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

The Code of Federal Regulations is sold by the Superintendent of Documents.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2192; Airspace Docket No. 23–AEA–19]

RIN 2120–AA66

Amendment of Class D and Class E Airspace; Wilmington, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: A final rule was published in the **Federal Register** on December 7, 2023, amending Class D airspace and Class E surface airspace for New Castle Airport, Wilmington, DE. This action corrects the Class E legal description for New Castle Airport.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; telephone: (404) 305–5966.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (88 FR 85094, December 7, 2023) for Doc. No. FAA–2023–2192 is updating the Class D and Class E surface airspace for New Castle Airport, Wilmington, DE, by replacing Notice to Airmen with Notice to Air Missions. After publication, the FAA found the Class E surface description was inadvertently transposed. This action corrects this error.

Correction to the Final Rule

Pursuant to the authority delegated to me, the Class E surface airspace amendment for Castle Airport, Wilmington, DE, in Docket No. FAA–2023–2192, as published in the **Federal Register** on December 7, 2023 (88 FR 85094), is corrected as follows:

§ 71.1 [Corrected]

On page 85095, in the second column, correct the E2 description for New Castle Airport to read:

AEA DE E2 Wilmington, DE [Amended]

New Castle Airport, DE
(Lat. 39°40′43″ N, long. 75°36′24″ W)

That airspace extending upward from the surface within a 4.2-mile radius of the New Castle Airport; this Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in College Park, Georgia, on December 13, 2023.

Lisa E. Burrows,

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

[FR Doc. 2023–28135 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1984; Airspace Docket No. 23–ASW–17]

RIN 2120–AA66

Establishment of Class E Airspace; Liberty, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Liberty, TX. The FAA is taking this action to support new public instrument procedures.

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA 2023–1984 in the **Federal Register** on October 18, 2023 (88 FR 71783), proposing to establish the Class E airspace at Liberty, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

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

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace upward from 700 feet above the surface within a 6-mile radius of Liberty Dayton Regional Medical Center, Liberty, TX.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Liberty, TX [Establish]

Liberty Dayton Regional Medical Center, TX
(Lat. 30°4′10″ N, long. 094°47′56″ W)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Liberty Dayton Regional Medical Center.

* * * * *

Issued in Fort Worth, Texas, on December 18, 2023.

Steven Phillips,

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

[FR Doc. 2023–28201 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1006; Airspace Docket No. 22–AWP–65]

RIN 2120–AA66

Modification of Class E Airspace; Minden-Tahoe Airport, Minden, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace extending upward from 700 feet above the surface at Minden-Tahoe Airport, Minden, NV. Additionally, this action makes administrative amendments to update the airport's Class E airspace legal description. These actions support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Keith Adams, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2428.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies Class E airspace to support IFR operations at Minden-Tahoe Airport, Minden, NV.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–1006 in the **Federal Register** on August 10, 2023 (88 FR 54252), followed by an SNPRM (88 FR 72971, October 24, 2023) to modify Class E airspace at Minden-Tahoe Airport, Minden, NV. Interested parties were invited to participate in this rulemaking

effort by submitting written comments on the proposal to the FAA. One comment was received from a local glider pilot requesting a glider area or corridor for glider operations in the airspace. This action already reduces the size of the Class E airspace restoring airspace that is available for glider operations without contacting Air Traffic Control.

Incorporation by Reference

Class E5 airspace areas are published in paragraph 6005 of FAA Order 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by modifying Class E airspace extending upward from 700 feet above the surface at Minden-Tahoe Airport, Minden, NV, by reducing the radius 2.3 miles to be within a 4.2-mile radius of Minden-Tahoe Airport, NV. In addition, the Class E airspace extending upward from 700 feet above the surface is established within 2 miles each side of the 001° bearing from the airport, extending from the 4.2-mile radius to 8.9 miles north of the airport. Furthermore, Class E airspace extending upward from 700 feet above the surface is established within 1.1 miles each side of the 180° bearing from the airport, extending from the 4.2-mile radius to 7 miles south of the airport. This airspace would contain IFR departures to 1,200 feet above the surface and IFR arrivals below 1,500 feet above the surface.

Finally, the administrative portion of the airport's associated legal description is modified to update the geographic coordinates located on line three of the text header to match the FAA's database.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It, therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AWP CA E5 Minden, NV [Amended]

Minden-Tahoe Airport, NV
(Lat. 39°00′02″ N, long. 119°45′04″ W)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the airport, that airspace 2 miles each side of a 001° bearing extending from the 4.2-mile radius to 8.9 miles north of the airport, and that airspace 1.2 miles each side of a 180° bearing extending from the 4.2-mile radius to 7 miles south of the airport.

