboe Rule 4.21(b) for similar provisions. The Exchange notes that unlike Cboe, it is not

Continued

FLEX Order for a FLEX Option series to the System, the submitting Member must include one of each of the terms detailed in proposed subparagraphs (1)–(6) of Section 3(c) in the FLEX Order (all other terms of a FLEX Option series are the same as those that apply to non-FLEX Options), provided that a FLEX Equity Option overlying an ETF (cash- or physically-settled) may not be the same type (put or call) and may not have the same exercise style, expiration date, and exercise price as a non-FLEX Equity Option overlying the same ETF,[26] which terms constitute the FLEX Option series.

As proposed, the submitting Member must specify the following terms in the FLEX Order: (1) underlying equity security or index, as applicable (the index multiplier for FLEX Index Options is 100; [27] (2) type of option (*i.e.,* put or call); [28] (3) exercise style, which may be American-style or European-style; [29] (4) expiration date, which may be any business day (specified to the day, month, and year) no more than 15 years from the date on which a Member submits a FLEX Order to the System; [30] (5) settlement type for the FLEX Equity Option or FLEX Index Option, as applicable; [31] and (6) exercise price, which may be in increments no smaller than $0.01.[32] Further, the Exchange may determine the smallest increment for exercise prices of FLEX Options on a class-by-class basis.[33]

As it relates to the settlement type for FLEX Equity Options, the Exchange proposes in subparagraph (c)(5)(A)(i) of Options 3A, Section 3 that FLEX Equity Options, other than as permitted in proposed subparagraphs (c)(5)(A)(ii) and (iii), are settled with physical delivery of the underlying security. Proposed subparagraph (c)(5)(A)(ii) will allow for the cash-settlement of certain qualifying FLEX Equity Options with an underlying security that is an ETF.[34] Proposed subparagraph (c)(5)(A)(iii) will provide that FLEX Equity Options are subject to the exercise by exception provisions of OCC Rule 805.

As it relates to the settlement type for FLEX Index Options, the Exchange proposes in subparagraphs (c)(5)(B)(i) and (ii) of Options 3A, Section 3 that FLEX Index Options are settled in U.S. dollars, and may be either a.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported opening prices of the component securities) or p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities). The Exchange notes that Cboe recently received approval of its pilot program that permitted it to list p.m.-settled FLEX Index Options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration that expire on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (''FLEX PM Third Friday Options'').[35] Consistent with the Commission's approval of Cboe's proposal, the Exchange is proposing to allow the listing of FLEX PM Third Friday Options on ISE as well, and will align proposed Section 3(c)(5)(B)(ii) with Cboe Rule 4.21(b)(5)(B)(ii).

E. FLEX Fungibility (Section 3(d))

Proposed Section 3(d)(1)(A) will provide that if the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, all existing open positions established under the FLEX trading procedures will become fully fungible with transactions in the identical non-FLEX Option series.[36] In addition, proposed Section 3(d)(1)(B) will provide that any further trading in the series would be as non-FLEX Options subject to non-FLEX trading procedures and Rules.[37] The foregoing provisions are materially identical to Cboe Rule 4.22(a)(1) and (2).

Unlike Cboe, however, the Exchange will not permit intraday additions of a non-FLEX Option series with identical terms as an already-listed FLEX Option series for the remainder of the trading day.[38] As a result, the Exchange will not incorporate the provisions in Cboe Rule 4.22(b) that relate to allowing closing-only transactions for FLEX Option series that become fungible with identical non-FLEX Option series.

Lastly, in the event the relevant expiration is a holiday pursuant to General 3, Rule 1030,[39] proposed Section 3(d) will apply to options with an expiration date that is the business day immediately preceding the holiday, except for Monday-expiring Weekly Expirations (as defined in Options 4A, Section 3), in which case proposed Section 3(d) will apply to options with

proposing FLEX Index Options with a multiplier of 1 (*i.e.,* Micro FLEX Index Options) or FLEX Index Options that are Asian- or Cliquet-settled as the Exchange does not have these capabilities today for index options. For the same reason, the Exchange is not proposing to allow exercise prices to be expressed as a percentage value. Therefore, the Exchange has not incorporated the applicable provisions in this Rule.

[26] The Exchange will discuss cash-settled FLEX Equity Options overlying an ETF (''cash-settled FLEX ETFs'') later in this filing. As discussed below, the Commission previously approved a rule filing by NYSE American to permit the listing and trading of this product, and Cboe recently filed an immediately effective rule change based on NYSE American's filing. *See infra* notes 186 and 187.

[27] *See* proposed Options 3A, Section 3(c)(1), which is based on Cboe Rule 4.21(b)(1) except for the provisions relating to Micro FLEX Index Options.

[28] *See* proposed Options 3A, Section 3(c)(2), which is based on Cboe Rule 4.21(b)(2) except the provisions related to Asian-settled or Cliquet-settled FLEX Index Options.

[29] *See* proposed Options 3A, Section 3(c)(3), which is based on Cboe Rule 4.21(b)(3) except with respect to Asian-settled or Cliquet-settled FLEX Index Options.

[30] *See* proposed Options 3A, Section 3(c)(4), which is based on Cboe Rule 4.21(b)(4) except with respect to Asian-settled or Cliquet-settled FLEX Index Options.

[31] *See* proposed Options 3A, Section 3(c)(5), which is based on Cboe Rule 4.21(b)(5) except with respect to Asian-settled or Cliquet-settled FLEX Index Options.

[32] *See* proposed Options 3A, Section 3(c)(6), which is based on Cboe Rule 4.21(b)(6) except the Exchange is not proposing Cliquet-settled Index Options or to allow exercise prices to be expressed as a percentage value.

[33] *See* proposed Options 3A, Section 3(c), which is based on Cboe Rule 4.21(b) except for the provisions allowing the exercise price to be expressed as a percentage amount and with respect to Micro FLEX Index Options. As noted above, the Exchange does not offer these capabilities today for non-FLEX index options.

[34] As discussed later in this filing, the Exchange is proposing to list and trade cash-settled FLEX ETFs in the same manner as NYSE American and Cboe.

[35] *See* Securities Exchange Act Release No. 99222 (December 21, 2023), 88 FR 89771 (December 28, 2023) (SR–CBOE–2023–018) (''FLEX Settlement Pilot Approval''). In support of making the pilot a permanent program, Cboe cited to its own review of pilot data during the course of the pilot program and a study by the Commission's Division of Economic and Risk Analysis (''DERA'') staff. *See* FLEX Settlement Pilot Approval, notes 18 and 35.

[36] An open position resulting from a transaction on the Exchange becomes fungible post-trade and is separate from the execution occurring on the Exchange. For example, assume a Member buys one (1) American style AAPL call option expiring on October 9, 2024, with a strike price of 150, which is a FLEX series because there is no standard option listed with those same terms. Now assume, while holding this position, a standard option with the same terms is listed (American style AAPL call option expiring on October 9, 2024, with a strike price of 150). After this standard option is listed, the Member purchases one (1) contract in this non-FLEX option series. After this second transaction, the Participant will have an open position of two (2) contracts in the standard AAPL call expiring on October 9, 2024, with a 150 strike price.

[37] This includes all priority and trade-through provisions on the Exchange. *See, e.g.,* Options 3, Section 10 and Options 5, Section 2.

[38] *See* proposed Options 3A, Section 3(d)(2). In such instances, the non-FLEX Option series could be added overnight to begin trading the next trading day (upon which all existing open positions in the FLEX Option would become fully fungible with transactions in the identical non-FLEX Option series, and any further trading in the series would be as non-FLEX Options subject to non-FLEX trading procedures and Rules).

[39] ISE General 3 (including Rule 1030) incorporates by reference Series 1000 of the Rules of The Nasdaq Stock Market, LLC (''Nasdaq'').

an expiration date that is a business day immediately following the holiday.[40]

F. Units of Trading; Minimum Trading Increments (Sections 4 and 5)

Proposed Section 4(a) of Options 3A will provide that bids and offers for FLEX Options must be expressed in U.S. dollars and decimals in the minimum increments as set forth in proposed Section 5.[41] Proposed Section 5(a) will provide that the Exchange would determine the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than $0.01.[42]

G. Types of Orders; Order and Quote Protocols (Section 6)

Pursuant to proposed Section 6(a), the Exchange may determine to make the order types and times-in-force, respectively, in Options 3, Section 7 available on a class or System basis for FLEX Orders.[43] The Exchange notes that it currently has the authority to make certain order types and times-in-force available on a class or System basis for non-FLEX Options pursuant to Options 3, Section 7, and therefore proposes to have similar authority with respect to FLEX Options.

Proposed Section 6(b) will provide that the following order and quote protocols in Supplementary Material .03 to Options 3, Section 7 will be available for FLEX Orders, FLEX auction notifications, and FLEX auction responses:

- *FIX:*[44] FLEX Orders and FLEX auction responses
- *OTTO:*[45] FLEX Orders, FLEX auction notifications, and FLEX auction responses
- *SQF:*[46] FLEX auction notifications and FLEX auction responses

H. Complex Orders (Section 7)

Pursuant to proposed Section 7(a), the Exchange may make complex orders, including a Complex Options Order,[47] Stock-Options Order,[48] and Stock-Complex Order[49] available for FLEX trading. Complex FLEX Orders may have up to the maximum number of legs determined by the Exchange.[50] Each leg of a complex FLEX Order: (1) must be for a FLEX Option series authorized for FLEX trading with the same underlying equity security or index; (2) must have the same exercise style (American or European); and (3) for a FLEX Index Option, may have a different settlement type (a.m.-settled or p.m.-settled).[51]

Pursuant to proposed Section 7(b), complex FLEX Orders may not have to adhere to the ratio requirements in Options 3, Sections 14(a)(1)–(3), as determined by the Exchange on a class-by-class basis. Options 3, Sections 14(a)(1)–(3) currently includes the complex ratio requirements for Complex Options Strategies, Stock-Options Strategies, and Stock-Complex Strategies.[52] The Exchange is not changing the complex ratio requirements for non-FLEX complex orders under this proposal. Instead, it is proposing to offer this feature only for complex FLEX Orders so that Members may submit complex FLEX Orders with any ratio.[53] The Exchange notes that Cboe currently permits complex FLEX Orders to be submitted with any ratio.[54]

I. Opening of FLEX Trading (Section 8)

Proposed Section 8 will specify that there will be no Opening Process pursuant to Options 3, Section 8 in FLEX Options. Instead, Members may begin submitting FLEX Orders into an electronic FLEX Auction pursuant to proposed Section 11(b), a FLEX PIM pursuant to proposed Section 12, or a FLEX SOM pursuant to proposed Section 13 when the underlying security is open for trading.[55] Because market participants incorporate transaction prices of underlying securities or the values of underlying indexes when pricing options (including FLEX

[40] *See* proposed Options 3A, Section 3(d)(3), which is based on Cboe Rule 4.22(c).

[41] *See* Cboe Rule 5.3(e)(3) for similar provisions, except the Exchange is not proposing to allow prices to be expressed as a percentage value, or to provide for Micro FLEX Index Options.

[42] *See* Cboe Rule 5.4(c)(4) for similar provisions, except the Exchange is not proposing to allow prices to be expressed as a percentage value.

[43] *See* Options 3, Section 7 for descriptions of these order types and times-in-force.

[44] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages.

[45] ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) System event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages.

[46] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) System event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series.

[47] A Complex Options Order is an order for a Complex Options Strategy, which is the simultaneous purchase and/or sale of two or more different options series in the same underlying security, for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purpose of executing a particular investment strategy. *See* Options 3, Section 14(a)(1).

[48] A Stock-Option Order is an order for a Stock-Option Strategy, which is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg to the total number of units of the underlying stock or convertible security in the stock leg. *See* Options 3, Section 14(a)(2).

[49] A Stock-Complex Order is an order for a Stock-Complex Strategy, which is the purchase or sale of a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of a Complex Options Strategy on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option legs to the total number of units of the underlying stock or convertible security in the stock leg. *See* Options 3, Section 14(a)(3).

[50] The Exchange will initially permit a maximum of 10 legs.

[51] *See* Cboe Rule 5.70(b) for similar provisions except the Exchange is not proposing Asian-settled or Cliquet-settled FLEX Index Options, as currently specified in Cboe Rule 5.70(b)(3).

[52] *See supra* notes 47–49.

[53] For instance, the Exchange may permit Complex Options Strategies with a ratio on the options legs less than one-to-three (.333) or greater than three-to-one (3.00), and Stock-Option Strategies with a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying stock or convertible security in the option leg(s) to the total number of units of the underlying stock or convertible security in the stock leg.

[54] *See* Cboe US Options Complex Book Process, Section 2.1 (Ratios) and Section 3 (Complex FLEX Order Functionality), available at *https://cdn.cboe.com/resources/membership/US-Options-Complex-Book-Process.pdf.* Unlike Cboe, the Exchange will continue to require non-FLEX complex orders to adhere to the complex ratios in Options 3, Sections 14(a)(1)–(3), and therefore will not permit non-FLEX complex orders to be submitted in any ratio outside of those stipulated in Section 14.

[55] *See* proposed Options 3A, Section 8(a) and (b), which is based on Cboe Rule 5.71 except with respect to open outcry trading and trading sessions outside of regular trading hours.

Options), the Exchange believes that it will benefit investors for FLEX Options trading to not be available until that information has begun to be disseminated in the market (*i.e.,* when the security opens for trading).

Additionally, the Exchange's Opening Process is used to open or reopen a series of options on ISE at a single opening price.[56] There is a period of time before an options series opens during which orders placed on the Exchange's order book do not generate trade executions but may participate in the Opening Process.[57] As noted above, FLEX Options will not be placed on the Exchange's simple and complex order books and therefore will not have an Opening Process.[58] FLEX Options are created with terms unique to individual investment objectives. As such, each investor may require FLEX Options with slightly different terms than those already created. These individually defined FLEX Options are customized for each investor, so the Opening Process may not be useful for investors who may create their own FLEX Options because the Opening Process is designed, in part, to determine a single opening, or reopening, price based on orders and quotes from multiple Members. With the bespoke nature of FLEX Options, there is not the opportunity, nor the need, to bring together multiple orders and quotes as part of an Opening Process.

J. Trading Halts (Section 9)

Proposed Section 9 will provide that the Exchange may halt trading in a FLEX Option class pursuant to Options 3, Section 9, and always halts trading in a FLEX Option class when trading in a non-FLEX Options class with the same underlying equity security or index is halted on the Exchange. The System will not accept a FLEX Order for a FLEX Option series while trading in a FLEX Option class is halted.[59]

K. Exchange Order Books (Section 10)

Proposed Section 10 will provide that the Exchange's simple and complex order books will not be available for transactions in FLEX Options. Accordingly, FLEX Options may only be traded on the Exchange by submitting FLEX Orders into a FLEX Electronic Auction pursuant to proposed Options 11(b), FLEX PIM pursuant to proposed Options 12, and FLEX SOM pursuant to proposed Options 13, each as discussed further below. The Exchange notes that its proposal is in line with other options exchanges' FLEX rules that do not contemplate the interaction of their respective order books with FLEX transactions.[60]

L. FLEX Options Trading (Section 11)

Proposed Section 11 will describe the procedures for FLEX trading on the Exchange. Specifically, a FLEX Option series will only be eligible for trading if a Member submits a FLEX Order for that series into an electronic FLEX Auction pursuant to proposed paragraph (b) of Options 11, or submits the FLEX Order to a FLEX PIM or FLEX SOM Auction pursuant to proposed Section 12 or Section 13, respectively.[61]

Proposed Section 11(a)(1) and (2) will specify the requirements for both simple and complex FLEX Orders.

- For a simple FLEX Order, a FLEX Order for a FLEX Option series submitted to the System must include all terms for a FLEX Option series set forth in proposed Section 3 as described above, size, side of the market, and a bid or offer price.[62] The Exchange also proposes that the System will not accept a FLEX Order with identical terms as a non-FLEX Option series that is already listed for trading to signify that this requirement is System-enforced.
- For a complex FLEX Order, a FLEX Order for a FLEX Option complex strategy submitted to the System must satisfy the criteria for a complex FLEX Order set forth in proposed Section 7(a) as described above, and include size, side of the market, and a net debit or credit price. Additionally, each leg of the FLEX Option complex strategy must include all terms for a FLEX Option series set forth in proposed Section 3.[63] Similar to simple FLEX Orders, the Exchange proposes to System enforce the stipulation that it will not accept a FLEX Option complex strategy if a leg in the order has identical terms as a non-FLEX Option series that is already listed for trading. Additionally, a complex FLEX Order submitted into the System for an electronic FLEX Auction pursuant to proposed Section 11(b), a FLEX PIM pursuant to Section 12, or a FLEX SOM pursuant to Section 13 must include a bid or offer price for each leg, which leg prices must add together to equal the net price.[64]

Proposed Section 11(b) will describe the electronic FLEX Auction. The proposed FLEX Auction will be substantially similar to Cboe's electronic FLEX Auction set forth in Cboe Rule 5.72(c), except for certain intended differences as further described below.[65] Specifically, a Member may electronically submit a FLEX Order (simple or complex) into an electronic FLEX Auction for execution pursuant to this paragraph (b). Pursuant to proposed subparagraph (b)(1), a FLEX Auction may be initiated if all of the below conditions in proposed subparagraph (b)(1)(A)–(G) are met; otherwise, the System rejects or cancels a FLEX Order that does not meet the conditions in this subparagraph (b)(1).[66]

- *Class:* The FLEX Order is in a class of options the Exchange is authorized to list for trading on the Exchange.
- *Size:* There is no minimum size for FLEX Orders.
- *Terms:* A simple or complex FLEX Order must comply with proposed Section 11(a).
- *Price:* The bid or offer price, or the net debit or credit price, as applicable, of the FLEX Order is the ''auction price.''
- *Time:* A FLEX Order may only be submitted for electronic execution in a FLEX Auction after FLEX trading has opened pursuant to proposed Section 8.
- *Exposure Interval:* The submitting Member must designate the length of the ''exposure interval,'' which must be between three seconds and five minutes.[67] If the designated time

[56] *See* Options 3, Section 8(h) and (j).

[57] *See* Options 3, Section 8(c).

[58] *See* proposed Options 3A, Section 10(a). Instead, Members will be required to submit FLEX Orders into an electronic FLEX Auction, FLEX PIM, or FLEX SOM. *See* proposed Options 3A, Section 11(a).

[59] *See* Cboe Rule 4.21(a)(3) for materially identical provisions.

[60] *See e.g.,* NYSE Arca Rule 5.30–O(c). *See also* Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (October 10, 2019) (SR–CBOE–2019–084) (among other changes, eliminating the availability of an electronic book for FLEX Options).

[61] *See* proposed Options 3A, Section 11(a), which is based on Cboe Rule 5.72(b) except the Exchange is not proposing an open outcry FLEX Auction.

[62] *See* Cboe Rule 5.72(b)(1) for similar provisions. The Exchange does not have an analogous rule as Cboe Rule 5.7, which specifies the different trading sessions during which the system is available to receive FLEX orders, and thus has not incorporated the applicable language. As noted above, the Exchange will accept FLEX Orders entered into an electronic FLEX Auction, FLEX PIM or FLEX SOM when the underlying security is open for trading. *See* proposed Options 3A, Section 8.

[63] *See* Cboe Rule 5.72(b)(2) for similar provisions. As noted above for simple FLEX Orders, the Exchange does not have an analogous rule as Cboe Rule 5.7, and thus has not incorporated the applicable language. *See supra* note 62.

[64] *See* proposed Options 3A, Section 11(a)(2)(A), which is based on Cboe Rule 5.72(b)(2)(A) except the Exchange will also add references to FLEX PIM and FLEX SOM for accuracy and completeness.

[65] *See also* Securities Exchange Act Release No. 87235 (October 4, 2019), 84 FR 54671 (SR–CBOE–2019–084) (October 10, 2019) (adopting an electronic FLEX Auction on Cboe, among other changes).

[66] Proposed paragraph (b) is based on Cboe Rule 5.72(c). The proposed eligibility requirements for the FLEX Auction in subparagraph (b)(1) are similar to Cboe Rule 5.72(c)(1), except as noted below.