* * * * *

Issued in Des Moines, Washington, on December 18, 2023.

B.G. Chew,

Group Manager, Western Service Center, Operations Support Group.

[FR Doc. 2023–28228 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2448; Airspace Docket No. 23–AAL–65]

RIN 2120–AA66

Modification of Class E Airspace; Ralph M. Calhoun Memorial Airport, Tanana, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace designated as a surface area and modifies the Class E airspace extending upward from 700 feet above the surface at Ralph M. Calhoun Memorial Airport, Tanana, AK. These modifications correct administrative errors contained within a previous airspace action and support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the Class E airspace legal descriptions to support IFR operations at Ralph M. Calhoun Memorial Airport, Tanana, AK.

History

The FAA published a final rule for Docket No. FAA–2022–1471 in the **Federal Register** (88 FR 63516; September 15, 2023), effective November 30, 2023, which modified the Class E airspace at Ralph M. Calhoun Memorial Airport, AK. Subsequent to the effective date, the FAA discovered that the legal descriptions within the final rule inadvertently used magnetic bearings instead of true bearings. Only true bearings are to be used within regulatory airspace legal descriptions, so the magnetic bearings used within the previous airspace descriptions were erroneously interpreted and charted as if they were true bearings. This action corrects the error by updating the Class E airspace legal descriptions with true bearings.

Incorporation by Reference

Class E2 and E5 airspace areas are published in paragraphs 6002 and 6005, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

The Rule

This action amends 14 CFR part 71 by modifying the legal descriptions of the Class E airspace designated as a surface area and the Class E airspace extending upward from 700 feet above the surface at Ralph M. Calhoun Memorial Airport, AK.

This action is an administrative change to correct errors within the final rule of Docket No. FAA–2022–1471, which erroneously described the airspace using magnetic instead of true bearings; therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

AAL AK E2 Tanana, AK [Amended]

Ralph M. Calhoun Memorial Airport, AK
(Lat. 65°10′28″ N, long. 152°06′29″ W)

That airspace within a 5.1-mile radius of the airport and within 3.6 miles each side of the airport's 233° bearing extending from the 5.1-mile radius to 6.5 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

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

* * * * *

AAL AK E5 Tanana, AK [Amended]

Ralph M. Calhoun Memorial Airport, AK
(Lat. 65°10′28″ N, long. 152°06′29″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the airport and within 1.9 miles each side of the airport's 101° bearing extending from the 6.6-mile radius to 10.5 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within a 73-mile radius of the airport.

* * * * *

Issued in Des Moines, Washington, on December 18, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–28218 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1747; Airspace Docket No. 23–ASW–15]

RIN 2120–AA66

Establishment of Class E Airspace; Uvalde, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays the original effective date in the final rule published on October 18, 2023. This action also republishes the text of that final rule establishing Class E airspace at Uvalde, TX.

DATES: The final rule published October 18, 2023 (88 FR 71735), is delayed until 0901 UTC, March 21, 2024. This action is effective 0901 UTC, December 28, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA 2023–1747 in the **Federal Register** (88 FR 54955; August 14, 2023), proposing to establish the Class E airspace at Uvalde, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. The FAA published a final rule for this docket in the **Federal Register** on October 18, 2023 (88 FR 71735), with an effective date of December 28, 2023. For administrative reasons, the FAA republishes this final rule with a delayed effective date of March 21, 2024.

Incorporation by Reference

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

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace upward from 700 feet above the surface within a 7.5-mile radius of Ox Ranch Airport, Uvalde, TX.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Uvalde, TX [Establish]

Ox Ranch Airport, TX
(Lat. 29°27′41″ N, long. 100°06′51″ W)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Ox Ranch Airport.

* * * * *

Issued in Fort Worth, Texas, on December 18, 2023.

Steven Phillips,

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

[FR Doc. 2023–28199 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1614; Airspace Docket No. 23–ASW–14]

RIN 2120–AA66

Establishment of Class E Airspace; Lajitas, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lajitas, TX. The FAA is taking this action to support new public instrument procedures.

DATES: Effective date 0901 UTC, March 21, 2024. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

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

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

FOR FURTHER INFORMATION CONTACT: Raul Garza Jr., Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5874.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published an NPRM for Docket No. FAA 2023–1614 in the **Federal Register** on October 10, 2023 (88 FR 69893), proposing to establish the Class E airspace at Lajitas, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Incorporation by Reference

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

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

The Rule

This action amends 14 CFR part 71 by establishing Class E airspace upward from 700 feet above the surface within a 3.4-mile radius of Lajitas International Airport, Lajitas, TX.

This action supports new public instrument procedures.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW TX E5 Lajitas, TX [Establish]

Lajitas International Airport, TX
(Lat. 29°16′38″ N, long 103°41′09″ W)

That airspace extending upward from 700 feet above the surface within a 3.4-mile

radius of the airport beginning at the 226° bearing clockwise to the 123° bearing, thence to the point of beginning, within 2 miles north and south of the airport's 076° bearing extending to 10.2 miles east, and within 2.2 miles north and 2.1 miles south of the airport's 265° bearing extending to 7.8 miles west, excluding that airspace within Mexico and the sensitive bird nesting area south and east of the airport.

* * * * *

Issued in Fort Worth, Texas, on December 18, 2023.

Steven Phillips,

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

[FR Doc. 2023–28200 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 205 and 225

[Docket DARS–2023–0001]

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule; technical amendment.

SUMMARY: DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make needed editorial changes.

DATES: Effective December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, Defense Acquisition Regulations System, telephone 703–717–8226.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS to make needed editorial changes to update the references to the Governmentwide point of entry (*https://www.sam.gov*) at DFARS 205.205–70, 205.301, 225.7003–3 and 225.7018–4.

List of Subjects in 48 CFR Parts 205 and 225

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 205 and 225 are amended as follows:

■ 1. The authority citation for 48 CFR parts 205 and 225 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 205—PUBLICIZING CONTRACT ACTIONS

205.205–70 [Amended]

■ 2. Amend section 205.205–70 in paragraph (a) by removing ''*FedBizOpps.gov* (or any successor site)'' and adding ''the Governmentwide point of entry (*https://www.sam.gov*)'' in its place.

205.301 [Amended]

■ 3. Amend section 205.301 in paragraph (S–70)(i) by removing ''GPE'' and adding ''Governmentwide point of entry (*https://www.sam.gov*)'' in its place.

PART 225—FOREIGN ACQUISITION

■ 4. Amend section 225.7003–3 by revising paragraph (b)(5)(ii)(A)(*1*) to read as follows:

225.7003–3 Exceptions.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(A) * * *

(1) Publish a notice in the Governmentwide point of entry (GPE) (*https://www.sam.gov*) of the intent to make the domestic nonavailability determination; and

* * * * *

■ 5. Amend section 225.7018–4 by revising paragraph (b)(1)(i) to read as follows:

225.7018–4 Nonavailability determination.

* * * * *

(b) * * *

(1) * * *

(i) Publish a notice in the GPE (*https://www.sam.gov*) of the intent to make the nonavailability determination; and

* * * * *

[FR Doc. 2023–27940 Filed 12–21–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 211, 212, 245, and 252

[Docket DARS–2023–0017]

RIN 0750–AL14

Defense Federal Acquisition Regulation Supplement: Consolidation of DoD Government Property Clauses (DFARS Case 2020–D029)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to consolidate existing contract clauses for the management and reporting of Government property into a single contract clause. The final rule also replaces references to legacy software applications used for reporting Government property within the DoD enterprise-wide eBusiness platform, and converts existing form-based processes into electronic processes within that platform.

DATES: Effective January 22, 2024.

FOR FURTHER INFORMATION CONTACT: Heather Kitchens, telephone 571–296–7152.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 88 FR 25600 on April 27, 2023, to amend the DFARS to consolidate contract clauses related to management and reporting of Government property, update references to certain forms that are being incorporated into electronic processes, and update references to applications used to report receipt, shipment, transfer, or loss of Government property, or excess Government property. DoD developed the Government-Furnished Property (GFP) module within the Procurement Integrated Enterprise Environment (PIEE) to house the GFP life-cycle reporting requirements to provide end-to-end accountability for all GFP transactions within a single, secure, integrated system, while employing enhancements in technology to reduce burden on the public and the Government. The final rule creates a new consolidated clause at DFARS 252.245–7005, Management and Reporting of Government Property, and removes and reserves the following DFARS clauses:

- 252.211–7007, Reporting of Government-Furnished Property.
- 252.245–7001, Tagging, Labeling, and Marking of Government-furnished Property.
- 252.245–7002, Reporting Loss of Government Property.
- 252.245–7004, Reporting, Reutilization, and Disposal.