[67] There will be no default setting to the FLEX Auction exposure interval. As such, Members will

exceeds the market close, then the FLEX Auction will end at the market close with an execution, if an execution is permitted pursuant to proposed Section 11(b).[68]

• *Minimum Increment:* The price of a simple FLEX Order must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in proposed Section 5 (*i.e.,* $0.01)). If the FLEX Order is a complex order, the price must be a net price for the complex strategy.[69] The foregoing rule proposal will be substantially similar to the minimum increment requirements in Cboe Rules 5.73(a)(5) and 5.74(a)(5). While the Exchange will align to Cboe's minimum increment requirements (*i.e.,* $0.01) for the individual options legs of a complex FLEX Order entered into a FLEX Auction, the Exchange also proposes to align the minimum increment requirements for stock-tied FLEX complex strategies with the existing requirements for stock-tied non-FLEX complex strategies as set forth in Options 3, Section 14(c)(1). As such, proposed Options 3A, Section 11(b)(1)(G) will further provide that the prices of Complex Options Strategies (as defined in Options 3, Section 14) may be expressed in one cent ($0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Prices of Stock-Option Strategies or Stock-Complex Strategies (each as defined in Options 3, Section 14) may be expressed in any decimal price determined by the Exchange,[70] and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Similar to stock-tied complex orders today, the Exchange believes that smaller minimum increments are appropriate for complex FLEX Orders that contain a stock component as the stock component can trade at finer decimal increments permitted by the equity market.

Proposed subparagraph (b)(2) of Options 11 will describe the FLEX Auction process, and will provide that upon receipt of a FLEX Order that meets the conditions in subparagraph (a) as described above, the FLEX Auction commences. Proposed subparagraph (b)(2)(A) will describe the contents of the FLEX Auction message, and will provide that the System initiates a FLEX Auction by sending a FLEX Auction notification message to Members detailing the FLEX Option series or complex strategy (as applicable), side, size, auction ID,[71] capacity, and exposure interval. FLEX Auction notification messages are not disseminated to OPRA.[72] Like Cboe, the FLEX Auction message will not include the price of the auctioned FLEX Order. The Exchange believes not including the auction price in the notification message will encourage Members to respond with the best prices at which they are willing to trade against the auctioned FLEX Order. If the message included the price, Members may only respond to trade at that price; without the price, Members may respond at better prices, which may result in price improvement opportunities for the auctioned FLEX Order.

Proposed subparagraph (b)(2)(B) will provide that one or more FLEX Auctions in the same FLEX Option series or complex strategy (as applicable) may occur at the same time. To the extent there is more than one FLEX Auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the FLEX Auctions conclude sequentially based on the times at which each FLEX Auction's exposure interval concludes. At the time each FLEX Auction concludes, the System allocates the FLEX Order pursuant to proposed subparagraph (3) and takes into account all FLEX responses submitted during the exposure interval.[73] Generally, if a Member attempts to initiate an electronic FLEX Auction in a FLEX Option series while another auction in that series is ongoing, the Exchange believes it will provide that second FLEX Order with an opportunity for execution in a timely manner by initiating another FLEX Auction, rather than having the Member wait for the first auction to conclude. The second Member may not be able to submit a response to trade in the ongoing FLEX Auction, because the terms may not be consistent with that Member's order (for example, there may not be sufficient size, and the Member may only receive a share of the auctioned order depending on other responses). Therefore, the Exchange believes providing this proposed functionality may encourage Members to use electronic FLEX Auctions to execute their FLEX Orders.

Proposed subparagraph (b)(2)(C) will provide that the submitting Member may cancel a FLEX Auction prior to the end of the exposure interval.[74] Proposed subparagraph (b)(2)(D) will specify the conditions for submitting responses to a FLEX Auction. Any Member (including the submitting Member) may submit responses to a FLEX Auction that are properly marked specifying the FLEX Option series or complex strategy (as applicable), bid or offer price or net price (respectively), size, side of the market, and the auction ID for the FLEX Auction to which the Member is submitting the response. A FLEX response may only participate in the FLEX Auction with the auction ID specified in the response, which is why the auction notification message described above will include an auction ID and responses must identify the applicable auction ID.[75] If there are concurrent FLEX Auctions occurring, a Member may submit responses to all

be required to specify the exposure interval; otherwise, their FLEX Order will be rejected by the System.

[68] Cboe Rule 5.72(c)(1)(F) does not specify whether an execution would occur (if permitted) when the designated time exceeds the market close, and only expressly prohibits the designated time from going beyond the market close. While the Exchange's rules are silent in this regard, the Exchange notes that its proposal will follow current non-FLEX auction behavior, including current PIM and SOM behavior. In doing so, the Exchange's proposal will promote executions in electronic FLEX Auctions and also prevent executions after the market close.

[69] *See* proposed subparagraph (G) of Section 11(b)(1). While Cboe's electronic FLEX Auction eligibility requirements in Rule 5.72(c)(1) are silent on minimum increments, the eligibility requirements for Cboe's FLEX AIM and FLEX SAM in Cboe Rules 5.73(a)(5) and 5.74(a)(5), respectively, address minimum increments. The Exchange believes it will be helpful to add a similar requirement for electronic FLEX Auctions for greater consistency and clarity. The Exchange also notes that unlike Cboe, it is not proposing to allow exercise prices to be expressed as percentages, and will therefore not incorporate the applicable provisions. As discussed above, the Exchange is also incorporating within proposed subparagraph (G) the minimum increment provisions for non-FLEX complex orders that are stock-tied from Options 3, Section 14(c)(1).

[70] The minimum increment for Stock-Option Strategies and Stock-Complex Strategies can currently be expressed to four decimal places.

[71] As discussed below, this information on the proposed auction message will permit responses to only execute at the conclusion of the auction into which the responses were submitted.

[72] *See* Cboe Rule 5.72(c)(2)(A) for similar provisions, except with respect to the exposure interval and Attributable designation. The Exchange will simply disseminate the duration of the exposure interval, instead of calculating and disseminating what time the auction will conclude like Cboe. In addition, the Exchange is not proposing to offer an Attributable designation for FLEX Orders like Cboe does today.

[73] *See* Cboe Rule 5.72(c)(2)(B) for materially identical provisions.

[74] *See* Cboe Rule 5.72(c)(2)(C) for materially identical provisions.

[75] *See* Cboe Rule 5.72(c)(2)(D) for materially identical provisions.

ongoing auctions, and thus concurrent auctions will not hinder a Member's ability to participate in any FLEX Auction.

A Member using the same badge/[76] mnemonic[77] may only submit a single FLEX response per auction ID to a FLEX Auction. If an additional FLEX response is submitted for the same auction ID from the same badge/mnemonic, then that FLEX response will automatically replace the previous FLEX response.[78] The System caps the size of a FLEX response for the same badge/mnemonic at the size of the FLEX Order (*i.e.,* the System ignores the size in excess of the size of the FLEX Order when processing the FLEX Auction).[79] Given that the Exchange is proposing below to apply a pro-rata allocation methodology to executions at the conclusion of the FLEX Auction, this provision is intended to prevent a Member from submitting a response with an extremely large size into the electronic FLEX Auction in order to obtain a larger pro-rata share of the FLEX Order.

Further, FLEX responses must be on the opposite side of the market as the FLEX Order. The System rejects a FLEX response on the same side of the market as the FLEX Order.[80] FLEX responses are not visible to Members or disseminated to OPRA.[81] This is consistent with how Cboe treats FLEX responses pursuant to Cboe Rule 5.72(c)(2)(D)(iv). The proposed rule change is also consistent with the Exchange's existing auctions, in which responses are not visible to the market.[82] Responses to electronic auctions are not firm prior to the conclusion of the auction, at which time their price and size are firm. For the same reason as the Exchange is proposing not to disseminate the auction price on the auction notification message as discussed above, the Exchange believes it will encourage Members to submit responses at their best possible price if they do not know the prices at which other Members are willing to trade.[83]

A Member may modify or cancel it FLEX Responses during the exposure interval.[84] The minimum price increment for FLEX responses is the same as the one the Exchange determines for a class pursuant to proposed subparagraph (b)(1)(G) above. A response to a FLEX Auction of a complex order must have a net price. The System rejects a FLEX response that is not in the applicable minimum increment.[85]

Pursuant to proposed subparagraph (b)(3) of Section 11, the FLEX Auction concludes at the end of the exposure interval, unless the Exchange halts trading in the affected series or the submitting Member cancels the FLEX Auction, in which case the FLEX Auction concludes without execution.[86] At the conclusion of the FLEX Auction:

• Pursuant to proposed subparagraph (b)(3)(A), the System executes the FLEX Order against the FLEX responses at the best price(s), to the price at which the balance of the FLEX Order or the FLEX responses can be fully executed (the ''final auction price''). For purposes of ranking FLEX responses when determining how to allocate a FLEX Order, the term ''price'' refers to the dollar and decimal amount of the response bid or offer.[87]

• Pursuant to proposed subparagraph (b)(3)(A)(i), if there are multiple FLEX responses at the same price level, then the contracts in those FLEX responses are allocated proportionally according to Size Pro-Rata Priority[88] with Priority Customer overlay[89] (as described in Options 3, Section 10(c)). The Exchange notes that this is similar to Cboe Rule 5.72(c)(3)(A)(i), except Cboe applies no overlays to its size pro-rata allocation methodology whereas the Exchange will apply an overlay for Priority Customers on top of its standard size pro-rata allocation methodology. This is consistent with the Exchange's standard allocation methodology in its auctions for non-FLEX Options.[90]

• Pursuant to proposed subparagraph (b)(3)(A)(ii), the executable quantity is allocated to the nearest whole number, with fractions rounded up for the FLEX response with the higher quantity. Further, proposed subparagraph (b)(3)(A)(iii) will provide that if an allocation would result in less than one contract, then one contract will be allocated. The Exchange is not adopting the rounding and allocation language in Cboe Rule 5.72(c)(3)(A)(ii) and (iii), but is rather adopting language that is consistent with its current rounding and allocation methodology as the Exchange does not allocate fractional contracts and instead rounds up to the nearest whole number.[91]

Pursuant to proposed subparagraph (b)(3)(B), the System cancels an unexecuted FLEX Order (or unexecuted portion).[92] Further, proposed

[76] A ''badge'' shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. *See* Options 1, Section 1(a)(5).

[77] A ''mnemonic'' shall mean an acronym comprised of letters and/or numbers assigned to Electronic Access Members. An Electronic Access Member account may be associated with multiple mnemonics. *See* Options 1, Section 1(a)(23).

[78] *See* proposed Options 3A, Section 11(b)(2)(D)(i), which is based on Cboe Rule 5.72(c)(2)(D)(i) except the Exchange will not allow Members to submit multiple FLEX responses using the same badge/mnemonic, and will not aggregate all of the Member's FLEX responses. While not specified in the Exchange's current rules, this is consistent with current auction behavior, including current PIM and SOM behavior.

[79] *See* proposed Options 3A, Section 11(b)(2)(D)(ii), which is based on Cboe Rule 5.72(c)(2)(D)(ii) except the Exchange will not aggregate all of the Member's FLEX responses. *See supra* note 78.

[80] *See* proposed Options 3A, Section 11(b)(2)(D)(iii), which is based on Cboe Rule 5.72(c)(2)(D)(iii).

[81] *See* proposed Options 3A, Section 11(b)(2)(D)(iv), which is based on Cboe Rule 5.72(c)(2)(D)(iv).

[82] *See* Supplementary Material .02 to Options 3, Section 11; and Options 3, Section 13(c)(4).

[83] For example, if during a FLEX Auction of a buy FLEX Order, a Member submitted a response to sell at $1.05, if another Member saw that response, it may merely respond to sell at $1.05, or maybe $1.04, even though it may ultimately be willing to sell at $1.03. Without seeing the other responses, the second Member may instead submit a response to sell at $1.03, which could result in price improvement for the auctioned order.

[84] *See* proposed Options 3A, Section 11(b)(2)(D)(v), which is based on Cboe Rule 5.72(c)(2)(D)(v).

[85] *See* proposed Options 3A, Section 11(b)(2)(D)(vi). While Cboe's electronic FLEX Auction response requirements in Rule 5.72(c)(2)(D) are silent on minimum increments, the response requirements for Cboe's FLEX AIM and FLEX SAM in Cboe Rules 5.73(c)(5)(A) and 5.74(c)(5)(A), respectively, have similar provisions. The Exchange believes it will be helpful to add a similar requirement for electronic FLEX Auction responses for greater consistency and clarity. The Exchange also notes that unlike Cboe, it is not proposing to allow percentage formats for exercise prices of FLEX Options, and will therefore not incorporate the applicable provisions.

[86] *See* Cboe Rule 5.72(c)(3) for materially identical provisions.

[87] *See* Cboe Rule 5.72(c)(3)(A) for similar provisions, except the Exchange is not proposing to allow percentage values of the response bid or offer.

[88] Size Pro-Rata Priority shall mean that if there are two or more resting orders or quotes at the same price, the System allocates contracts from an incoming order or quote to resting orders and quotes beginning with the resting order or quote displaying the largest size proportionally according to displayed size, based on the total number of contracts displayed at that price. *See* Options 3, Section 10(c).

[89] Priority Customer overlay mean that the highest bid and lowest offer shall have priority except that Priority Customer orders shall have priority over non- Priority Customer interest at the same price in the same options series. If there are two or more Priority Customer orders for the same options series at the same price, priority shall be afforded to such Priority Customer orders in the sequence in which they are received by the System. *See* Options 10, Section 10(c)(1)(A).

[90] *See, e.g.,* Options 3, Section 11(d)(3)(C) (SOM allocation methodology) and Options 3, Section 13(d) (PIM allocation methodology).

[91] *See* Options 3, Section 10(c), Supplementary Material .09 to Options 3, Section 11, and Supplementary Material .10 to Options 3, Section 13.

[92] *See* Cboe Rule 5.72(c)(3)(B) for materially identical provisions.

subparagraph (b)(3)(C) will provide that the System cancels any unexecuted responses (or unexecuted portions).[93]

M. FLEX PIM (Section 12)

The Exchange proposes to establish PIM auction functionality for FLEX Options in Options 3A, Section 12. The proposed FLEX PIM auction will be substantially similar to Cboe's FLEX AIM in Cboe Rule 5.73, except for certain intended differences as further described below. Pursuant to proposed Section 12, a Member (the ''Initiating Member'') may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (''Agency Order'') against principal interest or a solicited order(s) (except, if the Agency Order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange) (an ''Initiating Order''), provided it submits the Agency Order for electronic execution into a FLEX PIM auction pursuant to this Rule.[94]

Proposed Section 12(a)(1)–(5) will set forth the FLEX PIM auction eligibility requirements. Specifically, the Initiating Member may initiate a FLEX PIM auction if all of the following conditions are met:

- *Class.* An Agency Order must in a FLEX Option class the Exchange designates as eligible for FLEX PIM auctions.
- *FLEX Option Series.* The Agency Order and Initiating Order must each be a FLEX Order that complies with proposed Section 11(a) in a permissible FLEX Option series that complies with proposed Section 3(b).
- *Marking.* The Initiating Member must mark an Agency Order for FLEX PIM auction processing.
- *Size.* There will be no minimum size for Agency Orders. The Initiating Order must be for the same size as the Agency Order.
- *Minimum Increment.* The price of the Agency Order and Initiating Order for simple FLEX Orders must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Section 5 above). If the Agency Order and Initiating Order are complex orders, the price must be a net price for the complex strategy.[95] While the Exchange will align to Cboe's minimum increment requirements (*i.e.,* $0.01) for the individual options legs of a complex FLEX Order entered into a FLEX PIM, the Exchange also proposes to align the minimum increment requirements for stock-tied FLEX complex strategies with the existing requirements for stock-tied non-FLEX complex strategies as set forth in Options 3, Section 14(c)(1). As such, proposed Options 3A, Section 12(a)(5) will further provide that the prices of Complex Options Strategies (as defined in Options 3, Section 14) may be expressed in one cent ($0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Prices of Stock-Option Strategies or Stock-Complex Strategies (each as defined in Options 3, Section 14) may be expressed in any decimal price determined by the Exchange,[96] and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Similar to stock-tied complex orders today, the Exchange believes that smaller minimum increments are appropriate for complex FLEX Orders that contain a stock component as the stock component can trade at finer decimal increments permitted by the equity market.
- *Time.* An Initiating Member may only submit an Agency Order to a FLEX PIM auction after trading in FLEX Options is open pursuant to proposed Section 8.

The System will reject or cancel both an Agency Order and Initiating Order submitted to a FLEX PIM auction that do not meet the conditions in proposed paragraph (a) as described above. The proposed FLEX PIM eligibility requirements in proposed Section 12(a) are substantially similar to Cboe's FLEX AIM eligibility requirements in Cboe Rule 5.73(a), except with respect to the language related to the percentage value, as noted above.

Pursuant to proposed Section 12(b), the Initiating Order must stop the entire Agency Order at a specified price. If the Agency Order and Initiating Order are Complex Orders, the price must be a net price for the complex strategy.[97] In particular, the Initiating Member must specify either of the below; otherwise, the System will reject or cancel both an Agency Order and Initiating Order submitted to a FLEX PIM auction that do not meet the conditions in this proposed paragraph (b).

- Pursuant to proposed subparagraph (b)(1), a single price at which it seeks to execute the Agency Order against the Initiating Order (a ''single-price submission''), including whether it elects to have less than its guaranteed allocation (as described in proposed Section 12(e)(4) below). This is similar to Cboe Rule Rule 5.73(b)(1), except the Exchange is not proposing to allow Initiating Members to elect for the Initiating Order to have last priority to trade against the Agency Order, and will instead allow them to elect less than their guaranteed allocation. As further discussed below, the proposed guaranteed allocation option will be based on the guaranteed allocation option available in non-FLEX PIM auctions, and therefore the proposed rule change will provide further consistency across the Exchange's auction mechanisms.
- Pursuant to subparagraph (b)(2), an initial stop price and instruction to automatically match the price and size of all FLEX PIM responses (''auto-match'') at each price, up to a designated limit price, better than the price at which the balance of the Agency Order can be fully executed (the ''final auction price''). This is materially identical to Cboe Rule 5.73(b)(2).

Proposed Section 12(c) will govern the FLEX PIM auction process. Specifically, upon receipt of an Agency Order that meets the conditions in paragraphs (a) and (b) as described above, the FLEX PIM auction process commences. Proposed subparagraphs (c)(1)(A) and (B) will describe concurrent FLEX PIM auctions for simple Agency Orders and complex Agency Orders, respectively. One or more FLEX PIM auctions in the same FLEX Option series or same complex strategy (as applicable) may occur at the

[93] *See* Cboe Rule 5.72(c)(3)(C) for materially identical provisions.

[94] *See* Cboe Rule 5.73 for similar provisions, except the Exchange will not incorporate the reference to FLEX SPX as this is a Cboe-specific product.

[95] The Exchange notes that unlike Cboe, it will not allow prices to be entered as a percentage value, and therefore will not incorporate the applicable language from Cboe Rule 5.73(a)(5) into proposed Section 12(a)(5). As discussed above, the Exchange will also add existing complex order minimum increment requirements in Options 3, Section 14(c)(1) to align the proposed FLEX functionality with non-FLEX functionality.

[96] The minimum increment for Stock-Option Strategies and Stock-Complex Strategies can currently be expressed to four decimal places.

[97] *See* Cboe Rule 5.73(b) for similar provisions, except the Exchange will not allow prices to be entered as a percentage value, and therefore will not incorporate the applicable language from Cboe's rule into proposed Section 12(b).

same time.[98] To the extent there is more than one FLEX PIM auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the FLEX PIM auctions will conclude sequentially based on the times at which the FLEX PIM auction periods end. At the time each FLEX PIM auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) as described below, and takes into account all FLEX PIM responses received during the FLEX PIM auction period. The concurrent FLEX PIM auction feature in proposed Section 12(c)(1)(A) and (B) is materially identical to Cboe Rule 5.73(c)(1)(A) and (B), and is also consistent with the concurrent auction feature proposed above for FLEX Auctions. Similar to FLEX Auctions as proposed above, if a Member attempts to initiate a FLEX PIM Auction in a FLEX Option series while another auction in that series in ongoing, the Exchange believes it will provide that second FLEX Order with an opportunity for execution in a timely manner by initiating another FLEX PIM Auction, rather than requiring the Member to wait for the first auction to conclude. The second Member may not be able to submit a response to trade in the ongoing FLEX PIM Auction because the terms may not be consistent with that Member's order (for example, there may not be sufficient size, and the Member may only receive a share of the auctioned order depending on other responses). Therefore, the Exchange believes that providing this functionality for FLEX PIM may provide additional opportunities for execution of FLEX Orders by encouraging Members to use FLEX PIM.

Pursuant to proposed Section 12(c)(2), the System initiates the FLEX PIM auction process by sending a FLEX PIM auction notification message detailing the side, size, auction ID, the length of the FLEX PIM auction period, and FLEX Option series or complex strategy, as applicable, of the Agency Order to all Members that elect to receive FLEX PIM auction notification messages. The Exchange may also determine to include the stop price in FLEX PIM auction notification messages, which will apply to all FLEX PIM auctions. FLEX PIM auction notification messages will not be disseminated to OPRA.[99]

Proposed Section 12(c)(3) will describe the ''FLEX PIM Auction period,'' and is based on Cboe Rule 5.73(c)(3). The FLEX PIM Auction period will be defined as a period of time that must be designated by the Initiating Member, which may be no less than three seconds and no more than five minutes. Similar to the exposure interval for electronic FLEX Auctions in Section 11(b) discussed above, the Initiating Member will be required to identify a length of time within the specified parameters for FLEX PIM as there will be no default for the FLEX PIM Auction period. Otherwise, their FLEX Order will be rejected by the System. Further, if the designated length of the FLEX PIM Auction period exceeds the market close, then the auction will end at the market close with an execution, if an execution is permitted by this Section 12. Cboe's rule does not specify whether an execution (if permitted) would occur if the designated length exceeds the market close. However, the Exchange's non-FLEX auctions currently allow executions (as permitted by their respective rules) to occur in such scenarios, so the Exchange proposes to be consistent with current System functionality in this regard.[100] In doing so, the Exchange's proposal will promote executions in FLEX PIM and also prevent executions after the market close.

Proposed Section 12(c)(4) will provide that an Initiating Member may not modify or cancel an Agency Order or Initiating Order after submission to a FLEX PIM auction, except to improve the price of the Initiating Order. This will be similar to Cboe Rule 5.73(c)(4) except unlike Cboe, the Exchange will allow a limited exception by allowing Initiating Members to improve the price of their Initiating Orders. The Exchange notes that this will align to current non-FLEX PIM behavior, which allows entering Members to modify their Counter-Side Orders [101] upon entry into the PIM by improving upon the initial price of the Counter-Side Order.[102]

Proposed Section 12(c)(5) will govern the requirements for FLEX PIM responses. Specifically:

- Any Member other than the Initiating Member (the System rejects a response with the same badge/mnemonic as the Initiating Order) may submit responses to a FLEX PIM auction that are properly marked specifying price, size, side, and the auction ID for the FLEX PIM auction to which the Member is submitting the response. A FLEX PIM response may only participate in the FLEX PIM auction with the auction ID specified in the response.[103]
- The minimum price increment for FLEX PIM responses is the same as the one the Exchange determines for a class pursuant to proposed Section 12(a)(5) above. A response to a FLEX PIM auction of a complex Agency Order must have a net price. The System will reject a FLEX PIM response that is not in the applicable minimum increment.[104]
- A Member using the same badge/mnemonic may only submit a single FLEX PIM response per auction ID for a given auction. If an additional FLEX PIM response is submitted for the same auction ID from the same badge/mnemonic, then that FLEX PIM response will automatically replace the previous FLEX PIM response.[105]
- The System will cap the size of a FLEX PIM response at the size of the Agency Order (*i.e.,* the System will ignore size in excess of the size of the Agency Order when processing the FLEX PIM auction).[106]
- FLEX PIM responses must be on the opposite side of the market as the

[98] Further, for complex Agency Orders, PIM auctions in different complex strategies may be ongoing at any given time, even if the complex strategies have overlapping components. A FLEX PIM auction in a complex strategy may be ongoing at the same time as a FLEX PIM auction in any component of the complex strategy. *See* proposed subparagraph (c)(1)(B)(i) of Options 3A, Section 12.

[99] *See* Cboe Rule 5.73(c)(2) for substantially similar provisions except the Exchange will not incorporate the reference to SPX as it does not list this symbol.

[100] While this behavior is not explicitly stated in the current Rules, the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current PIM and SOM behavior.

[101] Counter-Side Orders for PIM are the equivalent to Initiating Orders for FLEX PIM. *See* Options 3, Section 13(b) for a description of Counter-Side Orders.

[102] *See* Options 3, Section 13(b)(5) as modified by SR–ISE–2023–06 (not yet implemented) (providing that the Crossing Transaction may not be canceled or modified, but the price of the Counter-Side Order may be improved during the exposure period).

[103] *See* proposed Options 3A, Section 12(c)(5), which is based on Cboe Rule 5.73(c)(5).

[104] *See* proposed Options 3A, Section 12(c)(5)(A), which is based on Cboe Rule 5.73(c)(5)(A) except the Exchange will not allow prices to be expressed as a percentage value. Further, the Exchange will not incorporate the Cboe rule portions on Index Combo Orders as the Exchange does not offer this functionality.

[105] *See* proposed Options 3A, Section 12(c)(5)(B), which will be different from Cboe Rule 5.73(c)(5)(B) because the Exchange will not allow Members to submit multiple FLEX PIM responses using the same badge/mnemonic, and will not aggregate all of the Member's FLEX PIM responses. While the rules are currently silent in this regard, this will align to current non-FLEX auction behavior, including PIM auction behavior.

[106] *See* proposed Options 3A, Section 12(c)(5)(C), which is based on Cboe Rule 5.73(c)(5)(C) except the Exchange will not allow Members to submit multiple FLEX PIM responses using the same badge/mnemonic, and will not aggregate all of the Member's FLEX PIM responses. As noted above, this will align to current non-FLEX auction functionality, including PIM auction functionality in Options 3, Section 13.

Agency Order. The System rejects a FLEX PIM response on the same side of the market as the Agency Order.[107]

• FLEX PIM responses will not be visible to PIM auction participants or disseminated to OPRA.[108]

• A Member may modify or cancel its FLEX PIM responses during the FLEX PIM auction.[109]

Pursuant to proposed Section 12(d), a FLEX PIM auction concludes at the earliest to occur of the following times: (1) the end of the FLEX PIM auction period; and (2) any time the Exchange halts trading in the affected series, provided, however, that in such instance the FLEX PIM auction concludes without execution.[110]

Proposed Section 12(e) will govern how executions will occur in FLEX PIM. In particular, at the end of the FLEX PIM auction, the System allocates the Initiating Order or FLEX PIM responses against the Agency Order at the best price(s), to the price at which the balance of the Agency Order can be fully executed (the ''final auction price''), as follows. For purposes of ranking the Initiating Order and FLEX PIM responses when determining how to allocate the Agency Order against the Initiating Order and those responses, the term ''price'' refers to the dollar and decimal amount of the order or response bid or offer.[111] Proposed subparagraphs (e)(1)–(4) details the FLEX PIM allocation methodology for the following scenarios:

• *No Price Improvement:* If the FLEX PIM auction results in no price improvement, the System executes the Agency Order at the stop price in the following order:

• Priority Customer responses (in time priority); [112]

• The Initiating Order for the greater of (1) one contract or (2) up to 50% of the Agency Order if there is a response(s) from one other Member at the same price or 40% of the Agency Order if there are responses from two or more other Members at the same price (which percentages are based on the original size of the Agency Order).[113] Unless there are remaining contracts after including all PIM responses, under no circumstances does the Initiating Member receive an allocation percentage at the final auction price of more than 50% of the initial Agency Order in the event there is a response(s) from one other Member or 40% of the initial Agency Order in the event there are responses from two or more other Members, except when rounding up. The Exchange is specifying two limited scenarios in this Rule where the Initiating Member may receive an allocation percentage greater than its guaranteed allocation percentage, which is either when there are remaining contracts after including all PIM responses or when rounding up.[114] As an example of the first scenario, assume an Initiating Member submitted a FLEX Order for 20 contracts into FLEX PIM and there are 2 PIM responses (one for 3 contracts and one for 4 contracts). After the 7 PIM responses are allocated, the Initiating Member would then receive the remaining 13 contracts (which is more than their 40% allocation percentage) because there are remaining contracts after all PIM responses are included.

• All other FLEX PIM responses, allocated on a Size Pro-Rata basis (as defined in Options 3, Section 10(c)); [115] and

• The Initiating Order to the extent there are any remaining contracts.[116]

• *Price Improvement with Single-Price Submission:* If the FLEX PIM auction results in price improvement for the Agency Order and the Initiating Member selected a single-price submission, at each price better than the final auction price, the System executes the Agency Order in the following order:

• Priority Customer responses (in time priority); [117]

• Other FLEX PIM responses (in time priority) at prices better than the final auction price; and

• All other FLEX PIM responses at the final auction price, allocated on a Size Pro-Rata basis (as defined in Options 3, Section 10(c)).[118]

For example, assume a FLEX PIM Agency Order is sent for 100 contracts with a price of $1.00 and the Initiating Member selected a single-price submission. There are two PIM responses for 5 contracts each at $0.98, two PIM responses for 20 contracts each at $0.99, and two PIM responses for 40 contracts each at $1.00. The PIM responses at $0.98 and $0.99 will be executed in their entirety. The PIM responses at $1.00 (final auction price) will be executed on a Size Pro-Rata basis.

At the final auction price, the System executes any remaining contracts from the Agency Order at that price in the order set forth in proposed subparagraph (e)(1), as described above.[119]

• *Price Improvement with Auto-Match:* If the FLEX PIM auction results in price improvement for the Agency Order and the Initiating Member selected auto-match, at each price better than the final auction price up to the designated limit price, the System executes the Agency Order against the Initiating Order for the number of contracts equal to the aggregate size of all FLEX PIM responses and then executes the Agency Order against those responses in the order set forth in proposed subparagraph (e)(2) described above. At the final auction price, the System executes contracts at that price in the order set forth in proposed subparagraph (e)(1) described above.[120]

• *Guaranteed Allocation:* If the Initiating Member selects a single-price submission, it may elect for the Initiating Order to have less than their guaranteed allocation (50% if there is a response(s) from one other Member or 40% if there are responses from two or more Members) to trade against the

[107] *See* proposed Options 3A, Section 12(c)(5)(D), which is materially identical to Cboe Rule 5.73(c)(5)(D).

[108] *See* proposed Options 3A, Section 12(c)(5)(E), which is materially identical to Cboe Rule 5.73(c)(5)(E).

[109] *See* proposed Options 3A, Section 12(c)(5)(F), which is materially identical to Cboe Rule 5.73(c)(5)(F).

[110] *See* Cboe Rule 5.73(d) for materially identical provisions.

[111] *See* Cboe Rule 5.73(e) for similar provisions except the Exchange will not allow prices to be expressed as a percentage value.

[112] *See* proposed Section 12(e)(1)(A), which is materially identical to Cboe Rule 5.73(e)(1)(A).

[113] *See* proposed Section 12(e)(1)(B)(ii), which is based on Cboe Rule 5.73(e)(1)(B)(ii) except the percentages will be based on the original size of the Agency Order, instead of the number of contracts remaining after execution against Priority Customer responses like Cboe. This will align to current PIM functionality. *See* Options 3, Section 13(d)(3). *See infra* note 121 for further discussion on allocation percentages.

[114] *See* proposed Section 12(e)(1)(B), which is based on Cboe Rule 5.73(e)(1)(B) except with respect to the two limited scenarios discussed above. This behavior will align to current PIM functionality. While the Exchange's rules are silent on the first scenario, the rounding up scenario is specified in Options 3, Section 13(d)(7).

[115] *See* proposed Section 12(e)(1)(C), which is materially identical to Cboe Rule 5.73(e)(1)(C). The Exchange notes that Size Pro-Rata (as defined in Options 3, Section 10(c)) is similar to pro-rata as referenced in the Cboe rule (and as defined in Cboe Rule 5.32(a)(1)(B)).

[116] *See* proposed Section 12(e)(1)(D), which is materially identical to Cboe Rule 5.73(e)(1)(D).

[117] *See* proposed Section 12(e)(2)(A), which is materially identical to Cboe Rule 5.73(e)(2)(A).

[118] *See* proposed Section 12(e)(2)(B), which is based on Cboe Rule 5.73(e)(2)(B), except the Exchange will specify that other FLEX PIM responses at prices better than the final auction price will be allocated in time priority and all other FLEX PIM responses at the final auction price will be allocated on a Size Pro-Rata Basis. While the current rules are silent in this regard, this behavior follows current PIM behavior.

[119] *See* proposed Section 12(e)(2), which is materially identical to Cboe Rule 5.73(e)(2).

[120] *See* proposed Section 12(e)(3), which is materially identical to Cboe Rule 5.73(e)(3).

Agency Order. The Initiating Member may select a lesser percentage than their guaranteed allocation. If the Initiating Member elects 0%, then notwithstanding subparagraphs (e)(1) and (2), the System only executes the Initiating Order against any remaining Agency Order contracts at the stop price after the Agency Order is allocated to all FLEX PIM responses at all prices equal to or better than the stop price. Guaranteed allocation information is not available to other market participants and may not be modified after it is submitted.[121]

Pursuant to proposed Section 12(e)(5), the System cancels any unexecuted FLEX PIM responses (or unexecuted portions) at the conclusion of the FLEX PIM auction.[122]

Lastly, the Exchange proposes a number of policies applicable to FLEX PIM as Supplementary Materials to Options 3A, Section 12. Specifically, proposed Supplementary Material .01 will provide that a Member may only use a FLEX PIM auction where there is a genuine intention to execute a bona fide transaction.[123] Proposed Supplementary Material .02 will provide that it will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Options 9, Section 1 [124] to engage in a pattern of conduct where the Initiating Member breaks up an Agency Order into separate orders for the purpose of gaining a higher allocation percentage than the Initiating Member would have otherwise received in accordance with the allocation procedures contained in proposed paragraph (e) above.[125] Lastly, proposed Supplementary Material .03 will provide that if an allocation would result in less than one contract, then one contract will be allocated. This aligns to how the Exchange currently allocates contracts in PIM.[126]

N. FLEX SOM (Section 13)

The Exchange proposes to establish SOM auction functionality for FLEX Options in Options 3A, Section 13. The proposed FLEX SOM auction will be substantially similar to Cboe's FLEX SAM in Cboe Rule 5.74, except for certain intended differences to align with the Exchange's current System functionality for non-FLEX Options, as further described below. Pursuant to proposed Section 13, a Member (the ''Initiating Member'') may electronically submit for execution an order (which may be a simple or complex order) it represents as agent (''Agency Order'') against a solicited order (''Solicited Order'') if it submits the Agency Order for electronic execution into a FLEX SOM auction pursuant to this Rule.[127]

Proposed Section 13(a)(1)–(6) will set forth the FLEX SOM auction eligibility requirements, and will be substantially similar to Cboe Rule 5.74(a)(1)–(6) except as noted below. Specifically, the Initiating Member may initiate a FLEX SOM auction if all of the following conditions are met:

- *Class.* An Agency Order must in a FLEX Option class the Exchange designates as eligible for FLEX SOM auctions.
- *FLEX Option Series.* The Agency Order and Solicited Order must each be a FLEX Order that complies with proposed Section 11(a) in a permissible FLEX Option series that complies with proposed Section 3(b).
- *Marking.* The Initiating Member must mark an Agency Order for FLEX SOM auction processing.
- *Size.* The Agency Order must be for at least the minimum size designated by the Exchange (which may not be less than 500 standard option contracts). The Solicited Order must be for the same size as the Agency Order. The System handles each of the Agency Order and the Solicited Order as all-or-none.[128]
- *Minimum Increment.* The price of the Agency Order and Solicited Order for simple FLEX Orders must be in an increment the Exchange determines on a class basis (which may not be smaller than the amounts set forth in Section 5 above). If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy.[129] While the Exchange will align to Cboe's minimum increment requirements (*i.e.,* $0.01) for the individual options legs of a complex FLEX Order entered into a FLEX SOM, the Exchange also proposes to align the minimum increment requirements for stock-tied FLEX complex strategies with the existing requirements for stock-tied non-FLEX complex strategies as set forth in Options 3, Section 14(c)(1). As such, proposed Options 3A, Section 12(a)(5) will further provide that the prices of Complex Options Strategies (as defined in Options 3, Section 14) may be expressed in one cent ($0.01) increments, and the options leg of Complex Options Strategies may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Prices of Stock-Option Strategies or Stock-Complex Strategies (each as defined in Options 3, Section 14) may be expressed in any decimal price determined by the Exchange,[130] and the stock leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in any decimal price permitted in the equity market. The options leg of a Stock-Option Strategy or Stock-Complex Strategy may be executed in one cent ($0.01) increments, regardless of the minimum increments otherwise applicable to the individual options legs of the order. Similar to stock-tied complex orders today, the Exchange believes that smaller minimum

[121] *See* proposed Section 12(e)(4), which is based on Cboe Rule 5.73(e)(4) except the Exchange will replace Cboe's last priority feature with a guaranteed allocation feature similar to current PIM functionality that allows Members to request a lower percentage than their guaranteed allocation. *See* Options 3, Section 13(d)(3). The Exchange notes that the proposed guaranteed allocation percentages of 50% (if there is a response(s) from one other Member) and 40% (if there are responses from two or more Members) for FLEX PIM will differ from the current guaranteed allocation percentage of 40% for standard PIM. As such, the Exchange is aligning to Cboe's allocation percentages. The Exchange also notes that its affiliate, Nasdaq BX, Inc. (''BX''), has consistent guaranteed allocation percentages for its price improvement auction, BX PRISM. *See* BX Options 3, Section 13(ii)(A)(1).

[122] *See* Cboe Rule 5.73(e)(5) for substantially similar provisions.

[123] *See* Cboe Rule 5.73, Interpretations and Policies .01 for materially identical provisions.

[124] Options 9, Section 1 provides that no Member shall engage in acts or practices inconsistent with just and equitable principles of trade. Persons associated with Members shall have the same duties and obligations as Members under the Rules of Options 9.

[125] *See* Cboe Rule 5.73, Interpretations and Policies .02 for materially identical provisions.

[126] *See* Supplementary Material .10 to Options 3, Section 13.

[127] *See* Cboe Rule 5.74 for similar provisions. The Exchange will not add Cboe's language that the Solicited Order cannot have a Capacity F for the same executing firm ID (''EFID'') as the Agency Order because it will not System enforce the rejection of Firm capacity for the same badge/mnemonic as the Agency Order. Instead, it will to enforce the requirement that the contra-side order be a solicitation rather than a facilitation through surveillance, as it does today for non-FLEX SOM. The applicable rule for the foregoing requirement will be set forth in Supplementary Material .02 to Options 3A, Section 13.

[128] *See* Cboe Rule 5.74(a)(4) for similar provisions except unlike Cboe, the Exchange will not allow the Solicited Order to be comprised of multiple solicited orders in FLEX SOM to be consistent with current non-FLEX SOM functionality in Options 3, Section 11(d). In addition, the Exchange will not incorporate Cboe's provisions relating to mini options or Micro FLEX Index Options into proposed Section 13(a)(4) as the Exchange does not list these products today.

[129] The Exchange notes that unlike Cboe, it will not allow prices to be entered as a percentage value, and therefore will not incorporate the applicable language from Cboe Rule 5.74(a)(5) into proposed Section 13(a)(5). As discussed above, the Exchange will also incorporate existing minimum increment requirements for non-FLEX complex orders into proposed Section 13(a)(5) to align the proposed FLEX functionality with non-FLEX functionality.

[130] The minimum increment for Stock-Option Strategies and Stock-Complex Strategies can currently be expressed to four decimal places.

increments are appropriate for complex FLEX Orders that contain a stock component as the stock component can trade at finer decimal increments permitted by the equity market.

• An Initiating Member may only submit an Agency Order to a FLEX SOM auction after trading in FLEX Options is open pursuant to proposed Section 8.

The System will reject or cancel both an Agency Order and Solicited Order submitted to a FLEX SOM auction that do not meet the conditions in proposed paragraph (a) as described above.

Pursuant to proposed Section 13(b), the Solicited Order must stop the entire Agency Order at a specified price. If the Agency Order and Solicited Order are complex orders, the price must be a net price for the complex strategy. The Initiating Member must specify a single price at which it seeks to execute the Agency Order against the Solicited Order. Otherwise, the System will reject or cancel both an Agency Order and Solicited Order submitted to a FLEX SOM auction that do not meet this condition.[131]

Proposed Section 13(c) will govern the FLEX SOM auction process. Specifically, upon receipt of an Agency Order that meets the conditions in paragraphs (a) and (b) as described above, the FLEX SOM auction process commences. Proposed subparagraphs (c)(1)(A) and (B) will describe concurrent FLEX SOM auctions for simple Agency Orders and complex Agency Orders, respectively, and will be materially identical to Cboe Rule 5.74(c)(1)(A) and (B).