Four respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. Public comments from three respondents were unrelated to the rule, and therefore were not considered in the development of the final rule. A discussion of the respondent's comments and the changes made to the rule, as a result of those comments, is provided as follows:

A. Summary of Significant Changes From the Proposed Rule

The term ''physical'' was removed from the requirement to report receipt of GFP. The discussion of workmanship errors was removed from the requirement to report loss of property. The seven-day reporting requirement for loss was removed, thereby defaulting to the timeframe identified in the clause at Federal Acquisition Regulation (FAR) 52.245–1, Government Property. Marking of GFP was clarified by stating it is only applicable to items being repaired by a contractor. Outdated weblinks were revised.

B. Analysis of Public Comments

1. Marking Government-Furnished Property

Comment: The respondent questioned why the proposed rule creates a new requirement for marking equipment.

Response: DFARS clause 252.245–7001 Tagging, Labeling, and Marking of Government-Furnished Property, requires contractors to mark all Government-furnished property that is identified as serially managed and has not been previously marked. The consolidated clause, DFARS 252.245–7005, reduces that requirement to only mark items that are identified as serially managed, where the contractor has access to the technical data and the technical data indicates a marking requirement. To further restrict the application of this requirement, the language has been modified to clarify that the marking requirement only applies to serially managed items being repaired by the contractor, where the contractor has access to the technical data and the technical data requires marking. DFARS clause 252.245–7001 is removed and reserved by this final rule.

Comment: The respondent questioned why the term ''technical drawings'' does not include technical data in other media and stated that the term may be misinterpreted. The respondent expressed concern that the requirement could be misinterpreted as requiring contractors to have technical data packages on all GFP.

Response: The final rule retains the term ''technical drawing'' in paragraph (d) of the new clause at DFARS 252.245–7005. This term reflects the Government's needs and is more limited in scope that other terms such as ''technical data'' or ''technical data package.'' In addition, restricting this requirement to items the contractor is repairing eliminates the opportunity to misinterpret the requirement and to potentially apply it to a broader scope than intended.

Comment: The respondent asked for clarification if an item has been marked but not registered, and if that is a new requirement.

Response: As noted above, the requirement for marking items is an existing requirement. In this final rule, marking has been limited to repairs, where the technical drawing requires marking and registration of the item, and therefore has limited and specific applicability.

2. Misinterpretation of DFARS PGI

Comment: The respondent commented on marking contractor acquired property (CAP) when it is delivered. The comments identified that the statement in DFARS PGI 245.402–71(3)(iii) on the delivery of contractor-acquired property, ''Contractor-acquired property items shall be marked as required by DFARS clause 252.211–7003'', was interpreted to require marking of CAP at delivery.

Response: While DFARS PGI 245.402–71(3)(iii) is not part of DFARS Case 2020–D029, the reference to DFARS clause 252.211–7003, Item Unique Identification and Valuation, is correct. DFARS clause 252.211–7003 is required ''. . . in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for supplies, and for services involving the furnishing of supplies. . . .'' This would include where line items are established for the delivery of CAP. It is the presence of the clause 252.211–7003 that may require the marking of CAP at delivery.

Comment: The respondent inquired why there is no existing requirement to report or mark items shipped-in-place.

Response: DFARS clause 252.211–7003 identifies the criteria for marking and requires reporting the receipt of all Government-furnished property. The clause does not provide an exception or exclusion for property shipped-in-place. If an item requires marking under the clause, the marking is required regardless of the shipping destination.

3. Data Elements

Comment: The respondent stated the rule creates a ''proxy'' National Stock Number where it states one of the data elements is ''(1) National stock number (NSN).'' The respondent asked if an NSN is not available, if it is appropriate to use either the combination of manufacturer's CAGE code and part number, or model number.

Response: DFARS 252.245–7005 includes more specific details of the requirement in FAR 52.245–1 that the contractor's property records contain ''The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition), and other data elements as necessary and required in accordance with the terms and conditions of the contract.'' It is not creating a proxy but indicates a preference for when the National Stock Number is used and identifies the alternatives, when it is not.

Comment: The respondent stated that sometimes serially managed assets are received without serial numbers, and therefore instructions should be provided that the serial number is not mandatory.

Response: The requirement relates to the ability of the contractor's system to capture data when they create records. The requirement is that the contractor records be able to record serial numbers for serially managed items when a unique item identifier (UII) is not present, not that a serial number is mandatory in all cases.

4. Reporting Consumption of Serially Managed Assets

Comment: The respondent inquired as to why reporting of serially managed assets occurs when consumed into higher-level components as a new requirement.

Response: This is not a new requirement as the DFARS clause 252.211–7007 required the reporting of serially managed items when they are ''Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract

as determined by the Government property administrator, including reasonable inventory adjustments.'' DFARS clause 252.245–7005 also requires reporting when serially-managed items of GFP are incorporated into a higher-level component, assembly, or end item.

5. Physical Receipt

Comment: The respondent stated that the term ''physical'' receipt is confusing as receipt may be virtual for property transferred in place or received by a subcontractor on behalf of the contractor.

Response: The term physical has been removed in the final rule.

6. Reporting Transfer of GFP

Comment: The respondent took exception to the requirement to report the transfer of property between contracts, both in the proposed rule and DFARS clause 252.211–7007, as the transfer of property between contracts should be done by the Government through modification.

Response: FAR 45.106 and DFARS PGI 245.103–71 both require a contract modification to transfer the accountability of property between contracts. FAR 45.106 states that once transferred the property becomes Government-furnished property on the new contract. Just as the Government listing the property in the contract does not show receipt of the property, the contract modification does not reflect any physical or virtual updates to the contractor records to reflect the change in accountability. The contractor reporting of transfers at DFARS 252.245–7005(b)(ii) shows that the action required by the modification changing accountability is complete as required to enable accurate accountability of assets. This is not a change from the clause 252.211–7007.

7. Reporting Through Commercial Asset Visibility

Comment: The respondent questioned whether there is duplication between the requirements of the proposed rule (and the DFARS clause 252.211–7007) with requirements to report to the Commercial Asset Visibility System (CAV). CAV is a system used by the Department of the Navy to track assets during the repair process. The recommendation is made that reporting reparables should be removed from this case in favor of new rulemaking.

Response: The respondent's recommendation is not accepted. CAV reporting covers a specific organization's reporting requirements that include reporting not covered by the proposed rule and excludes reporting required on all Government property. FAR clause 52.245–1, at paragraphs (f)(1)(iii) and (vi), identifies that there will be contract specific reporting requirements. Including contract specific reporting requirements, however, does not eliminate DoD's need for standard reporting for all GFP. DoD has created significant efficiencies and reduced the burden on contractors by incorporating multiple legacy tools into the PIEE GFP Module. This rule advances the process of creating standard Government property reporting, and DoD continues to reduce duplicative reporting where practical.

8. Timeframe for Reporting

Comment: The respondent inquired as to whether creating a standard timeframe for reporting is arbitrary and will increase the cost of compliance.

Response: The data reported on Government property is used for numerous purposes by multiple functional communities including finance, logistics, asset managers, and acquisition. These stakeholders were involved in the drafting of the proposed rule. The seven-day standard represents a time that supports their needs for timely information and minimizes the need for contract specific reporting or timeframes. The establishment of a timeframe does not increase the volume of what will be reported or the time it takes to report each action, and therefore should have no impact on the public burden compared to the previous requirement. To minimize the impact on contractors, reporting of loss has been removed from the seven-day reporting requirement so that any action with an established timeframe in FAR clause 52.245–1 will use the existing FAR timeframe.

9. Reporting of Loss Can Be Misinterpreted

Comment: The respondent inquired whether the statement ''Unless otherwise provided for in this contract, this requirement applies to a loss of GFP that results from damage that occurs during work in process (*e.g.,* workmanship errors)'' will be subject to misinterpretation and does not consider long-standing industry processes.

Response: The statement has been removed from the final rule to avoid the possibility of misinterpretation.

10. Economic Burden of Rule

Comment: The respondent disagreed with the statement that DoD does not expect the proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is not creating any new requirements for contractors.

Response: The items identified as new requirements by the respondent in prior comments are requirements in the existing contract clauses. Many of those requirements have been simplified or reduced in the final rule to reduce the impact on contractors. The improvements in automation and the standardization of business processes in this rule are expected to substantially reduce the burden on industry.

11. Use of Hyperlinks

Comment: The respondent expressed concern for the practice of including hyperlinks to documents within policy.

Response: Hyperlinks in the rule were reviewed for accuracy and relevance as follows: (1) *SAM.GOV* as an authoritative Government source; (2) the Procurement Integrated Enterprise Environment (PIEE) to provide access to the GFP Module, the required application for reporting; and (3) the Defense Logistics Standards Manual to provide ready access to supply condition code information. These links are beneficial to contractors who will need to execute the requirements of DFARS clause 252.245–7005.

12. Request for Additional Rulemaking

Comment: The respondent inquired if the Department should provide instruction on reporting of embedded items removed during repair.

Response: Reporting of embedded items during repair is based on the requirements of the contract and the GFP attachment. The request for policy clarification will be reviewed and may be subject to future rulemaking.