One or more FLEX SOM auctions in the same FLEX Option series or same complex strategy (as applicable) may occur at the same time.[132] To the extent there is more than one FLEX SOM auction in a FLEX Option series or complex strategy (as applicable) underway at the same time, the FLEX SOM auctions will conclude sequentially based on the times at which the FLEX SOM auction periods end. At the time each FLEX SOM auction concludes, the System allocates the Agency Order pursuant to proposed paragraph (e) as described below, and takes into account all FLEX SOM responses received during the FLEX SOM auction period. As noted above, the proposed concurrent FLEX SOM auction feature is consistent with Cboe's concurrent FLEX SAM auctions feature in Cboe Rule 5.74(c)(1), and is also consistent with the concurrent auction feature proposed above for FLEX Auctions and FLEX PIM. For the same reasons stated above for FLEX Auctions and FLEX PIM, the Exchange believes that providing this concurrent auction functionality for FLEX SOM may provide additional opportunities for execution of FLEX Orders by encouraging Members to use FLEX SOM.

Pursuant to proposed Section 13(c)(2), the System initiates the FLEX SOM auction process by sending a FLEX SOM auction notification message detailing the side, size, price, capacity, auction ID, the length of the FLEX SOM auction period, and FLEX Option series or complex strategy, as applicable, of the Agency Order to all Members that elect to receive FLEX SOM auction notification messages. FLEX SOM auction notification messages will not be disseminated to OPRA. These provisions are materially identical to Cboe Rule 5.74(c)(2).

Proposed Section 13(c)(3) will describe the ''FLEX SOM Auction period,'' and is based on Cboe Rule 5.74(c)(3). The FLEX SOM Auction period will be defined as a period of time that must be designated by the Initiating Member, which may be no less than three seconds and no more than five minutes. Similar to the exposure interval for electronic FLEX Auctions in Section 11(b) and the FLEX PIM Auction period in Section 12(c)(3) as discussed above, the Initiating Member will be required to identify a length of time within the specified parameters for FLEX SOM as there will be no default for the FLEX SOM Auction period. Otherwise, their FLEX Order will be rejected by the System. Further, if the designated length of the FLEX SOM Auction period exceeds the market close, then the auction will end at the market close with an execution, if an execution is permitted by this Section 13. Cboe's rule does not specify whether an execution (if permitted) would occur if the designated length exceeds the market close. However, the Exchange's non-FLEX auctions currently allow executions (as permitted by their respective rules) to occur in such scenarios, so the Exchange proposes to be consistent with current System functionality in this regard.[133] In doing so, the Exchange's proposal will promote executions in FLEX SOM while also preventing executions after the market close.

Proposed Section 13(c)(4) will provide that an Initiating Member may not modify an Agency Order or Solicited Order after submission to a FLEX SOM auction. This will be similar to Cboe Rule 5.74(c)(4) except unlike Cboe, the Exchange will allow Initiating Members to cancel their Agency Orders and Solicited Orders upon submission into a FLEX SOM, which will align with current SOM functionality.[134]

Proposed Section 13(c)(5) will govern the requirements for FLEX SOM responses. Specifically:

• Any Member other than the Initiating Member (the response cannot have the same badge/mnemonic as the Agency Order) may submit responses to a FLEX SOM auction that are properly marked specifying size, side, price, and the auction ID for the FLEX SOM auction to which the Member is submitting the response. A FLEX SOM response may only participate in the FLEX SOM auction with the auction ID specified in the response.[135]

• The minimum price increment for FLEX SOM responses is the same as the one the Exchange determines for a class pursuant to proposed Section 12(a)(5) above. A response to a FLEX SOM auction of a complex Agency Order must have a net price. The System will reject a FLEX SOM response that is not in the applicable minimum increment.[136]

• A Member using the same badge/mnemonic may only submit a single FLEX SOM response per auction ID for a given auction. If an additional SOM response is submitted for the same auction ID from the same badge/mnemonic, then that FLEX SOM response will automatically replace the previous FLEX SOM response.[137]

• The System will cap the size of a FLEX SOM response at the size of the

[131] *See* Cboe Rule 5.74(b) for similar provisions, except the Exchange will not allow prices to be entered as a percentage value, and therefore will not incorporate the applicable language from Cboe's rule into proposed Section 13(b).

[132] Further, for complex Agency Orders, SOM auctions in different complex strategies may be ongoing at any given time, even if the complex strategies have overlapping components. A FLEX SOM auction in a complex strategy may be ongoing at the same time as a FLEX SOM auction in any component of the complex strategy. *See* proposed subparagraph (c)(1)(B)(i) of Options 3A, Section 13.

[133] While this behavior is not explicitly stated in the current Rules, the Exchange's proposal will be consistent with current non-FLEX auction behavior, including current PIM and SOM behavior.

[134] This feature is not explicitly stated in the current SOM rules in Options 3, Section 11(d), but it is consistent with current SOM functionality.

[135] *See* proposed Options 3A, Section 13(c)(5), which is based on Cboe Rule 5.74(c)(5).

[136] *See* proposed Options 3A, Section 13(c)(5)(A), which is based on Cboe Rule 5.74(c)(5)(A) except the Exchange will not allow prices to be expressed as a percentage value.

[137] *See* proposed Options 3A, Section 13(c)(5)(B), which will be different from Cboe Rule 5.74(c)(5)(B) because the Exchange will not allow Members to submit multiple FLEX SOM responses using the same badge/mnemonic, and will not aggregate all of the Member's FLEX SOM responses. While the rules are currently silent in this regard, the proposed language will align to current non-FLEX auction functionality, including SOM auctions in Options 3, Section 11(d).

Agency Order (*i.e.,* the System will ignore size in excess of the size of the Agency Order when processing the FLEX SOM auction).[138]

• FLEX SOM responses must be on the opposite side of the market as the Agency Order. The System rejects a FLEX SOM response on the same side of the market as the Agency Order.[139]

• FLEX SOM responses will not be visible to FLEX SOM auction participants or disseminated to OPRA.[140]

• A Member may modify or cancel its FLEX SOM responses during a FLEX SOM auction.[141]

Pursuant to proposed Section 13(d), a FLEX SOM auction concludes at the earliest to occur of the following times: (1) the end of the FLEX SOM auction period; and (2) any time the Exchange halts trading in the affected series, provided, however, that in such instance the FLEX SOM auction concludes without execution.[142]

Proposed Section 13(e) will govern how executions will occur in FLEX SOM. In particular, at the end of the FLEX SOM auction, the System will execute the Agency Order against the Solicited Order or FLEX SOM responses at the best price(s) as follows. For purposes of ranking the Solicited Order and FLEX SOM responses when determining how to allocate the Agency Order against the Solicited Order and those responses, the term ''price'' refers to the dollar and decimal amount of the order or response bid or offer.[143] Proposed subparagraphs (e)(1)–(3) details the FLEX SOM allocation methodology for the following scenarios:

• *Execution Against Solicited Order:* The System executes the Agency Order against the Solicited Order at the stop price if there are no Priority Customer FLEX SOM responses and the aggregate size of FLEX SOM responses at an improved price(s) is insufficient to satisfy the Agency Order.[144]

• *Execution Against FLEX SOM Responses:* The System executes the Agency Order against FLEX SOM responses if (1) there is a Priority Customer FLEX SOM response and the aggregate size of that response and all other FLEX SOM responses is sufficient to satisfy the Agency Order or (2) the aggregate size of FLEX SOM responses at an improved price(s) is sufficient to satisfy the Agency Order. The Agency Order executes against FLEX SOM responses at each price level. At the price at which the balance of the Agency Order can be fully executed, in the following order:

• Priority Customer FLEX SOM responses (in time priority); [145] and

• All other FLEX SOM responses, allocated on a Size Pro-Rata basis (as defined in Options 3, Section 10(c)).[146]

• *No Execution:* The System will cancel the Agency Order and Solicited Order with no execution if there is a Priority Customer FLEX SOM response and the aggregate size of that response and other FLEX SOM responses is insufficient to satisfy the Agency Order.[147]

Pursuant to proposed Section 12(e)(4), the System cancels any unexecuted FLEX SOM responses (or unexecuted portions) at the conclusion of a FLEX SOM auction.[148]

Lastly, the Exchange proposes a number of policies applicable to FLEX SOM as Supplementary Materials to Options 3A, Section 13. Specifically, proposed Supplementary Material .01 will provide that prior to entering Agency Orders into a FLEX SOM auction on behalf of customers, Initiating Members must deliver to the customer a written notification informing the customer that its order may be executed using the FLEX SOM Auction. The written notification must disclose the terms and conditions contained in this Rule and be in a form approved by the Exchange.[149] Proposed Supplementary Material .02 will provide that under this Rule, Initiating Members may enter contra-side orders that are solicited. FLEX SOM provides a facility for Members that locate liquidity for their customer orders. Members may not use the FLEX SOM auction to circumvent Options 3, Section 22(b) limiting principal transactions. This may include, but is not limited to, Members entering contra-side orders that are solicited from (1) affiliated broker-dealers, or (2) broker-dealers with which the Member has an arrangement that allows the Member to realize similar economic benefits from the solicited transaction as it would achieve by executing the customer order in whole or in part as principal. Additionally, any solicited contra-side orders entered by Members to trade against Agency Orders may not be for the account of an Exchange Market Maker that is assigned to the options class.[150] Lastly, proposed Supplementary Material .03 will provide that if an allocation would result in less than one contract, then one contract will be allocated. This aligns to how the Exchange currently allocates contracts in SOM.[151]

O. Risk Protections (Section 14)

The Exchange proposes in Options 3A, Section 14 to specify which of the Exchange's risk protections apply to FLEX trading. Proposed Section 14(a) will provide that the following simple order risk protections (as described in Options 3, Section 15) are available to FLEX Options: Market Wide Risk Protection [152] and Size Limitation.[153] Proposed Section 14(b) will provide that the following complex order risk protections (as described in Options 3, Section 16) are available to FLEX Options: Strategy Protections (only to FLEX Auctions and FLEX responses in proposed Options 3A, Section 11(b)) [154]

[138] *See* proposed Options 3A, Section 13(c)(5)(C), which is based on Cboe Rule 5.74(c)(5)(C) except the Exchange will not allow Members to submit multiple FLEX SOM responses using the same badge/mnemonic, and will not aggregate all of the Member's FLEX SOM responses. As noted above, this will align to current non-FLEX auction functionality, including SOM auctions in Options 3, Section 11(d).

[139] *See* proposed Options 3A, Section 13(c)(5)(D), which is materially identical to Cboe Rule 5.74(c)(5)(D).

[140] *See* proposed Options 3A, Section 13(c)(5)(E), which is materially identical to Cboe Rule 5.74(c)(5)(E).

[141] *See* proposed Options 3A, Section 13(c)(5)(F), which is materially identical to Cboe Rule 5.74(c)(5)(F).

[142] *See* Cboe Rule 5.74(d) for materially identical provisions.

[143] *See* Cboe Rule 5.74(e) for similar provisions except the Exchange will not allow prices to be expressed as a percentage value.

[144] *See* proposed Section 13(e)(1), which is materially identical to Cboe Rule 5.74(e)(1).

[145] *See* proposed Section 13(e)(2)(A), which is materially identical to Cboe Rule 5.74(e)(2)(A).

[146] *See* proposed Section 13(e)(2)(B), which is materially identical to Cboe Rule 5.74(e)(2)(B). The Exchange notes that Size Pro-Rata (as defined in Options 3, Section 10(c)) is similar to pro-rata as referenced in the Cboe rule (and as defined in Cboe Rule 5.32(a)(1)(B)).

[147] *See* proposed Section 13(e)(3), which is materially identical to Cboe Rule 5.74(e)(3).

[148] *See* Cboe Rule 5.74(e)(4) for substantially similar provisions.

[149] *See* Cboe Rule 5.74, Interpretations and Policies .01 for materially identical provisions.

[150] *See* Cboe Rule 5.74, Interpretations and Policies .02 for similar provisions. The Exchange is also adding a prohibition against solicited contra-side orders being for the account of an Exchange Market Maker assigned to the options class to align with the current prohibition in Supplementary Material .03 to Options 3, Section 11.

[151] *See* Supplementary Material .09 to Options 3, Section 11.

[152] Market Wide Risk Protection are mandatory activity-based protections that establish limits for order entry and order execution rate. Upon triggering the specified limits, the System will either delete all open orders and prevent entry of new orders for the Member, or prevent entry of new orders for the Member. *See* Options 3, Section 15(a)(1)(C).

[153] Size Limitation for simple orders is a limit on the number of contracts an incoming order may specify. Orders that exceed the maximum number of contracts are rejected. The maximum number of contracts, which shall not be less than 10,000, is established by the Exchange from time-to-time. *See* Options 3, Section 15(a)(2)(B).

[154] The Strategy Protections in Options 3, Section 16(b) as the Vertical Spread Protection, Calendar

and Size Limitation.[155] Today, Strategy Protections do not apply to orders and responses submitted into non-FLEX PIM and non-FLEX SOM. The Exchange will align this application to FLEX such that Strategy Protections would only apply to FLEX Auctions and FLEX responses in proposed Section 11(b) as described above, and not to FLEX Orders and responses submitted into FLEX PIM and FLEX SOM. Proposed Section 14(c) will provide that the optional risk protections in Options 3, Section 28 are available to FLEX Options.[156]

P. Data Feeds (Section 15)

The Exchange proposes to specify in Options 3A, Section 15 which data feeds it will disseminate auction notifications for simple and complex FLEX Orders. Proposed Section 15(a) will provide that auction notifications for simple FLEX Orders will be disseminated through the Order Feed, as described in Options 3, Section 23(a)(2).[157] Proposed Section 15(b) will provide that auction notifications for complex FLEX Orders will be disseminated through the Spread Feed, as described in Options 3, Section 23(a)(5).[158] The Exchange notes that this aligns to current functionality where simple auction notifications are disseminated over the Order Feed and complex auction notifications are disseminated over the Spread Feed.

Q. FLEX Market Makers (Section 16)

Proposed Section 16 will govern FLEX Market Makers on the Exchange. Pursuant to proposed Section 16(a), a FLEX Market Maker will automatically receive an appointment in the same FLEX option class(es) as its non-FLEX class appointments selected pursuant to Options 2, Section 3.[159] Only the Primary Market Maker in the non-FLEX Option may be the assigned Primary Market Maker in that FLEX Option.[160]

Proposed Section 16(b) will provide that each FLEX Market Maker must fulfill all the obligations of a Market Maker under Options 2 and must comply with the applicable provisions, except FLEX Market Makers do not need to provide continuous quotes in FLEX Options.[161]

R. Letters of Guarantee (Section 17)

The Exchange proposes in Options 3A, Section 17(a) to provide that no FLEX Market Maker shall effect any transaction in FLEX Options unless one or more effective Letter(s) of Guarantee has been issued by a Clearing Member and filed with the Exchange accepting financial responsibility for all FLEX transactions made by the FLEX Market Maker pursuant to Options 6, Section 4.[162]

S. Position Limits (Section 18)

The Exchange proposes to detail the position limits for FLEX Options in Options 3A, Section 18. As discussed below, proposed Section 18 will be based on the FLEX Options position limit rules on Cboe and Phlx.

Proposed Section 18(a) will govern the position limits for FLEX Index Options. Specifically, proposed Section 18(a)(1) will provide that except as provided in proposed Section 18(a)(2)–(3) below, FLEX Index Options shall be subject to the same position limits governing index options as provided for in Options 4A, Sections 6 and 7.[163] Proposed Section 18(a)(2) will provide that except for the broad-based index options listed in Options 4A, Section 6(a),[164] which will have no position limits for FLEX Index Options, broad-based FLEX Index Options will be subject to a separate position limit of 200,000 contracts on the same side of the market.[165] Proposed Section 18(a)(3) will provide that industry-based FLEX Index Options shall be subject to separate position limits of 36,000, 48,000, or 60,000 contracts, depending on the position limit tier determined pursuant to Options 4A, Section 7(a)(1).[166]

Proposed Section 18(b) will govern the position limits for FLEX Equity Options. Pursuant to proposed Section 18(b)(1)(A), there will generally be no position limits for FLEX Equity Options.[167] Pursuant to proposed Section 18(b)(2), each Member (other than a Market Maker) that maintains a

Spread Protection, Butterfly Spread Protection, and Box Spread Protection, and are aimed at preventing the potential execution of certain complex strategies outside of specified price parameters.

[155] Size Limitation for complex orders is a limit on the number of contracts (and shares in the case of a Stock-Option Strategy or Stock-Complex Strategy) any single leg of an incoming Complex Order may specify. Orders that exceed the maximum number of contracts (or shares) are rejected. The maximum number of contracts (or shares), which shall not be less than 10,000 (or 100,000 shares), is established by the Exchange from time-to-time. *See* Options 3, Section 16 (c)(2).

[156] The Exchange will introduce the optional risk protections in Options 3, Section 28 as part of the technology migration to enhanced Nasdaq functionality discussed above. In particular, the following are optional risk protections in Options 3, Section 28: notional dollar value per order, daily aggregate notional dollar value, quantity per order, and daily aggregate quantity. *See* Securities Exchange Act Releases No. 96818 (February 6, 2023), 88 FR 8950 (February 10, 2023) (SR–ISE–2023–06).

[157] The Nasdaq ISE Order Feed (''Order Feed'') provides information on new orders resting on the book (*e.g.* price, quantity and market participant capacity). In addition, the feed also announces all auctions. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on ISE and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening.

[158] Nasdaq ISE Spread Feed (''Spread Feed'') is a feed that consists of: (1) options orders for all Complex Orders (*i.e.,* spreads, buy-writes, delta neutral strategies, etc.); (2) data aggregated at the top five price levels (BBO) on both the bid and offer side of the market; (3) last trades information. The Spread Feed provides updates, including prices, side, size and capacity, for every Complex Order placed on the ISE Complex Order book. The Spread Feed shows: (1) aggregate bid/ask quote size; (2) aggregate bid/ask quote size for Professional Customer Orders; and (3) aggregate bid/ask quote size for Priority Customer Orders for ISE traded options. The feed also provides Complex Order auction notifications.

[159] *See* Cboe Rule 3.58(c) for materially identical provisions.

[160] The Exchange notes that this requirement is based on Phlx Options 8, Section 34(d)(1), which currently states that only the Lead Market Maker in the non-FLEX option may be the assigned Specialist in that FLEX option. Primary Market Maker on ISE is analogous to a Lead Market Maker on Phlx.

[161] *See* Cboe Rule 5.57 for similar provisions. Unlike Cboe, the Exchange will not specify that a FLEX Market Maker may (but is not obligated to) respond to a FLEX auction in a class in which the FLEX Market Maker is appointed. FLEX Market Makers will be subject to Options 2 rules pertaining to Market Makers, except the Exchange will not impose continuing quoting obligations on FLEX Market Makers (similar to Cboe) given that such obligations are relevant for book trading. As discussed above, there will be no book trading for FLEX Options. Furthermore, the Exchange will not incorporate provisions related to FLEX Officials like Cboe as this is generally a floor trading concept and the Exchange does not have a trading floor.

[162] Options 6, Section 4 provides that no Market Maker shall make any transactions on the Exchange unless a Letter of Guarantee has been issued for such Member by a Clearing Member and filed with the Exchange, and unless such Letter of Guarantee has not been revoked pursuant to paragraph (c) of this Rule. A Letter of Guarantee shall provide that the issuing Clearing Member accepts financial responsibilities for all Exchange Transactions made by the guaranteed Member.

[163] *See* Phlx Options 8, Section 34(e)(1) for materially identical provisions. Options 4A, Sections 6 and 7 presently set forth the position limits for broad-based and industry index options, respectively.

[164] As such the following broad-based index options listed in Options 4A, Section 6(a) will have no position limits for FLEX Index Options: options on the Nasdaq 100 Index, Mini Nasdaq 100 Index, Nations VolDex Index, Nasdaq 100 Reduced Value Index, and Nasdaq Micro Index Options.

[165] This separate same side position limit for broad-based FLEX Index Options (except for the ones noted above) is based on Phlx Options 8, Section 34(e)(1). The Exchange notes that market index options, as referenced in the Phlx rule, is the equivalent of broad-based index options on the Exchange.

[166] *See* Phlx Options 8, Section 34(e)(1) for materially identical provisions.

[167] See Cboe Rule 8.35(c)(1)(A) for materially identical provisions. Like Cboe, the Exchange's rule will have exceptions for the aggregation of FLEX positions (proposed Section 18(c)) and for position limits for cash-settled FLEX Equity Options where the underlying security is an ETF (proposed Section 18(b)(1)(B), which will be discussed later in this filing).

position on the same side of the market in excess of the standard limit under Options 9, Section 13 for non-FLEX Equity Options of the same class on behalf of its own account or for the account of a customer shall report information on the FLEX Equity option position, positions in any related instrument, the purpose or strategy for the position, and the collateral used by the account. This report shall be in the form and manner prescribed by the Exchange.[168] Pursuant to proposed Section 18(b)(3), whenever the Exchange determines that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity option position in excess of the standard limit for non-FLEX Equity options of the same class, the Exchange may consider imposing additional margin upon the account maintaining such under-hedged position, pursuant to its authority under Options 6C, Section 5.[169] Additionally, it should be noted that the clearing firm carrying the account will be subject to capital charges under Rule 15c3–1 under the Exchange Act to the extent of any margin deficiency resulting from the higher margin requirement.[170]

Proposed Section 18(c) will govern the aggregation of FLEX positions. Specifically, for purposes of the position limits and reporting requirements set forth in this Section 18, FLEX Option positions shall not be aggregated with positions in non-FLEX Options other than as provided in this Section 18(c) and in Section(b)(1)(B),[171] and positions in FLEX Index Options on a given index shall not be aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index.[172] Pursuant to proposed Section 18(c)(1), commencing at the close of trading two business days prior to the last trading day of the calendar quarter, positions in P.M.-settled FLEX Index Options (*i.e.,* FLEX Index Options having an exercise settlement value determined by the level of the index at the close of trading on the last trading day before expiration) shall be aggregated with positions in Quarterly Options Series on the same index with the same expiration and shall be subject to the position limits set forth in Options 4A, Section 6 or Section 7, as applicable.[173] Pursuant to proposed Section 18(c)(2), commencing at the close of trading two business days prior to the last trading day of the week, positions in FLEX Index Options that are cash settled shall be aggregated with positions in Short Term Option Series on the same underlying (*e.g.,* same underlying index as a FLEX Index Option) with the same means for determining exercise settlement value (*e.g.,* opening or closing prices of the underlying index) and same expiration, and shall be subject to the position limits set forth in Options 4A, Section 6 or Section 7, as applicable.[174] Pursuant to proposed Section 18(c)(3), as long as the options positions remain open, positions in FLEX Options that expire on a third Friday-of-the-month expiration day shall be aggregated with positions in non-FLEX Options on the same underlying, and shall be subject to the position limits set forth in Options 4A, Section 6, Options 4A, Section 7, or Options 9, Section 13, as applicable, and the exercise limits set forth in Options 9, Section 15, as applicable.[175]

T. Exercise Limits (Section 19)

The Exchange proposes to detail the exercise limits for FLEX Options in Options 3A, Section 19. As discussed below, proposed Section 19 will be based on the FLEX Options exercise limit rules on Cboe and Phlx.

Proposed Section 19(a) will provide that exercise limits for FLEX Options shall be equivalent to the FLEX position limits prescribed in proposed Section 18.[176] There shall be no exercise limits for broad-based FLEX Index Options (including reduced value option contracts) on broad-based index options listed in Options 4A, Section 6(a).[177]

Proposed Section 19(a)(1) will require that the minimum value size for FLEX Equity Option exercises be 25 contracts or the remaining size of the position, whichever is less.[178] Proposed Section 19(a)(2) will require that the minimum value size for FLEX Index Option exercises be $1 million Underlying Equivalent Value (as defined below) or the remaining Underlying Equivalent Value of the position, whichever is less.[179] Proposed Section 19(a)(3) will stipulate that except as provided in proposed Section 18(b)(1)(B) and Section 18(c) above,[180] FLEX Options shall not be taken into account when calculating exercise limits for non-FLEX Option contracts.[181] Lastly, proposed Section 19(a)(4) will set forth the definition of Underlying Equivalent Value as the aggregate value of a FLEX Index Option (index multiplier times the current index value) multiplied by the number of FLEX Index Options.[182]

U. Capacity and Surveillances

The Exchange has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional message traffic associated with the listing of new series that may result from the introduction of FLEX Options.[183]

Additionally, the Exchange believes it has an adequate surveillance program in place and intends to apply the same program procedures to FLEX Options that is applied to the Exchange's other options products, as applicable. FLEX Option products and their respective symbols will be integrated into the Exchange's existing surveillance system architecture and will be subject to the relevant surveillance processes. The Exchange believes that any potential

[168] *See* Cboe Rule 8.35(c)(2) for materially identical provisions.

[169] Options 6C, Section 5 provides that the amount of margin prescribed by these Rules is the minimum which must be required initially and subsequently maintained with respect to each account affected thereby; but nothing in these Rules shall be construed to prevent a Member from requiring margin in an amount greater than that specified. Further, the Exchange may at any time impose higher margin requirements with respect to such positions when it deems such higher margin requirements to be advisable.

[170] *See* Cboe Rule 8.35(c)(3) for materially identical provisions.

[171] Proposed Section 18(b)(1)(B) will set forth the position limits for cash-settled FLEX ETF options and will be discussed later in this filing.

[172] *See* Cboe Rule 8.35(d) for materially identical provisions.

[173] *See* Cboe Rule 8.35(d)(1) for materially identical provisions.

[174] This is based on Cboe Rule 8.35(d)(2), except the Exchange does not currently list Credit Default Options and will therefore not incorporate the applicable portion into its proposed rule.

[175] *See* Cboe Rule 8.35(d)(3) for materially identical provisions.

[176] Proposed Section 19(a) is based on Cboe Rule 8.42(g) except the Exchange will not incorporate references to Cboe-specific products like Micro FLEX Index Options, FLEX Individual Stock or ETF Based Volatility Index Options. Similarly, the Exchange will replace the references to Cboe-specific broad-based index options like SPX, VIX, etc. with the broad-based index options in Options 4A, Section 6(a).

[177] As such the following broad-based index options listed in Options 4A, Section 6(a) will have no exercise limits for FLEX Index Options: options on the Nasdaq 100 Index, Mini Nasdaq 100 Index, Nations VolDex Index, Nasdaq 100 Reduced Value Index, and Nasdaq Micro Index Options.

[178] *See* Cboe Rule 8.42(g)(1) for materially identical provisions.

[179] *See* Cboe Rule 8.42(g)(2) for materially identical provisions.

[180] As described above, proposed Section 18(c) will govern the aggregation of FLEX positions generally, while proposed Section 18(b)(1)(B) will govern the aggregation of cash-settled FLEX Equity Options specifically. Cash-settled FLEX Equity Options will be discussed later in this filing.

[181] *See* Cboe Rule 8.42(g)(3) for materially identical provisions.

[182] *See* Phlx Options 8, Section 34(b)(8)(D) for materially identical provisions.

[183] The Exchange will report FLEX Option trades and, if necessary, trade cancellations to OPRA.

risk of manipulative activity is mitigated by these existing surveillance technologies, procedures, and reporting requirements, which allow the Exchange to properly identify disruptive and/or manipulative trading activity.

V. Cash-Settled FLEX ETFs

The Exchange proposes to include rule text in proposed Options 3A, Section 3(c) and Section 18, each as discussed above, to allow for cash settlement of certain FLEX Equity Options. Generally, as discussed above, FLEX Equity Options will be settled by physical delivery of the underlying security,[184] while all FLEX Index Options will be settled by delivery in cash.[185] The Exchange proposes to allow FLEX Equity Options where the underlying security is an ETF to be settled by delivery in cash if the underlying security meets prescribed criteria. The Exchange notes that cash-settled FLEX ETF Options will be subject to the same trading rules and procedures described above that will govern the trading of other FLEX Options on the Exchange, with the exception of the rules to accommodate the cash-settlement feature proposed as follows. Today, NYSE American Rule 903G [186] and Cboe Rule 4.21(b)(5)(A) [187] allow for cash-settled FLEX ETF Options as well.

To permit cash settlement of certain FLEX ETF Options, the Exchange proposes rule text in Section 3(c)(5)(A)(ii) to provide that the exercise settlement for a FLEX ETF Option may be by physical delivery of the underlying ETF or by delivery in cash if the underlying security, measured over the prior six-month period, has an average daily notional value of $500 million or more and a national average daily volume (''ADV'') of at least 4,680,000 shares.[188]

The Exchange also proposes in Section 3(c) that a FLEX Equity Option overlying an ETF (cash- or physically-settled) may not be the same type (put or call) and may not have the same exercise style, expiration date, and exercise price as a non-FLEX Equity Option overlying the same ETF.[189] In other words, regardless of whether a FLEX Equity Option overlying an ETF is cash or physically settled, at least one of the exercise style (*i.e.,* American-style or European-style), expiration date, and exercise price of that FLEX Option must differ from those terms of a non-FLEX Option overlying the same ETF in order to list such a FLEX Equity Option. For example, suppose a non-FLEX SPY option (which is physically settled, p.m.-settled and American-style) with a specific September expiration and exercise price of 475 is listed for trading. A FLEX Trader could not submit an order to trade a FLEX SPY option (which is p.m.-settled) that is cash-settled (or physically settled) and American-style with the same September expiration and exercise price of 475.

In addition, the Exchange proposes new subparagraph (a) to Section 3(c)(5)(A)(ii), which would provide that the Exchange will determine bi-annually the underlying ETFs that satisfy the notional value and trading volume requirements in Section 3(c)(5)(A)(ii) by using trading statistics for the previous six-month period.[190] The proposed rule would further provide that the Exchange will permit cash settlement as a contract term on no more than 50 underlying ETFs that meet the criteria in this subparagraph (ii) and that if more than 50 underlying ETFs satisfy the notional value and trading volume requirements, then the Exchange would select the top 50 ETFs that have the highest average daily volume.[191]

Proposed new subparagraph (b) to Section 3(c)(5)(A)(ii) would further provide that if the Exchange determines pursuant to the bi-annual review that an underlying ETF ceases to satisfy the requirements under proposed Section 3(c)(5)(A)(ii), any new position overlying such ETF entered into will be required to have exercise settlement by physical delivery, and any open cash-settled FLEX ETF Option positions may be traded only to close the position.[192]

The Exchange believes it is appropriate to introduce cash settlement as an alternative contract term to the select group of ETFs because they are among the most highly liquid and actively traded ETF securities. As described more fully below, the Exchange believes that the deep liquidity and robust trading activity in the ETFs identified by the Exchange as meeting the criteria mitigate against historic concerns regarding susceptibility to manipulation.

Characteristics of ETFs

ETFs are funds that have their value derived from assets owned. The net asset value (''NAV'') of an ETF is a daily calculation that is based off the most recent closing prices of the assets in the fund and an actual accounting of the total cash in the fund at the time of calculation. The NAV of an ETF is calculated by taking the sum of the assets in the fund, including any securities and cash, subtracting out any liabilities, and dividing that by the number of shares outstanding.

Additionally, each ETF is subject to a creation and redemption mechanism to ensure the price of the ETF does not fluctuate too far away from its NAV—which mechanisms reduce the potential for manipulative activity. Each business day, ETFs are required to make publicly available a portfolio composition file that describes the makeup of their creation and redemption ''baskets'' (*i.e.,* a specific list of names and quantities of securities or other assets designed to track the performance of the portfolio as a whole). ETF shares are created when an Authorized Participant, typically a market maker or other large institutional investor, deposits the daily creation basket or cash with the ETF issuer. In return for the creation basket or cash (or both), the ETF issues to the Authorized Participant a ''creation unit'' that consists of a specified number of ETF shares. For instance, IWM is designed to track the performance of the Russell 2000 Index. An Authorized Participant will purchase all the Russell 2000

[184] *See* proposed Options 3A, Section 3(c)(5)(A)(i).

[185] *See* proposed Options 3A, Section 3(c)(5)(B). As discussed below, cash settlement is also permitted in the OTC market.

[186] *See* Securities Exchange Act Release No. 88131 (February 5, 2020), 85 FR 7806 (February 11, 2020) (SR–NYSEAmer-2019–38) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Allow Certain Flexible Equity Options To Be Cash Settled).

[187] Cboe also recently filed to allow certain FLEX Options to be cash settled. *See* Securities Exchange Act Release No. 98044 (August 2, 2023), 88 FR 53548 (August 8, 2023) (SR-Cboe-2023–036) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled).

[188] *See* Cboe Rule 4.21(b)(5)(A)(ii) for materially identical provisions.

[189] *See* introductory paragraph of Cboe Rule 4.21(b) for materially identical provisions. All non-FLEX Equity Options (including on ETFs) are physically settled. Note all FLEX and non-FLEX Equity Options (including ETFs) are p.m.-settled.

[190] *See* proposed Options 3A, Section 3(c)(5)(A)(ii)(a), which is based on Cboe Rule 4.21(b)(5)(A)(ii)(a). The Exchange plans to conduct the bi-annual review on January 1 and July 1 of each year. The results of the bi-annual review will be announced via an Options Trader Alert and any new securities that qualify would be permitted to have cash settlement as a contract term beginning on February 1 and August 1 of each year. If the Exchange initially begins listing cash-settled FLEX Equity Options on a different date (*e.g.,* September 1), it would initially list securities that qualified as of the last bi-annual review (*e.g.,* the one conducted on July 1).

[191] *See* proposed Options 3A, Section 3(c)(5)(A)(ii)(a), which is based on Cboe Rule 4.21(b)(5)(A)(ii)(a).

[192] *See* proposed Section 3(c)(5)(A)(ii)(b), which is based on Cboe Rule 4.21(b)(5)(A)(ii)(b). If a listing is closing only, pursuant to Options 4, Section 4(a), opening transactions by Market Makers executed to accommodate closing transactions of other market participants are permitted.

constituent securities in the exact same weight as the index prescribes, then deliver those shares to the ETF issuer. In exchange, the ETF issuer gives the Authorized Participant a block of equally valued ETF shares, on a one-for-one fair value basis. This process can also work in reverse. A redemption is achieved when the Authorized Participant accumulates a sufficient number of shares of the ETF to constitute a creation unit and then exchanges these ETF shares with the ETF issuer, thereby decreasing the supply of ETF shares in the market.

The principal, and perhaps most important, feature of ETFs is their reliance on an ''arbitrage function'' performed by market participants that influences the supply and demand of ETF shares and, thus, trading prices relative to NAV. As noted above, new ETF shares can be created and existing shares redeemed based on investor demand; thus, ETF supply is open-ended. This arbitrage function helps to keep an ETF's price in line with the value of its underlying portfolio, *i.e.,* it minimizes deviation from NAV. Generally, in the Exchange's view, the higher the liquidity and trading volume of an ETF, the more likely the price of the ETF will not deviate from the value of its underlying portfolio, making such ETFs less susceptible to price manipulation.

Trading Data for the ETFs Proposed for Cash Settlement

The Exchange believes that average daily notional value is an appropriate proxy for selecting underlying securities that are not readily susceptible to manipulation for purposes of establishing a settlement price. Average daily notional value considers both the trading activity and the price of an underlying security. As a general matter, the more expensive an underlying security's price, the less cost-effective manipulation could become. Further, manipulation of the price of a security encounters greater difficulty the more volume that is traded. To calculate average daily notional value (provided in the table below), the Exchange summed the notional value of each trade for each symbol (*i.e.,* the number of shares times the price for each execution in the security) and divided that total by the number of trading days in the six-month period (from June 1, 2023 through December 31, 2023) reviewed by the Exchange.

Further, the Exchange proposes that qualifying ETFs also meet an ADV standard. The purpose for this second criteria is to prevent unusually expensive underlying securities from qualifying under the average daily notional value standard while not being one of the most actively traded securities. The Exchange believes an ADV requirement of 4,680,000 shares a day is appropriate because it represents average trading in the underlying ETF of 200 shares per second. While no security is immune from all manipulation, the Exchange believes that the combination of average daily notional value and ADV as prerequisite requirements would limit cash settlement of FLEX ETF Options to those underlying ETFs that would be less susceptible to manipulation in order to establish a settlement price.

The Exchange believes that the proposed objective criteria would ensure that only the most robustly traded and deeply liquid ETFs would qualify to have cash settlement as a contract term. As provided in the below table, as of December 31, 2023, the Exchange would be able to provide cash settlement as a contract term for FLEX ETF Options on 39 underlying ETFs, as only this group of securities would currently meet the requirement of $500 million or more average daily notional value and a minimum ADV of 4,680,000 shares. The table below provides the list of the 39 ETFs that, as of December 31, 2023, would be eligible to have cash settlement as a contract term.

Symbol	Security name	Average daily notional value (in dollars) (6/1/23–12/31/23)	Average daily volume (in shares) (6/1/23–12/31/23)
AGG	iShares Core U.S. Aggregate Bond ETF	819,003,505	8,539,037
ARKK	ARK Innovation ETF	707,292,851	16,154,806
BIL	SPDR Bloomberg 1–3 Month T-Bill ETF	762,676,069	8,326,055
EEM	iShares MSCI Emerging Markets ETF	1,162,016,698	29,631,030
EFA	iShares MSCI EAFE ETF	1,098,301,530	15,452,387
EWZ	iShares MSCI Brazil ETF	761,109,830	23,812,637
FXI	iShares China Large-Cap ETF	894,787,224	33,669,717
GDX	VanEck Gold Miners ETF	618,321,580	20,914,982
GLD	SPDR Gold Shares	1,253,006,545	6,922,775
HYG	iShares iBoxx $ High Yield Corporate Bond ETF	2,903,997,736	39,043,244
IEF	iShares 7–10 Year Treasury Bond ETF	894,889,766	9,586,765
IEFA	iShares Core MSCI EAFE ETF	530,658,618	8,004,183
IEMG	iShares Core MSCI Emerging Markets ETF	553,682,087	11,306,758
IWM	iShares Russell 2000 ETF	6,202,712,384	33,896,457
IYR	iShares U.S. Real Estate ETF	574,764,729	6,905,724
JNK	SPDR Bloomberg High Yield Bond ETF	761,813,968	8,366,332
KRE	SPDR S&P Regional Banking ETF	730,171,702	16,549,123
KWEB	KraneShares CSI China Internet ETF	540,782,914	19,393,082
LQD	Shares iBoxx Investment Grade Corporate Bond ETF	2,261,500,682	21,569,358
QQQ	Invesco QQQ Trust	18,595,359,899	50,027,506
RSP	Invesco S&P 500 Equal Weight ETF	852,555,992	5,795,082
SMH	VanEck Semiconductor ETF	1,158,968,787	7,603,553
SOXL	Direxion Daily Semiconductor Bull 3x Shares	1,356,546,736	61,542,137
SOXS	Direxion Daily Semiconductor Bear 3x Shares	647,424,841	65,816,096
SPXL	Direxion Daily S&P 500 Bull 3X Shares	841,777,983	9,749,178
SPY	SPDR S&P 500 ETF Trust	34,971,417,738	79,030,726
SQQQ	ProShares UltraPro Short QQQ ETF	2,319,281,990	124,445,645
TLT	iShares 20+ Year Treasury Bond ETF	3,469,546,370	37,328,733
TNA	Direxion Daily Small Cap Bull 3X Shares	506,756,845	15,750,951
TQQQ	ProShares UltraPro QQQ	3,928,939,456	98,454,290
XBI	SPDR S&P Biotech ETF	665,811,366	8,625,070

Symbol	Security name	Average daily notional value (in dollars) (6/1/23–12/31/23)	Average daily volume (in shares) (6/1/23–12/31/23)
XLE	Energy Select Sector SPDR Fund	1,708,817,762	19,948,160
XLF	Financial Select Sector SPDR Fund	1,403,745,482	41,035,132
XLI	Industrial Select Sector SPDR Fund	1,016,318,692	9,660,975
XLK	Technology Select Sector SPDR Fund	1,153,958,503	6,635,138
XLP	Consumer Staples Select Sector SPDR Fund	853,687,804	11,969,322
XLU	Utilities Select Sector SPDR Fund	1,026,772,959	16,431,256
XLV	Health Care Select Sector SPDR Fund	1,198,471,388	9,145,246
XLY	Consumer Discretionary Select Sector SPDR Fund	862,116,359	5,195,115

The Exchange believes that permitting cash settlement as a contract term for FLEX ETF Options for the ETFs in the above table would broaden the base of investors that use FLEX Equity Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

Today, equity options are settled physically at The Options Clearing Corporation (''OCC''), *i.e.,* upon exercise, shares of the underlying security must be assumed or delivered. Physical settlement may possess certain risks with respect to volatility and movement of the underlying security at expiration against which market participants may need to hedge. The Exchange believes cash settlement may be preferable to physical delivery in some circumstances as it does not present the same risk. If an issue with the delivery of the underlying security arises, it may become more expensive (and time consuming) to reverse the delivery because the price of the underlying security would almost certainly have changed. Reversing a cash payment, on the other hand, would not involve any such issue because reversing a cash delivery would simply involve the exchange of cash. Additionally, with physical settlement, market participants that have a need to generate cash would have to sell the underlying security while incurring the costs associated with liquidating their position as well as the risk of an adverse movement in the price of the underlying security.