C. Other Changes

The final rule adds a clarification that the IUID Registry is to be used for the purpose of verifying whether a marked item had been registered.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This final rule creates a new DFARS contract clause 252.245–7XXX, Management and Reporting of Government Property. DFARS 252.245–7XXX is prescribed at DFARS 245.107(4) for use in solicitations and contracts containing the clause at FAR 52.245–1, Government Property. DFARS 252.245–7XXX is applicable to acquisitions at or below the SAT and to

acquisitions of commercial products and commercial services, when the contract contains the clause at FAR 52.245–1. For DoD, the FAR clause 52.245–1 is required to be used in all purchase orders for repair, maintenance, overhaul, or modification of Government property regardless of the unit acquisition cost of the items to be repaired. These types of purchase orders are likely to fall under the SAT. Not applying this clause to contracts below the SAT and for the acquisition of commercial products, including COTS items, and commercial services would exclude contracts intended to be covered by this rule and undermine the overarching purpose of the rule. Consequently, DoD is applying the rule to contracts at or below the SAT, for the acquisition of commercial products including COTS items, and for the acquisition of commercial services.

IV. Expected Impact of the Rule

The final rule consolidates the requirements for Government property reporting from multiple DFARS contract clauses into a single DFARS clause, reflecting the move of this activity into a single integrated eBusiness platform. This change will improve the ability of contractors and the Government to access and use the data across the Government property life cycle. The technical enhancements of the PIEE GFP Module allow for importing data, which will substantially reduce the reporting burden on DoD contractors while improving the accuracy of information. The PIEE GFP Module further enables DoD to consolidate and electronically share data about Government property in the possession of contractors, thereby improving accountability and auditability.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* and is summarized as follows:

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to consolidate existing contract clauses for the management and reporting of Government property into a single DFARS clause, eliminate some form-based reporting by providing an electronic equivalent, and replace references to legacy software applications used for the reporting of Government property with updated language directing the Government and contractors to utilize the Procurement Integrated Enterprise Environment (PIEE) Government-furnished property (GFP) Module within the DoD enterprise-wide eBusiness platform. DoD developed the GFP module within the PIEE to house the GFP life-cycle reporting requirements, thus providing end-to-end accountability for all GFP transactions within a single, secure, integrated system. Use of the PIEE GFP Module capitalizes on technological enhancements and reduces burden on the public and the Government.

The objective of the rule is to create more efficient instructions for reporting Government property by consolidating reporting requirements for Government property. The rule transitions instructions for property reporting from multiple stand-alone, legacy software applications to the PIEE GFP Module, a fully integrated, DoD enterprise-wide eBusiness platform. Use of the new system functionality will enable DoD to address numerous audit findings and security concerns. The legal basis for the rule is 41 U.S.C. 1303.

No comments were received in response to the initial regulatory flexibility analysis.

This rule will likely affect some small business concerns that are provided Government-furnished property in the performance of their contracts. Data generated from the Federal Procurement Data System for fiscal years 2019 through 2021 indicates that, on average, 2,022 unique small entities per year received awards with Government property that would be subject to this rule.

The rule does not impose any new reporting, recordkeeping, or compliance requirements. The replacement application used for reporting is intended to maintain the status quo regarding the information to be reported and to reduce compliance requirements due to the technological advances in the PIEE GFP Module.

There are no practical alternatives that would reduce burden on small entities and still meet the objective of creating efficiency by consolidating reporting requirements for Government property.

VIII. Paperwork Reduction Act

This rule contains information collection requirements that have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35). This information collection requirement is assigned OMB Control Number 0704–0246, Defense Federal Acquisition Regulation Supplement (DFARS) part 245, Government Property.

List of Subjects in 48 CFR Parts 211, 212, 245, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 211, 212, 245, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 211, 212, 245, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 211—DESCRIBING AGENCY NEEDS

211.274–4 [Removed]

■ 2. Remove section 211.274–4.

211.274–5 and 211.274–6 [Redesignated as 211.274–4 and 211.274–5]

■ 3. Redesignate sections 211.274–5 and 211.274–6 as sections 211.274–4 and 211.274–5, respectively.

211.274–5 [Amended]

■ 4. Amend the newly redesignated section 211.274–5 by—

■ a. Redesignating paragraphs (a)(1), (2), and (3) as paragraphs (a) introductory text and (a)(1) and (2), respectively;
■ b. Removing paragraph (b); and
■ c. Redesignating paragraph (c) as paragraph (b).