With respect to position and exercise limits, cash-settled FLEX ETF Options would be subject to the position limits set forth in proposed Options 3A, Section 18. Accordingly, the Exchange proposes to add subparagraph (b)(1)(B) of Options 3A, Section 18, which would provide that a position in FLEX Equity Options where the underlying security is an ETF that is settled in cash pursuant to Options 3A, Section 3(c)(5)(A)(ii) shall be subject to the position limits set forth in Options 9, Section 13, and subject to the exercise limits set forth in Options 9, Section 15. The proposed rule would further state that positions in such cash-settled FLEX Equity Options shall be aggregated with positions in physically settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13 and the exercise limits set forth in Options 9, Section 15.[193] The Exchange further proposes to add in subparagraph (b)(1)(A) of Section 18 a cross-reference to subparagraph (b)(1)(B) of Section 18, as subparagraph (b)(1)(B) would also contain provisions about position limits for FLEX Equity Options that would be exceptions to the statement in Options 3A, Section 18(b)(1)(A) that FLEX Equity Options have no position limits. The Exchange also proposes to add in paragraph (c) of Section 18, a cross-reference to proposed subparagraph (b)(1)(B), as the proposed rule adds language regarding aggregation of positions for purposes of position limits, which will be covered by paragraph (c). Given that each of the underlying ETFs that would currently be eligible to have cash-settlement as a contract term have established position and exercise limits applicable to physically settled options, the Exchange believes it is appropriate for the same position and exercise limits to also apply to cash-settled options. Accordingly, of the 39 underlying securities that would currently be eligible to have cash settlement as a FLEX contract term, 27 would have a position limit of 250,000 contracts pursuant to Options 9, Section 13(d)(5).[194] Further, pursuant to Supplementary Material .01 to Options 9, Section 13, six would have a position limit of 500,000 contracts (EWZ, TLT, HYG, XLF, LQD, and GDX); four (EEM, FXI, IWM, and EFA) would have a position limit of 1,000,000 contracts; one (QQQ) would have a position limit of 1,800,000 contracts; and one (SPY) would have a position limit of 3,600,000.[195]

The Exchange understands that cash-settled ETF options are currently traded in the OTC market by a variety of market participants, *e.g.,* hedge funds, proprietary trading firms, and pension funds.[196] These options are not fungible with the exchange listed options. The Exchange believes some of these market participants would prefer to trade comparable instruments on an exchange, where they would be cleared and settled through a regulated clearing agency. The Exchange expects that users of these OTC products would be among the primary users of exchange-traded cash-settled FLEX ETF Options. The Exchange also believes that the trading of cash-settled FLEX ETF Options would allow these same market participants to better manage the risk associated with the volatility of underlying equity positions given the enhanced liquidity that an exchange-traded product would bring.

In the Exchange's view, cash-settled FLEX ETF Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity. Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed

[193] *See* proposed Options 3A, Section 18(b)(1)(B), which is based on Cboe Rule 8.35(c)(1)(B). The aggregation of position and exercise limits would include all positions on physically settled FLEX and non-FLEX Options on the same underlying ETFs.

[194] Options 9, Section 13(d)(5) provides that to be eligible for the 250,000 contract limit, either the most recent six (6) month trading volume of the underlying security must have totalled at least 100 million shares or the most recent six-month trading volume of the underlying security must have totalled at least seventy-five (75) million shares and the underlying security must have at least 300 million shares currently outstanding.

[195] These were based on position limits as of March 5, 2024. Position limits are available on at *https://www.theocc.com.* Position limits for ETFs are always determined in accordance with the Exchange's Rules regarding position limits.

[196] As noted above, other options exchanges have received approval to list certain cash-settled FLEX ETF Options. *See supra* notes 186 and 187.

by OCC. Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer cash-settled FLEX ETF Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers. Further, the Exchange believes listing cash-settled FLEX ETF Options would provide investors with competition on an exchange platform, as other options exchanges have received Commission approval to list the same options.[197]

The Exchange notes that OCC has received approval from the Commission for rule changes that will accommodate the clearance and settlement of cash-settled ETF options.[198] The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of cash-settled FLEX ETF Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX ETF Options would be manageable. The Exchange expects that members will not have a capacity issue as a result of this proposed rule change. The Exchange also does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

The Exchange does not believe that allowing cash settlement as a contract term would render the marketplace for equity options more susceptible to manipulative practices. The Exchange believes that manipulating the settlement price of cash-settled FLEX ETF Options would be difficult based on the size of the market for the underlying ETFs that are the subject of this proposed rule change. The Exchange notes that each underlying ETF in the table above is sufficiently active to alleviate concerns about potential manipulative activity. Further, in the Exchange's view, the vast liquidity in the 39 underlying ETFs that would currently be eligible to be traded as cash-settled FLEX options under the proposal ensures a multitude of market participants at any given time. Moreover, given the high level of participation among market participants that enter quotes and/or orders in physically settled options on these ETFs, the Exchange believes it would be very difficult for a single participant to alter the price of the underlying ETF or options overlying such ETF in any significant way without exposing the would-be manipulator to regulatory scrutiny. The Exchange further believes any attempt to manipulate the price of the underlying ETF or options overlying such ETF would also be cost prohibitive. As a result, the Exchange believes there is significant participation among market participants to prevent manipulation of cash-settled FLEX ETF Options.

Still, the Exchange believes it has an adequate surveillance program in place and intends to apply the same program procedures to cash-settled FLEX ETF Options that it applies to the Exchange's other options products.[199] FLEX options products and their respective symbols will be integrated into the Exchange's existing surveillance system architecture and will thus be subject to the relevant surveillance processes, as applicable. The Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which procedures the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX ETF Options.

With respect to regulatory scrutiny, the Exchange believes its existing surveillance technologies and procedures adequately address potential concerns regarding possible manipulation of the settlement value at or near the close of the market. The Exchange notes that the regulatory program operated by and overseen by ISE [200] includes cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general, abusive behavior related to front running, wash sales, and quoting/routing, which may occur on the Exchange or other markets. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates and from markets not affiliated with the Exchange. The Exchange represents that, today, its existing trading surveillances are adequate to monitor trading in the underlying ETFs and subsequent trading of options on those securities listed on the Exchange. Further, with the introduction of cash-settled FLEX ETF Options, the Exchange would leverage its existing surveillances to monitor trading in the underlying ETFs and subsequent trading of options on those securities listed on the Exchange with respect to cash-settled FLEX ETF options.[201]

Additionally, for options, the Exchange utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on the Exchange (*i.e.,* mini-manipulation strategies). That surveillance coverage is initiated once options begin trading on the Exchange. Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA, on behalf of the Exchange, coupled with ISE's own monitoring for violative activity on the Exchange comprise a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying ETF and overlying option. Furthermore, the Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX ETF Options.

In addition to the surveillance procedures and processes described above, improvements in audit trails (*i.e.,* the Consolidated Audit Trail), recordkeeping practices, and inter-exchange cooperation over the last two decades have greatly increased the Exchange's ability to detect and punish attempted manipulative activities. In addition, the Exchange is a member of the Intermarket Surveillance Group (''ISG'').[202] The ISG members work

[197] *See supra* notes 186 and 187.

[198] *See* Securities Exchange Act Release No. 34–94910 (May 13, 2022), 87 FR 30531 (May 19, 2022) (SR–OCC–2022–003).

[199] For example, the regulatory program for the Exchange includes surveillance designed to identify manipulative and other improper options trading, including, spoofing, marking the close, front running, wash sales, etc.

[200] ISE maintains a regulatory services agreements with Financial Industry Regulatory Authority, Inc. (''FINRA'') whereby FINRA provides certain regulatory services to the exchanges, including cross-market surveillance, investigation, and enforcement services.

[201] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols.

[202] ISG is an industry organization formed in 1983 to coordinate intermarket surveillance among the SROs by cooperatively sharing regulatory information pursuant to a written agreement

together to coordinate surveillance and investigative information sharing in the stock and options markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities.

The proposed rule change is designed to allow investors seeking to effect cash-settled FLEX ETF Options with the opportunity for a different method of settling option contracts at expiration if they choose to do so. As noted above, market participants may choose cash settlement because physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to members' evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products for reasons that are generally debated in academic literature. The Exchange believes that introducing cash-settled FLEX ETF Options would further broaden the base of investors that use FLEX Equity Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market onto the Exchange, which, it believes, would enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that this may open up cash-settled FLEX ETF Options to more retail investors. The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because existing safeguards—such as position limits (and the aggregation of cash-settled positions with physically-settled positions), exercise limits (and the aggregation of cash-settled positions with physically-settled positions), and reporting requirements—would continue to apply. The Exchange believes the proposed position and exercise limits may further help mitigate the concerns that the limits are designed to address about the potential for manipulation and market disruption in the options and the underlying securities.[203]

Given the novel characteristics of cash-settled FLEX ETF Options, the Exchange will conduct a review of the trading in cash-settled FLEX ETF Options over an initial five-year period. The Exchange will furnish five reports to the Commission based on this review, the first of which would be provided within 60 days after the first anniversary of the initial listing date of the first cash-settled FLEX ETF Option under the proposed rule and each subsequent annual report to be provided within 60 days after the second, third, fourth and fifth anniversary of such initial listing. At a minimum, each report will provide a comparison between the trading volume of all cash-settled FLEX ETF Options listed under the proposed rule and physically settled options on the same underlying security, the liquidity of the market for such options products and the underlying ETF, and any manipulation concerns arising in connection with the trading of cash-settled FLEX ETF Options under the proposed rule. The Exchange will also provide additional data as requested by the Commission during this five year period. The reports will also discuss any recommendations the Exchange may have for enhancements to the listing standards based on its review. The Exchange believes these reports will allow the Commission and the Exchange to evaluate, among other things, the impact such options have, and any potential adverse effects, on price volatility and the market for the underlying ETFs, the component securities underlying the ETFs, and the options on the same underlying ETFs and make appropriate recommendations, if any, in response to the reports.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[204] in general, and furthers the objectives of Section 6(b)(5) of the Act.[205] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [206] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes that the adoption of the proposed rules allowing FLEX Options to trade on ISE in the manner specified above is consistent with the goals of the Act to remove impediments to and perfect the mechanism of a free and open market because it will benefit market participants by providing an additional venue for market participants to provide and seek liquidity for FLEX Options. As the Commission noted in its order granting FLEX trading on Cboe and what was then the Pacific Stock Exchange (now NYSE Arca), trading FLEX Options on an exchange is an alternative to trading customized options in OTC markets and carries with it the advantages of exchange markets such as transparency, parameters and procedures for clearance and settlement, and a centralized counterparty clearing agency.[207] Therefore, the Exchange believes the proposed rule change will promote these same benefits for the market as a whole by providing an additional venue for market participants to trade customized FLEX Options. The Exchange believes that providing an additional venue for FLEX Options will be beneficial by increasing competition for order flow and executions.

In general, transactions in FLEX Options will be subject to many of the same rules that currently apply to non-FLEX Options traded on the Exchange. In order to provide investor with the flexibility to designate terms of the options and accommodate the special trading of FLEX Options, however, the Exchange is proposing to add new rules in proposed Options 3A that will apply solely to FLEX Options. As noted above, the proposed rules are largely consistent with Cboe's rules pertaining to electronic FLEX Options, with certain intended differences primarily to align to current System behavior (and especially current auction behavior) to provide increased consistency for Members trading FLEX Options and non-FLEX Options on ISE, each as discussed above and below. Further, the Exchange has omitted certain Cboe rules from the proposed rules due to differences in scope and operation of FLEX trading at Cboe compared to the proposed scope and operation of FLEX

between the parties. The goal of the ISG's information sharing is to coordinate regulatory efforts to address potential intermarket trading abuses and manipulations.

[203] *See supra* note 193.

[204] 15 U.S.C. 78f(b).

[205] 15 U.S.C. 78f(b)(5).

[206] 15 U.S.C. 78f(b)(5).

[207] *See* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving the Trading of Flexibly Structured Equity Options by CBOE and PSE).

trading on ISE, each as noted above. For example, the Exchange will not include Cboe rule provisions related to floor trading, Asian- or Cliquet-settled FLEX Index Options, or Micro FLEX Index Options as it does not offer these capabilities today. For the same reason, the Exchange will not allow prices in FLEX trading to be expressed as percentages under this proposal.

The Exchange further believes that its proposal is designed to prevent fraudulent and manipulative acts and practices as the Exchange believes that it has an adequate surveillance program in place and intends to apply the same program procedures to FLEX Options that is applied to the Exchange's other options products, as applicable. As described above, FLEX Option products and their respective symbols will be integrated into the Exchange's existing surveillance system architecture and will be subject to the relevant surveillance processes, thereby allowing the Exchange to properly identify disruptive and/or manipulative trading activity.

A. General Provisions (Section 1)

The Exchange believes that proposed Section 1(a) setting forth the applicability of Exchange Rules will make clear that unless otherwise provided in proposed Options 3A, the Exchange's existing rules will continue to apply to FLEX Options, which will provide consistency for Members trading both FLEX Options and non-FLEX Options on ISE.

The Exchange believes that the defined terms proposed in Section 1(b) will provide increased clarity to Members by specifying definitions like ''FLEX Option'' and ''FLEX Order'' that are used throughout Options 3A. The Exchange further believes that adding the definition of ''FLEX Order'' in Options 3, Section 7(z) will add transparency as to which order types would be available on ISE. Lastly, the non-substantive change proposed in Options 3, Section 7(y) will bring clarity and avoid potential confusion for market participants.

B. Hours of Business (Section 2)

The Exchange believes that specifying the trading hours for FLEX Options in proposed Section 2(a) will provide increased clarity that the trading hours for FLEX Options will generally be the same as the trading hours for corresponding non-FLEX Options as set forth in Options 3, Section 1. As noted above, the proposed language is materially identical to Cboe Rule 5.1(b)(3)(A).

C. FLEX Option Classes and Permissible Series (Section 3(a) and (b))

The Exchange believes that the proposed rule text in Sections 3(a) and 3(b) will provide greater transparency around the Exchange's listing standards for FLEX Option classes and FLEX Option series. Proposed Section 3(b)(1), which will prevent FLEX Options and non-FLEX Options with the same terms from trading concurrently by System enforcing this restriction, is consistent with the Act because this restriction will address concerns that FLEX Options would act as a surrogate for the trading of non-FLEX Options. In particular, a non-FLEX Option trading pursuant to Options 3 has different priority rules than a FLEX Option trading pursuant to proposed Options 3A.[208] Allowing an option with the same terms to trade under both rules concurrently would result in inconsistent order handling and could allow the order priority of non-FLEX Orders to be circumvented. Therefore, the Exchange proposes to prevent this situation by permitting FLEX Options transactions only in options with a different term (exercise style, expiration date, or exercise price) than a non-FLEX Option on the same underlying security or index that is already listed for trading. As noted above, the proposed language in Section 3(a) and Section 3(b) is materially identical to Cboe Rule 4.20 and Rule 4.21(a), respectively.

D. FLEX Options Terms (Section 3(c))

The Exchange believes that the terms of FLEX Options pursuant to proposed Options 3A, Section 3(c) serve to perfect the mechanism of a free and open market and a national market system because they will permit investors to customize some of the terms of their FLEX Options to implement more precise trading strategies, which may not be possible using non-FLEX Options. These investors may have improved capability to execute strategies to meet their specific investment objectives by using customized FLEX Options. However, only certain terms as specified in proposed Section 3(c) are subject to flexible structuring by the parties to the FLEX Option transactions, and most of such terms have a specified number of alternative configurations. The Exchange believes that these restrictions are reasonable and designed to further the objectives of the Act and to promote just and equitable principles of trade because limiting FLEX Option terms enables the efficient, centralized clearance and settlement and active secondary trading of opened FLEX Options. As noted above, these terms are consistent with Cboe Rule 4.21(b) except the Exchange will not incorporate applicable Cboe provisions relating to Asian- or Cliquet-settled FLEX Options, Micro FLEX Index Options, or relating to prices that are expressed as a percentage value because the Exchange does not offer these features today.

As discussed above, the Exchange is proposing to allow the listing of FLEX PM Third Friday Options on ISE, consistent with the Commission's recent approval of Cboe's proposal to make its pilot a permanent program.[209] The Exchange believes that aligning to Cboe will allow ISE to compete effectively with Cboe's product offering. Like Cboe, the Exchange believes that FLEX PM Third Friday Options will provide investors with greater trading opportunities and flexibility. The Exchange notes that the Commission recently approved proposals to make other pilots permitting p.m.-settlement of index options permanent after finding those pilots were consistent with the Act and the options subject to those pilots had no significant impact on the market.[210]

The Exchange further believes that permitting ISE to list FLEX PM Third Friday Options, similar to Cboe, will remove impediments to and perfect the mechanism of a free and open market

[208] For example, the Exchange's order books will be inapplicable to FLEX Orders and thus certain priority provisions in Options 3, Section 10 applicable to non-FLEX Orders will not be applicable to FLEX Orders, such as the enhanced Primary Market Maker priority in Section 10(c)(1)(B), Preferred Market Maker priority in Section 10(c)(1)(C), and entitlement for orders of 5 contracts or fewer in Section 10(c)(1)(D). FLEX Options will instead be subject to the priority provisions in Options 3A, Section 11(b)(3)(A) (electronic FLEX Auctions), Section 12(e) (FLEX PIM), and Section 13(e) (FLEX SOM).

[209] *See supra* note 35.

[210] *See* Securities Exchange Act Release Nos. 98454 (September 20, 2023) (SR–CBOE–2023–005) (order approving proposed rule change to make permanent the operation of a program that allows the Exchange to list p.m.-settled third Friday-of-the-month SPX options series) (''SPXPM Approval''); 98455 (September 20, 2023) (SR–CBOE–2023–019) (order approving proposed rule change to make permanent the operation of a program that allows the Exchange to list p.m.-settled third Friday-of-the-month XSP and MRUT options series) (''XSP and MRUT Approval''); and 98456 (September 20, 2023) (SR–CBOE–2023–020) (order approving proposed rule change to make the nonstandard expirations pilot program permanent) (''Nonstandard Approval''). See also Securities Exchange Act Release Nos. 98450 (September 20, 2023), 88 FR 66111 (September 26, 2023) (SR–ISE–2023–08) (order approving proposed rule change to make permanent certain p.m.-settled pilots); and 98935 (November 14, 2023), 88 FR 80792 (November 20, 2023) (SR–ISE–2023–20) (order approving a proposed rule change to permit the listing and trading of p.m.-settled Nasdaq-100 Index® Options with a third-Friday-of-the-month expiration).

and a national market system and protect investors, while maintaining a fair and orderly market. As described in the FLEX Settlement Pilot Approval, Cboe observed no significant adverse market impact or identified any meaningful regulatory concerns during the nearly 14-year operation of the FLEX PM Third Friday Program as a pilot nor during the 15 years since P.M.-settled index options (SPX) were reintroduced to the marketplace.[211]

As discussed in the FLEX Settlement Pilot Approval, the DERA staff study and corresponding Cboe study concluded that a significantly larger amount of non-FLEX p.m.-settled index options had no significant adverse market impact and caused no meaningful regulatory concerns. Therefore, the Exchange believes it is reasonable to conclude that the relatively small amount of FLEX Index Option volume would similarly have no significant adverse market impact or cause no meaningful regulatory concerns.[212]

The Exchange also believes the introduction of FLEX PM options had no significant impact on the market quality of corresponding a.m.-settled options or other options. As discussed in the FLEX Settlement Pilot Approval, Cboe's analysis conducted after the introduction of SPXW options with Tuesday and Thursday expirations demonstrated no statistically significant impact on the bid-ask or effective spreads of SPXW options with Monday, Wednesday, and Friday expirations after trading in the SPXW options with Tuesday and Thursday expirations began.[213] Further, Cboe concluded that large FLEX PM Third Friday Options trades had no material negative impact (and likely no impact) on quote quality of non-FLEX a.m.-settled options overlying the same index with similar terms as the FLEX PM Third Friday Option upon evaluating data that showed that the spreads were relatively stable before and after large trades.[214] Therefore, the Exchange believes Cboe's evaluation effectively demonstrates it is likely that FLEX PM Third Friday Options have had no significant negative impact on the market quality of non-FLEX Options with a.m.-settlement.[215]

Additionally, the significant changes in the closing procedures of the primary markets in recent decades, including considerable advances in trading systems and technology, has significantly minimized risks of any potential impact of FLEX PM Third Friday Options on the underlying cash markets. As such, the Exchange believes that this proposal does not raise any unique or prohibitive regulatory concerns and that such trading has not, and will not, adversely impact fair and orderly markets on expiration Fridays for the underlying indexes or their component securities.

E. FLEX Fungibility (Section 3(d))

The Exchange believes that the FLEX fungibility provisions in proposed Options 3A, Section 3(d) are consistent with the Act by preventing new FLEX Option positions from being opened when a non-FLEX Option with the same terms is listed for trading. Pursuant to proposed Section 3(d)(1), a FLEX Option with the same terms as a subsequently added non-FLEX Option would become fungible with the non-FLEX Option. Accordingly, once a non-FLEX Option is added with the same terms as an outstanding FLEX Option, the FLEX Option would effectively become a standardized, non-FLEX Option and trade under the same rules and procedures that apply to any other standard non-FLEX Option. The Exchange believes that enforcing consistent order handling for identical and fungible options prevents fraudulent and manipulative acts and practices, and promotes just and equitable principles of trade to protect investors and the public interest by ensuring consistent treatment of these options. As noted above, proposed Section 3(d)(1) is materially identical to Cboe Rule 4.22(a).

As noted above, the Exchange will not incorporate language from Cboe Rule 4.22(b) related to closing only transactions for FLEX Option series that become fungible with identical non-FLEX Option series. Pursuant to proposed Options 3A, Section 3(d)(2), the Exchange will not allow intra-day additions of non-FLEX Options in the same series with identical terms as an already-listed FLEX Option series for the remainder of the trading day. In such instances, the non-FLEX Option series could be added overnight to begin trading the the next trading day (upon which all existing open positions in the FLEX Option would become fully fungible with transactions in the identical non-FLEX Option series, and any further trading in the series would be as non-FLEX Options subject to non-FLEX trading procedures and Rules). The Exchange believes its proposal will be a straightforward process that ensures consistent treatment of FLEX Options with identical, fungible non-FLEX Options.

F. Units of Trading; Minimum Trading Increments (Sections 4 and 5)

The Exchange believes that the proposed rule text in Section 4(a) provides clear, transparent language regarding how bids and offers for FLEX Options must be expressed. As noted above, proposed Section 4(a) is consistent with Cboe Rule 5.3(e)(3) except the Exchange is not proposing to provide for Micro FLEX Index Options or to allow prices to be expressed as a percentage value because the Exchange does not offer these features today.

The Exchange similarly believes that proposed Section 5(a) provides clarity to market participants that the Exchange will determine the minimum increments for bids and offers on FLEX Options on a class-by-class basis, which may be no smaller than $0.01. Allowing FLEX Options to trade in increments as small as $0.01 is consistent with the Act because it provides investors with increased ability to meet their specific investment objectives and allows for increased opportunities for price

[211] Notably, Cboe did not identify any significant economic impact (including on pricing or volatility or in connection with reversals) on related futures, the underlying indexes, or the underlying component securities of the underlying indexes surrounding the close as a result of the quantity of FLEX PM Third Friday Options or the amount of expiring open interest in FLEX PM Third Friday Options, nor any demonstrated capacity for options hedging activity to impact volatility in the underlying markets. *See supra* note 35.

[212] *See supra* note 35. Additionally, these studies measured any impact on related futures, the underlying indexes, or the underlying component securities of the underlying indexes surrounding the close. Despite FLEX SPX options (which represent approximately half of the year-to-date 2023 volume of FLEX Index Options but only approximately 0.3% of total SPX volume) not being included in the DERA staff study and corresponding Cboe study, those studies concluded that during the time periods covered (which included the period of time in which the Pilot Program has been operating), there was no significant economic impact on the underlying index or related products. Therefore, the Exchange believes it is reasonable to conclude that any FLEX SPX Options that executed during the timeframes covered by the studies had no significant impact on the underlying index or related products, as neither DERA staff nor Cboe observed any significant economic impact on the underlying index or related product.

[213] *See supra* note 35.

[214] Specifically, Cboe evaluated each FLEX PM Third Friday Options trade for more than 500 contracts that occurred on Cboe during a two-year timeframe and analyzed the market quality (specifically, the average time-weighted quote spread and size 30 minutes prior to the trade and the average time-weighted quote spread and size 30 minutes after the trade) of series non-FLEX a.m.-settled options overlying the same index with similar terms as the FLEX PM Third Friday Option that traded (time to expiration, type (call or put), and strike price) as set forth in the Cboe's data. *See supra* note 35.

[215] The Exchange acknowledges that, while FLEX PM Third Friday Options has historically represented a very small percentage of overall volume, it is possible trading in these options may grow in the future.

improvement through a finer trading increment. As noted above, proposed Section 5(a) is consistent with Cboe Rule 5.4(c)(4) except the Exchange is not proposing to allow prices to be expressed as a percentage value.

G. Types of Orders; Order and Quote Protocols (Section 6)

The Exchange believes that specifying in proposed Section 6(a) that it may make the order types and times-in-force specified in Options 3, Section 7 available on a class or System basis for FLEX Orders is consistent with the Exchange's existing authority to designate the availability of order types and times-in-force for non-FLEX Orders.[216]

The Exchange further believes proposed Section 6(b) will provide greater transparency as to which existing order and quote protocols would be available for FLEX Orders, FLEX auction notifications, and FLEX auction responses.

H. Complex Orders (Section 7)

The Exchange believes the proposed Section 7 will provide investors with additional transparency regarding order entry requirements for complex FLEX Options. As noted above, the proposed complex FLEX Order entry requirements will be consistent with Cboe Rule 5.70(b), except the Exchange will not offer Asian-settled or Cliquet-settled FLEX Index Options.

The Exchange also believes that allowing the submission of complex FLEX Orders with any ratio will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will provide Members with additional flexibility and precision in their investment strategies. As noted above, Cboe already offers this feature for complex FLEX Orders, so the Exchange believes that the proposed changes will promote a free and open market and a national market system by providing an additional venue for market participants to execute complex FLEX Orders with any ratio.[217]

I. Opening of FLEX Trading (Section 8)

The Exchange believes that proposed Section 8, which will specify that there will be no Opening Process in FLEX Options and that Members may begin submitting FLEX Orders into an electronic FLEX Auction, a FLEX PIM, or a FLEX SOM when the underlying security is open for trading, will provide clarity to market participants regarding the mechanisms available for FLEX trading. The Exchange will not conduct an Opening Process in FLEX Options due to the customized nature of these products and the fact that there will be no requirement for specific FLEX Option series to be quoted or traded each day. The Exchange notes that Cboe likewise does not hold an opening trading rotation in FLEX Options.[218]

The Exchange also believes that allowing Member to begin submitting FLEX Orders once the underlying security is open is appropriate. Because market participants incorporate transaction prices of underlying securities or the values of underlying indexes when pricing options (which will include FLEX Options), the Exchange believes it will benefit investors for FLEX Options trading to not be available until that information has begun to be disseminated in the market. Because the Exchange will have no electronic book of resting orders for FLEX Options (and no Opening Process), being ''open'' for FLEX trading merely means that Members may submit FLEX Orders into one of the specified FLEX auction mechanisms once the underlying is open, at the conclusion of which executions in those auction mechanisms may occur (which are all discussed in the respective FLEX Auction, FLEX PIM, and FLEX SOM sections above).

J. Trading Halts (Section 9)

The Exchange believes that proposed Section 9 will provide clarity as to when the Exchange would halt trading in FLEX Options. The reasons why the Exchange would halt trading in a non-FLEX Option class (*e.g.,* trading in the underlying security is halted) would generally be reasons why the Exchange would halt a FLEX Option class, and therefore the Exchange will always halt trading in a FLEX Option class when trading in a non-FLEX Option class with the same underlying equity security or index is halted on the Exchange. Proposed Section 9 also provides the Exchange with authority to halt trading in a FLEX Option, even if trading in a non-FLEX Option with the same underlying is not halted. While such situation would be rare, there may be unusual circumstances that would cause the Exchange to halt trading in the FLEX Option. As noted above, the proposed halt provisions are consistent with Cboe Rule 4.21(a)(3).

K. Exchange Order Books (Section 10)

The Exchange believes that specifying in proposed Section 10 that the Exchange's simple and complex order books will not be available for transactions in FLEX Options will make clear what mechanisms would be available for FLEX trading (or not). FLEX Orders may only be submitted into a FLEX Auction, FLEX PIM, or FLEX SOM. As noted above, proposed Section 10 is consistent with the FLEX rules of other options exchanges that similarly do not contemplate the interaction of their respective order books with FLEX transactions.[219]

L. FLEX Options Trading (Section 11)

The Exchange believes that proposed Section 11(a), which specifies the requirements for submitting FLEX Orders for trading, is consistent with the Act. Proposed Section 11(a) will set forth which mechanisms would be available for FLEX Orders (*i.e.,* electronic FLEX Auction, FLEX PIM, or FLEX SOM) and the order entry requirements for simple and complex FLEX Orders. As noted above, these provisions will be substantially similar to Cboe Rule 5.72(b).[220] The Exchange believes that System-enforcing the stipulation that it will not accept simple or complex FLEX Orders if the order or leg, as applicable, has identical terms as a non-FLEX Option series that is already listed for trading will prevent options with the same terms to trade as both a FLEX Options and non-FLEX Option, thereby eliminating any potential concerns around inconsistent order handling.

The Exchange believes that the electronic FLEX Auction as described in proposed Section 11(b) will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. The proposed FLEX Auction will offer market participants with an auction mechanism for the execution of FLEX Options at potentially improved prices that is substantially similar in all respects to Cboe Rule 5.72(c), except for certain intended differences to align to current auction functionality in order to allow the proposed FLEX Auction to fit more seamlessly into the Exchange's market. For instance, the Exchange will not allow prices to be expressed as percentages in the electronic FLEX Auction as it does not have this capability today. The Exchange will also follow current non-FLEX auction behavior by allowing the FLEX Auction to end at the market close with an

[216] *See* introductory paragraph to Options 3, Section 7.

[217] *See supra* note 54.

[218] *See* Cboe Rule 5.71. *See supra* note 55.

[219] *See supra* note 60.

[220] *See supra* notes 61–64.

execution (if an execution is permitted pursuant to proposed Section 11(b)) in the event the designated exposure interval exceeds the market close.[221] In doing so, the Exchange's proposal will promote executions in electronic FLEX Auctions while also preventing executions after the market close. The Exchange will also align the minimum increment requirements in proposed Section 11(b)(1)(G) for stock-tied FLEX complex strategies with its existing requirements for stock-tied non-FLEX complex strategies in Options 3, Section 14(c)(1). Furthermore, pursuant to proposed Section 11(b)(2)(D), the Exchange would not allow Members to submit multiple FLEX responses using the same badge/mnemonic and would also not aggregate all of those responses at the same price in order to align to current auction functionality for non-FLEX Orders. Additionally, the Exchange will also specify in proposed Section 11(b)(2)(D) that an additional FLEX response from the same badge/mnemonic for the same auction ID will automatically replace the previous FLEX response.[222] The Exchange will also align the proposed FLEX Auction allocation methodology (*i.e.,* Priority Customer Size Pro-Rata and one contract allocation) [223] and related rounding (*i.e.,* rounding up for the higher response quantity) [224] with current auction functionality in those respects.[225] The Exchange believes that the proposed priority and allocation rules for the FLEX Auction will ensure a fair and orderly market by maintaining the priority of orders and protecting Priority Customer orders, while still affording the opportunity for price improvement during each FLEX Auction commenced on the Exchange. As noted above, all of the foregoing features are harmonized with the Exchange's current auction functionality for non-FLEX Orders, including PIM and SOM, so the Exchange believes that this will promote consistency for Members participating across different auctions on ISE.

Furthermore, unlike Cboe, the Exchange will not include certain details in the proposed FLEX Auction notification message in proposed Section 11(b)(2)(A) like what time the auction will conclude or whether the FLEX Order is Attributable. For simplicity, the Exchange will instead disseminate the duration of the exposure interval, instead of calculating and disseminating what time the auction will conclude, and will not offer an Attributable designation for FLEX Orders.

Otherwise, the general framework of the proposed electronic FLEX Auction in Section 11(b) (such as the eligibility requirements, the auction process and conclusion, and execution provisions) is consistent with the framework for Cboe's electronic FLEX Auctions in Cboe Rule 5.72(c). The clarity in how the proposed FLEX Auction will function and its consistency with similar auctions at another exchange will help promote a fair and orderly national options market system.

Like Cboe, the Exchange believes that the proposed auction exposure interval periods strike an appropriate balance between allowing executions of FLEX Orders to be completed in a timely fashion and providing Members sufficient time to price the unique terms of FLEX Options. As noted above, the submitting Member must designate the length of the exposure interval (which will be included in the auction notification message) to be between three seconds and five minutes, which is identical to Cboe's range of exposure intervals for their electronic FLEX Auctions in Cboe Rule 5.72(c)(1)(F). The Exchange believes it is appropriate to require the submitting Member to establish the length of the auction period (which will be included in the auction notification message), as the Member is in the best position to determine a reasonable period of time to provide other Members to respond based on the complexity of the FLEX Option series that is the subject of the auction, as well as based on market conditions (for example, in a volatile market, the Member may believe it is in the best interests of a customer to have a shorter auction period given quickly changing prices).

The Exchange believes that the proposed rule change to allow multiple electronic FLEX Auctions overlap will benefit investors, as it may lead to an increase in Exchange volume and permit the Exchange to compete with the OTC market, while providing for additional opportunities for price discovery and execution. Although electronic FLEX Auctions will be allowed to overlap, the Exchange does not believe that this raises any issues that are not addressed through the proposal as described above. For example, although overlapping, each auction will be started in a sequence and with a time that will determine its processing. Thus, even if there are two auctions that commence and conclude, at nearly the same time, each auction will have a distinct conclusion at which time the auction will be allocated. Additionally, FLEX Orders submitted into an electronic FLEX Auction will be able to execute only against FLEX responses submitted to that auction. If market participants desire to have interest execute against both FLEX Orders subject to concurrent FLEX Auctions, market participants may submit responses to both auctions. Additionally, the proposed concurrent auction feature is materially identical to Cboe's electronic FLEX Auction feature in Cboe Rule 5.72(c)(2)(B).

M. FLEX PIM and FLEX SOM (Sections 12 and 13)

The Exchange believes that the FLEX PIM and FLEX SOM Auctions as described in proposed Sections 12 and 13, respectively, will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. The proposed FLEX PIM and FLEX SOM Auctions will offer market participants with auction mechanisms for the execution of FLEX Options at potentially improved prices that are substantially similar to Cboe's FLEX AIM and FLEX SAM set forth in Cboe Rule 5.73 and 5.74, respectively, except for certain intended differences to align to the Exchange's current PIM and SOM auction functionality to allow the proposed FLEX PIM and SOM Auctions to fit more seamlessly into the Exchange's market. For instance, the Exchange will not allow prices to be expressed as percentages in FLEX PIM or FLEX SOM as it does not have this capability today. For FLEX SOM, the Exchange will not allow the Solicited Order to be comprised of multiple solicited orders in FLEX SOM to be consistent with current non-FLEX SOM functionality in Options 3, Section 11(d). The Exchange will also align the minimum increment requirements for stock-tied FLEX complex strategies submitted into FLEX PIM or FLEX SOM with its existing requirements for stock-tied non-FLEX complex strategies in Options 3, Section 14(c)(1). The Exchange will also follow current non-FLEX PIM and SOM behavior by

[221] *See* proposed Options 3A, Section 11(b)(1)(F). While the current rules are silent in this regard, the Exchange notes that its proposal will follow current SOM and PIM behavior. *See generally* Options 3, Sections 11(d) and 13.

[222] While this behavior is not specified in the Exchange's current rules, auction responses are currently handled in the same manner for SOM and PIM. *See generally* Options 3, Sections 11(d)(2) and 13(c).

[223] *See* proposed Options 3A, Sections 11(b)(3)(A)(i) and (iii).

[224] *See* proposed Options 3A, Sections 11(b)(3)(A)(ii).

[225] *See, e.g.,* Options 3, Section 11(d)(3)(C) (SOM allocation methodology); Options 3, Section 13(d) (PIM allocation methodology); Supplementary Material .09 to Options 3, Section 11; and Supplementary Material .10 to Options 3, Section 13.

allowing the FLEX PIM or FLEX SOM Auction to end at the market close with an execution (if an execution is permitted pursuant to proposed Section 12 or Section 13, as applicable) in the event the designated length of the auction period exceeds the market close.[226] In doing so, the Exchange's proposal will promote executions in FLEX PIM and FLEX SOM while also preventing executions after the market close. Furthermore, pursuant to Sections 12(c)(5)(B) and 13(c)(5)(B) (as applicable), the Exchange would not allow Members to submit multiple FLEX PIM or FLEX SOM responses using the same badge/mnemonic and would also not aggregate all of those responses at the same price in order to align to current PIM and SOM functionality for non-FLEX Orders. Additionally, the Exchange will also specify that an additional FLEX PIM or SOM response from the same badge/mnemonic for the same auction ID will automatically replace the previous FLEX PIM or SOM response.[227] The Exchange will also align to current PIM functionality by allowing a limited exception to the restriction in proposed Section 12(c)(4) against modifying or canceling a FLEX PIM Agency Order or Initiating Order by allowing Initiating Members to improve the price of their Initiating Orders.[228] The Exchange will also align to current SOM functionality by allowing Initiating Members to cancel (but not modify) their FLEX SOM Agency Orders and Solicited Orders pursuant to proposed Section 13(c)(4).[229]

The Exchange will also align certain aspects of the proposed FLEX PIM allocation methodology with its current non-FLEX PIM allocation methodology. First, the Exchange will base the allocation percentages set forth in proposed Section 12(e)(1)(B)(ii) on the original size of the Agency Order, instead of the number of contract remaining after execution against Priority Customer responses like Cboe Rule 5.73(e)(1)(B)(ii). As noted above, this will align to current PIM behavior in Options 3, Section 13(d)(3). Second, the Exchange will specify two limited scenarios in proposed Section 12(e)(1)(B) where the Initiating Member could receive an allocation percentage that is greater than the Initiating Member's guaranteed allocation (*i.e.,* when there are remaining contracts after including all PIM responses or when rounding up). As noted above, while Cboe does not have these exceptions noted in Cboe Rule 5.73(e)(1)(B), this will be consistent with current PIM behavior.[230] Third, the Exchange will specify in proposed Section 12(e)(2)(B) that other FLEX PIM responses at prices better than the final auction price will be allocated in time priority and all other FLEX PIM responses at the final auction price will be allocated on a Size Pro-Rata Basis.[231] Fourth, the Exchange will replace Cboe's last priority allocation in Cboe Rule 5.73(e)(4) with a guaranteed allocation feature in proposed Section 12(e)(4), which will be similar to a current PIM feature currently in Options 3, Section 13(d)(3) that allows Members to request a lower percentage than their guaranteed allocation.[232] For both FLEX PIM and FLEX SOM, the Exchange will also specify that if an allocation would result in less than one contract, then one contract will be allocated.[233] This would align to current SOM and PIM allocation.[234] As noted above, all of the foregoing features are consistent with the Exchange's current PIM and SOM auction functionality for non-FLEX Orders, so the Exchange believes that this will promote consistency for Members participating across different auctions on ISE.

Otherwise, the general frameworks of the proposed FLEX PIM and FLEX SOM Auctions in Sections 12 and 13 (such as the eligibility requirements, stop price requirements, auction process and conclusion, and execution provisions) are consistent with the frameworks for Cboe's FLEX AIM and FLEX SAM in Cboe Rules 5.73 and 5.74, respectively. The clarity in how FLEX PIM and FLEX SOM will function and their consistency with similar auctions at another exchange will help promote a fair and orderly national options market system. For example, the proposed range for the length of each of the FLEX PIM and FLEX SOM Auction periods is consistent with the range for the auction periods of the Cboe's FLEX AIM and FLEX SAM Auctions in Cboe Rules 5.73(c)(3) and 5.74(c)(3), respectively. Like Cboe, the Exchange believes it is appropriate to provide a reasonable and sufficient amount of time in which market participants may submit responses because of the unique terms of FLEX Options. Therefore, the Exchange is proposing that the minimum length of a FLEX PIM or FLEX SOM Auction be three seconds. The Exchange also proposes a maximum length of an auction period to be five minutes, as the Exchange also believes it is appropriate to provide for efficient and timely executions so that customers do not potentially miss a market. The proposed rule change also requires the Initiating Member to establish the length of the auction period (which will be included in the auction notification message), as the Member is in the best position to determine a reasonable period of time to provide other Members to respond based on the complexity of the FLEX Option series that is the subject of the auction, as well as based on market conditions (for example, in a volatile market, the Member may believe it is in the best interests of a customer to have a shorter auction period given quickly changing prices).