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 5. Amend section 212.301—
■ a. In paragraph (f)(v)(A) by removing ''211.274–6(a)(1)'' and adding ''211.274–5(a)'' in its place;
■ b. By removing paragraph (f)(v)(B);
■ c. By redesignating paragraph (f)(v)(C) as paragraph (f)(v)(B);
■ d. In the newly redesignated paragraph (f)(v)(B) by removing ''211.274–6(c)'' and adding ''211.274–5(b)'' in its place;
■ e. Redesignating paragraphs (f)(xix) and (xx) as paragraphs (f)(xx) and (xxi), respectively; and
■ f. Adding a new paragraph (f)(xix).

The addition reads as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial products and commercial services.

* * * * *

(f) * * *

(xix) *Part 245—Government Property.* Use the clause at 252.245–7005, Management and Reporting of Government Property, as prescribed in 245.107(4).

* * * * *

PART 245—GOVERNMENT PROPERTY

■ 6. Amend section 245.102—
■ a. By revising paragraph (2);
■ b. In the paragraph (4) heading and paragraphs (4)(i) and (4)(ii)(A) by removing ''Government-furnished property'' and adding ''GFP'' in their places, respectively; and
■ c. By revising paragraph (5).

The revisions read as follows:

245.102 Policy.

* * * * *

(2) *Government supply sources.* When a contractor will be responsible for preparing requisitioning documentation to acquire Government-furnished property (GFP) from Government supply sources, include in the contract the requirement to prepare the documentation in accordance with DLM 4000.25, Defense Logistics Management Standards (DLMS), Volume 2, Supply Standards and Procedures. Copies are available from the address cited at PGI 251.102.

* * * * *

(5) *Reporting Government property.* It is DoD policy that all Government property be reported in the GFP module or Wide Area WorkFlow module of the Procurement Integrated Enterprise Environment (PIEE) as required by the clause at 252.245–7005, Management and Reporting of Government Property.

■ 7. Revise section 245.103–72 to read as follows:

245.103–72 Government-furnished property attachments to solicitations and awards.

When performance will require the use of GFP, contracting officers shall include the GFP attachment to solicitations and awards. See PGI 245.103–72 for links to the formats and procedures for preparing the GFP attachment.

■ 8. Amend section 245.107 by—
■ a. Removing paragraphs (3), (4), and (6);
■ b. Redesignating paragraph (5) as paragraph (3); and
■ c. Adding a new paragraph (4).

The addition reads as follows:

245.107 Contract clauses.

* * * * *

(4) Use the clause at 252.245–7005, Management and Reporting of Government Property, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that contain the clause at FAR 52.245–1, Government Property.

245.201–70 [Removed]

■ 9. Remove section 245.201–70.

245.201–71 [Redesignated as 245.201–70]

■ 10. Redesignate section 245.201–71 as 245.201–70 and revise the newly designated section to read as follows:

245.201–70 Security classification.

Follow the procedures at PGI 245.201–70 for security classification.

■ 11. Amend section 245.604–1—
■ a. In paragraph (1) by removing ''(formal or informal sales)'';
■ b. By revising the paragraph (2) heading;
■ c. In paragraph (3)(ii) by removing ''252.245–7004, Reporting, Reutilization, and Disposal'' and adding ''252.245–7005, Management and Reporting of Government Property'' in its place;
■ d. In the paragraph (4) heading and paragraphs (4)(i) introductory text and (4)(ii) by removing ''Noncompetitive'' and adding ''Negotiated'' in its place wherever it appears, and in paragraph (4)(iii) introductory text by removing ''noncompetitive'' and adding ''negotiated'' in its place; and
■ e. In paragraph (5) by removing ''Implementation of Trade Security Controls'' and adding ''Implementation of Trade Security Controls (TSCs) for Transfers of DoD Personal Property to Parties Outside DoD Control'' in its place.

The revision reads as follows:

245.604–1 Sales procedures.

* * * * *

(2) *Invitation for bid procedures.*

* * *

* * * * *

SUBPART 245.70 [Removed and Reserved]

■ 12. Remove and reserve subpart 245.70 consisting of sections 245.7001 and 245.7001–1 through 245.7001–6.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.211–7003 [Amended]

■ 13. Amend section 252.211–7003 introductory text by removing ''211.274–6(a)(1)'' and adding ''211.274–5(a)'' in its place.

252.211–7007 [Removed and Reserved]

■ 14. Remove and reserve section 252.211–7007.

252.211–7008 [Amended]

■ 15. Amend section 252.211–7008 introductory text by removing ''211.274–6(c)'' and adding ''211.274–5(b)'' in its place.