The proposal will also allow FLEX PIM and FLEX SOM Auctions to occur concurrently with other FLEX PIM and FLEX SOM Auctions. As discussed above, the Exchange is aligning with current Cboe FLEX AIM and FLEX SAM behavior in Cboe Rules 5.73(c)(1) and 5.74(c)(1), respectively. Like Cboe, the Exchange does not believe that allowing FLEX PIM and FLEX SOM Auctions to overlap would raise any issues that are not addressed by proposal. For example, although overlapping, each FLEX PIM or FLEX SOM Auction will be started in a sequence and with a duration that determines its processing. Thus, even if there are two FLEX PIM or FLEX SOM Auctions that commence and conclude, at nearly the same time, each Auction will have a distinct conclusion at which time the Auction will be allocated, and only against responses submitted into that Auction. As discussed above, each FLEX PIM or FLEX SOM response is required to specifically identify the FLEX PIM or FLEX SOM Auction, respectively, for which it is targeted and if not fully executed, will be cancelled back at the conclusion of the Auction. Thus, responses will be specifically considered and executed only in the specified Auction. As a general matter, issues with concurrent auctions can relate to the interaction of auctioned orders with contra-side interest resting

[226] *See* proposed Options 3A, Sections 12(c)(3) and 13(c)(3). While the current rules are silent in this regard, the Exchange notes that its proposal will follow current SOM and PIM behavior. *See generally* Options 3, Sections 11(d) and 13.

[227] While this behavior is not specified in the Exchange's current rules, auction responses are currently handled in the same manner for SOM and PIM. *See generally* Options 3, Sections 11(d)(2) and 13(c).

[228] *See supra* note 102 and accompanying text.

[229] As noted above, while this feature is not explicitly stated in the current SOM rules in Options 3, Section 13(d), it is consistent with current SOM functionality.

[230] *See supra* note 114.

[231] *See supra* note 118.

[232] *See supra* note 121.

[233] *See* proposed Supplementary Material .03 to Options 3A, Section 11 and Supplementary Material .03 to Options 3A, Section 12.

[234] *See* Supplementary Material .09 to Options 3, Section 11 and Supplementary Material .10 to Options 3, Section 13).

on the book at the end of various auctions. As noted above, there will be no order book available for FLEX trading, so there can be no conflict among contra-side interest resting on the book and FLEX PIM or FLEX SOM responses with respect to executions. Further, because there is no book for FLEX Options, there are no events that cause a FLEX PIM or FLEX SOM to conclude prior to the end of auction exposure period that would result in an execution, and therefore, the same event could not cause multiple auctions to conclude early.

Like Cboe, the Exchange will apply a Size Pro-Rata execution algorithm with a Priority Customer overlay for FLEX PIM and FLEX SOM.[235] The Exchange believes that the proposed priority and allocation rules for FLEX PIM and FLEX SOM will ensure a fair and orderly market by maintaining the priority of orders and protecting Priority Customer orders, while still affording the opportunity for price improvement during each FLEX PIM and FLEX SOM Auction commenced on the Exchange.

N. Risk Protections (Section 14)

The Exchange believes that specifying the risk protections in proposed Options 3A, Section 14 will benefit investors with additional transparency regarding which of the Exchange's risk protections in Options 3, Sections 15 (simple order risk protections, 16 (complex order risk protections), and 28 (optional risk protections) would apply to FLEX trading. The Exchange also believes that applying the foregoing risk protections to FLEX Options will protect investors and the public interest, and maintain fair and orderly markets, by providing market participants with more tools to manage their risk. In addition, providing Members with more tools for managing risk facilitates transactions in FLEX Options because Members will have more confidence that risk protections are in place. As a result, apply the foregoing risk protections has the potential to promote just and equitable principles of trade.

O. Data Feeds (Section 15)

The Exchange believes that specifying the data feeds in proposed Options 3A, Section 15 will benefit investors with additional transparency regarding which data fees it will disseminate auction notifications for simple and complex FLEX Orders. As discussed above, the Exchange proposes to disseminate auction notifications for simple FLEX Orders through the Order Feed and auction notifications for complex FLEX Orders through the Spread Feed, which will be consistent with how non-FLEX simple and complex auction notifications are disseminated today.

P. FLEX Market Makers and Letters of Guarantee (Sections 16 and 17)

The Exchange believes that the proposed FLEX Market Maker provisions in Section 16 will provide clarity and transparency as to how FLEX Market Makers are appointed and their related obligations. As noted above, these provisions are substantially similar to other options exchanges, notably Cboe and Phlx.[236]

Pursuant to proposed Section 17, the Exchange's current Letter of Guarantee will effectively apply to FLEX transactions executed on ISE.[237] The Exchange believes that the existing Letter of Guarantee continues to protect investors and the public interest because it signifies that the clearing member has accepted financial responsibility for transactions in all options entered into by the Market Maker, which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX and non-FLEX Option transactions.

Q. Position and Exercise Limits (Sections 18 and 19)

Position and exercise limits are designed to address potential manipulative schemes and adverse market impacts surrounding the use of options, such as disrupting the market in the security underlying the options. While position and exercise limits should address and discourage the potential for manipulative schemes and adverse market impact, if such limits are set too low, participation in the options market may be discouraged. The Exchange believes that any decision regarding imposing position and exercise limits for FLEX Options must therefore be balanced between mitigating concerns of any potential manipulation and the cost of inhibiting potential hedging activity that could be used for legitimate economic purposes.

As it relates to FLEX Index Options, the Exchange believes that the proposed position and exercise limits in Sections 18(a), 18(c), and 19(a) are reasonably designed to prevent a Member from using FLEX Index Options to evade the position limits applicable to comparable non-FLEX Index Options. Further, by establishing the proposed position and exercise limits for FLEX Index Options and, importantly, aggregating such positions in the manner described in proposed Sections 18(c)(1), (c)(2), and 19(a)(3), the Exchange believes that the position and exercise limit requirements for FLEX Index Options should help to ensure that the trading of FLEX Index Options would not increase the potential for manipulation or market disruption and could help to minimize such incentives. The Exchange also notes that proposed position and exercise limits are consistent with the rules of other options exchanges that offer FLEX Index Options, and therefore raise no novel issues for the Commission.[238]

As it relates to FLEX Equity Options, while no position limits are proposed for FLEX Equity Options, there are several mitigating factors, which include aggregation of FLEX Equity Option and non-FLEX Equity Option positions that expire on a third Friday-of-the-month and subjecting those positions to position and exercise limits, and daily monitoring of market activity. Similar to the other exchanges that trade FLEX Equity Options, the Exchange believes that eliminating position and exercise limits for FLEX Equity Options, while requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in non-FLEX Equity Options on the same underlying security,[239] removes impediments to and perfects the mechanism of a free and open market and a national market system because it allow the Exchange to create a product and market that is an improved but comparable alternative to the OTC market in customized options. OTC transactions occur through bilateral agreements, the terms of which are not publicly disclosed to the marketplace. As such, OTC transactions do not contribute to the price discovery process that exists on a public exchange.

[235] *See* proposed Options 3A, Sections 12(e) and 13(e). As noted above, this is also consistent with the Exchange's current priority and allocation methodology for non-FLEX auctions, including SOM and PIM. *See* Options 3, Section 11(d)(3)(C) and Section 13(d).

[236] *See supra* notes 160–162.

[237] Today, all ISE Market Makers are required to enter into a Letter of Guarantee pursuant to Options 6, Section 4. This letter will automatically extend to FLEX transactions. Cboe Rule 3.61(e) separately requires FLEX Market Makers to provide a Letter of Guarantee issued by a clearing member and filed with the Exchange accepting responsibility for all FLEX transactions made by the FLEX Market Maker.

[238] *See* Phlx Options 8, Section 34(e) and Cboe Rules 8.35(a), (d), and 8.42(g).

[239] *See* proposed Options 3A, Section 18(c)(3) and Section 19(a)(3). *See also* Cboe Rules 8.35(d)(3) and 8.42(g)(3); NYSE Arca Rules 5.35–O(a)(iii), (b) and 5.36–O; NYSE American Rules 906G and 907G; and Phlx Options 8, Section 34(e) and (f).

The Exchange believes that the proposed elimination of position and exercise limits for FLEX Equity Options may encourage market participants to transfer their liquidity demands from OTC markets to exchanges and enable liquidity providers to provide additional liquidity to ISE through transactions in FLEX Equity Options. The Exchange notes that the Commission previously approved the elimination of position and exercise limits for FLEX Equity Options, finding that such elimination would allow exchanges ''to better compete with the growing OTC market in customized equity options, thereby encouraging fair competition among brokers and dealers and exchange markets.'' [240] The Commission has also stated that the elimination of position and exercise limits for FLEX Equity Options ''could potentially expand the depth and liquidity of the FLEX equity market without significantly increasing concerns regarding intermarket manipulations or disruptions of the options or the underlying securities.'' [241]

Additionally, the Exchange believes that requiring positions in FLEX Equity Options that expire on a third Friday-of-the-month to be aggregated with positions in non-FLEX Equity Options on the same underlying security subjects FLEX Equity Options and non-FLEX Equity Options to the same position and exercise limits on third Friday-of-the-month expirations. These limitations are intended to serve as a safeguard against potential adverse effects of large FLEX Equity Option positions expiring on the same day as non-FLEX Equity Option positions. As noted above, Cboe Rules 8.35(d)(3) and 8.42(g)(3) have the same requirements.

The Exchange believes that any potential risk of manipulative activity is mitigated by existing surveillance technologies, procedures, and reporting requirements at the Exchange, which allows the Exchange to properly identify disruptive and/or manipulative trading activity. In addition to its own surveillance programs, the Exchange also works with other SROs and exchanges on intermarket surveillance related issues. Through its participation in ISG, the Exchange shares information and coordinates inquiries and investigations with other exchanges designed to address potential intermarket manipulation and trading abuses. The Exchange also notes that FINRA conducts cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement.[242] The Exchange also represents that it is reviewing its procedures to detect potential manipulation in light of any changes required for FLEX Options to confirm appropriate surveillance coverage. These procedures utilize daily monitoring of market activity via automated surveillance techniques to identify unusual activity in both options and their underlying securities and are designed to protect investors and the public interest by ensuring that the Exchange has an adequate surveillance program in place.

The Exchange believes that proposed Section 18(b)(2) and (3) further mitigates concerns for potential market manipulation and/or disruption in the underlying markets and thus protects investors and the public interest because position reporting will be required (other than for a Market Maker) and the Exchange may determine that a higher margin requirement is necessary in light of the risks associated with a FLEX Equity Option position in excess of the standard limit for non-FLEX Equity Options of the same class. The Exchange may, pursuant to its authority under Options 6C, Section 5, impose additional margin upon the account maintaining such under-hedged position as a safeguard against potential adverse effects of large FLEX Equity Option positions. The Exchange notes that the clearing firm carrying the account will be subject to capital charges under SEC Rule 15c3–1 to the extent of any margin deficiency resulting from a higher margin requirement imposed by the Exchange.

Lastly, the Exchange notes that other exchanges currently trading FLEX options have similar position and exercise limits described above.[243]

R. Cash-Settled FLEX ETF Options

Introducing cash-settled FLEX ETF Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposal to permit cash settlement as a contract term for options on the specified group of equity securities would remove impediments to and perfect the mechanism of a free and open market as cash-settled FLEX ETF Options would enable market participants to receive cash in lieu of shares of the underlying security, which would, in turn provide greater opportunities for market participants to manage risk through the use of a cash-settled product to the benefit of investors and the public interest. The Exchange does not believe that allowing cash settlement as a contract term for options on the specified group of equity securities would render the marketplace for equity options more susceptible to manipulative practices. As illustrated in the table above, each of the qualifying underlying securities is actively traded and highly liquid and thus would not be susceptible to manipulation because, over a six-month period, each security had an average daily notional value of at least $500 million and an ADV of at least 4,680,000 shares, which indicates that there is substantial liquidity present in the trading of these securities, and that there is significant depth and breadth of market participants providing liquidity and of investor interest. The Exchange believes the proposed bi-annual review to determine eligibility for an underlying ETF to have cash settlement as a contract term would remove impediments to and perfect the mechanism of a free and open market as it would permit the Exchange to select only those underlying ETFs that are actively traded and have robust liquidity as each qualifying ETF would be required to meet the average daily notional value and average daily volume requirements, as well as to select the same underlying ETFs on which other exchanges may list cash-settled FLEX ETF Options.[244]

The Exchange believes the proposed change that, for FLEX ETF Options, at least one of exercise style, expiration date, and exercise price must differ from options in the non-FLEX market will provide clarity and eliminate confusion regarding permissible terms of FLEX ETF Options, including the proposed cash-settled FLEX ETF Options.

The Exchange believes that the data provided by the Exchange supports the supposition that permitting cash settlement as a FLEX term for the 39 underlying ETFs that would currently qualify to have cash settlement as a contract term would broaden the base of investors that use FLEX Equity Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

[240] *See* Securities Exchange Act Release No. 42223 (December 10, 1999), 64 FR 71158, 71159 (December 20, 1999) (SR–Amex–99–40) (SR–PCX–99–41) (SR–CBOE–99–59) (Order Granting Accelerated Approval to Proposed Rule Change Relating to the Permanent Approval of the Elimination of Position and Exercise Limits for FLEX Equity Options).

[241] *See id.*

[242] The Exchange notes that it is responsible for FINRA's performance under this regulatory services agreement.

[243] *See* Cboe Rules 8.35(d) and 8.42(g); and Phlx Options 8, Section 34(e) and (f).

[244] *See supra* notes 186 and 187.

The Exchange believes that the proposal to permit cash settlement for certain FLEX ETF options would remove impediments to and perfect the mechanism of a free and open market because the proposed rule change would provide members and member organizations with enhanced methods to manage risk by receiving cash if they choose to do so instead of the underlying security. In addition, this proposal would promote just and equitable principles of trade and protect investors and the general public because cash settlement would provide investors with an additional tool to manage their risk. Further, the Exchange notes that another exchange has previously received approval that allows for the trading of cash-settled options, and, specifically, cash-settled FLEX ETF Options in an identical manner as the Exchange proposes to list them pursuant to this rule filing.[245] The proposed rule change therefore should not raise issues for the Commission that it has not previously addressed.

The proposed rule change to permit cash settlement as a contract term for options on up to 50 ETFs is designed to promote just and equitable principles of trade in that the availability of cash settlement as a contract term would give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently traded in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of the proposed cash-settled options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently available for trading only in the OTC market and are approved to trade on another options exchange.

The Exchange believes that establishing position limits for cash-settled FLEX ETF Options to be the same as physically settled options on the same underlying security, and aggregating positions in cash-settled FLEX ETF Options with physically settled options on the same underlying security for purposes of calculating position limits is reasonable and consistent with the Act. By establishing the same position limits for cash-settled FLEX ETF Options as for physically settled options on the same underlying security and, importantly, aggregating such positions, the Exchange believes that the position limit requirements for cash-settled FLEX ETF Options should help to ensure that the trading of cash-settled FLEX ETF Options would not increase the potential for manipulation or market disruption and could help to minimize such incentives. For the same reasons, the Exchange believes the proposed exercise limits are reasonable and consistent with the Act.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX ETF Options and the underlying ETFs. Regarding the proposed cash settlement, the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Options. For surveillance purposes, the Exchange would have access to information regarding trading activity in the pertinent underlying ETFs. The Exchange believes that limiting cash settlement to no more than 50 underlying ETFs (currently, 39 ETFs would be eligible to have cash-settlement as a contract term) would minimize the possibility of manipulation due to the robust liquidity in both the equities and options markets.

As a self-regulatory organization, the Exchange recognizes the importance of surveillance, among other things, to detect and deter fraudulent and manipulative trading activity as well as other violations of Exchange rules and the federal securities laws. As discussed above, ISE has adequate surveillance procedures in place to monitor trading in cash-settled FLEX ETF Options and the underlying securities, including to detect manipulative trading activity in both the options and the underlying ETF.[246] The Exchange further notes the liquidity and active markets in the underlying ETFs, and the high number of market participants in both the underlying ETFs and existing options on the ETFs, helps to minimize the possibility of manipulation. The Exchange further notes that under Section 19(g) of the Act, the Exchange, as a self-regulatory organization, is required to enforce compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the rules of the Exchange.[247] The Exchange believes its surveillance, along with the liquidity criteria and position and exercise limits requirements, are reasonably designed to mitigate manipulation and market disruption concerns and will permit it to enforce compliance with the proposed rules and other Exchange rules in accordance with Section 19(g) of the Act. The Exchange performs ongoing evaluations of its surveillance program to ensure its continued effectiveness and will continue to review its surveillance procedures on an ongoing basis and make any necessary enhancements and/or modifications that may be needed for the cash settlement of FLEX ETF Options.

Additionally, the Exchange will monitor any effect additional options series listed under the proposed rule change will have on market fragmentation and the capacity of the Exchange's automated systems. The Exchange will take prompt action, including timely communication with the Commission and with other self-regulatory organizations responsible for oversight of trading in options, the underlying ETFs, and the ETFs' component securities, should any unanticipated adverse market effects develop.

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 intra-market competition that is not necessary or appropriate in furtherance of the purposes of the Act, as all Members who wish to trade FLEX

[245] *See supra* notes 186 and 187.

[246] Among other things, ISE's regulatory program include cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general abusive behavior related to front running, wash sales, and quoting/routing, which may occur on the Exchange and other markets. Furthermore, the Exchange stated that it has access to information regarding trading activity in the pertinent underlying securities as a member of ISG.

[247] 15 U.S.C. 78s(g).

Options will be able to trade such options in the same manner. Additionally, positions in FLEX Options of all Members will be subject to the same position limits, and such positions will be aggregated in the same manner as described in proposed Section 18(c).

The Exchange also does not believe that the proposed rule change will impose any burden on inter-market competition that is not necessary or appropriate in furtherance of the purposes of the Act. As discussed above, other options exchanges currently offer electronic FLEX trading and cash-settled FLEX ETF Options on their respective markets. The Exchange believes that its proposal will allow ISE to compete with these other exchanges and provide an additional execution venue for these transactions for market participants. Thus, the Exchange believes that its proposal will promote inter-market competition by increasing the number of exchanges where electronic FLEX trading and cash-settled FLEX ETF Options will be available. The proposal also promotes inter-market competition by providing another alternative (*i.e.,* exchange markets) to bilateral OTC trading of options with flexible terms. Exchange markets, in contrast with bilateral OTC trading, are centralized, transparent, and have the guarantee of OCC for options traded.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–ISE–2024–12 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–2024–12. 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–2024–12 and should be submitted on or before April 19, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[248]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–06452 Filed 3–28–24; 8:45 am]

BILLING CODE 8011–01–P

[248] 17 CFR 200.30–3(a)(12).

FEDERAL REGISTER

Vol. 89 Friday,
No. 62 March 29, 2024

Part IV

The President

Memorandum of March 12, 2024—Delegation of Authority Under Section 614(a)(1) of the Foreign Assistance Act of 1961

Federal Register
Vol. 89, No. 62
Friday, March 29, 2024

Presidential Documents

Title 3—

The President

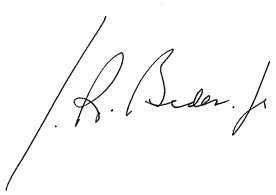
Memorandum of March 12, 2024

Delegation of Authority Under Section 614(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 621 of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to the Secretary of State the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to $126 million in assistance to Ukraine without regard to any provision of law within the purview of section 614(a)(1) of the FAA.

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



THE WHITE HOUSE,
Washington, March 12, 2024

[FR Doc. 2024–06898
Filed 3–28–24; 11:15 am]
Billing code 4710–10–P

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Vol. 89, No. 62

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FEDERAL REGISTER PAGES AND DATE, MARCH

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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