252.245–7001 [Removed and Reserved]

■ 16. Remove and reserve section 252.245–7001.

252.245–7002 [Removed and Reserved]

■ 17. Remove and reserve section 252.245–7002.

252.245–7003 [Amended]

■ 18. Amend section 252.245–7003 introductory text by removing ''245.107(5)'' and adding ''245.107(3)'' in its place.

252.245–7004 [Removed and Reserved]

■ 19. Remove and reserve section 252.245–7004.

■ 20. Add section 252.245–7005 to read as follows:

252.245–7005 Management and Reporting of Government Property.

As prescribed in 245.107(4), use the following clause:

Management and Reporting of Government Property (Jan 2024)

(a) *Definitions.* As used in this clause—

As is means that the Government makes no warranty with respect to the serviceability and/or suitability of the Government property for contract performance and that the Government will not pay for any repairs, replacement, and/or refurbishment of the property.

Commercial and Government Entity (CAGE) code means—

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity by unique location; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

Contractor-acquired property, contractor inventory, Government property, Government-furnished property, and *loss of Government property* have the meanings given in the Federal Acquisition Regulation (FAR) 52.245–1, Government Property, clause of this contract.

Demilitarization means the act of eliminating the functional capabilities and inherent military design features from DoD personal property. Methods and degree range from removal and destruction of critical features to total destruction by cutting, tearing, crushing, mangling, shredding, melting, burning, etc.

Export-controlled items has the meaning given in the Defense Federal Acquisition Regulation Supplement (DFARS) 252.225–7048, Export-Controlled Items, clause of this contract.

Ineligible transferee means an individual, an entity, or a country—

(1) Excluded from Federal programs by the General Services Administration as identified in the System for Award Management Exclusions located at *https://sam.gov;*

(2) Delinquent on obligations to the U.S. Government under surplus sales contracts;

(3) Designated by the Department of Defense as ineligible, debarred, or suspended from defense contracts; or

(4) Subject to denial, debarment, or other sanctions under export control laws and related laws and regulations, and orders administered by the Department of State, the Department of Commerce, the Department of Homeland Security, or the Department of the Treasury.

Item unique identification means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

National stock number means a 13-digit stock number used to identify items of supply. It consists of a four-digit Federal Supply Code and a nine-digit National Item Identification Number.

Reparable item means an item, typically in unserviceable condition, furnished to the contractor for maintenance, repair, modification, or overhaul.

Scrap means property that has no value except for its basic material content. For purposes of demilitarization, scrap is defined as recyclable waste and discarded materials derived from items that have been rendered useless beyond repair, rehabilitation, or restoration such that the item's original identity, utility, form, fit, and function have been destroyed. Items can be classified as scrap if processed by cutting, tearing, crushing, mangling, shredding, or melting. Intact or recognizable components and parts are not ''scrap.''

Serially-managed item means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number or unique item identifier.

Serviceable or usable property means property with potential for reutilization or sale as is or with minor repairs or alterations.

Supply condition code means a classification of materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel.

Unique item identifier (UII) means a set of data elements marked on an item that is globally unique and unambiguous. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

(b) *Reporting Government property.* (1) The Contractor shall use the Government Furnished Property (GFP) module of the Procurement Integrated Enterprise Environment (PIEE) to—

(i) Report receipt of GFP;

(ii) Report the transfer of GFP to another DoD contract;

(iii) Report the shipment of GFP to the Government or to a contractor. The GFP module generates the electronic equivalent of the DD Form 1149, DD Form 1348–1, or other required shipping documents;

(iv) Report when serially-managed items of GFP are incorporated into a higher-level component, assembly, or end item;

(v) Report the loss of Government property in accordance with paragraph (f)(1)(vii) of the FAR 52.245–1 clause of this contract;

(vi) Complete the plant clearance inventory schedule in accordance with paragraph (j)(2) of the FAR 52.245–1 clause of this contract, unless disposition instructions are otherwise included in this contract. The GFP module generates the electronic equivalent of the Standard Form (SF) 1428, Inventory Disposal Schedule; and

(vii) Submit a request to buy back or to convert to GFP items of Contractor-acquired property.

(2) Information regarding the GFP module is available in the GFP Module Vendor Guide at *https://dodprocurementtoolbox.com/site-pages/gfp-resources.* Users may also register for access to the GFP module and obtain training on the PIEE home page at *https://piee.eb.mil.*

(3) In complying with paragraphs (b)(1)(i) through (iv) of this clause, the Contractor shall report the updated status of the property to the GFP module within 7 business days of the date the change in status occurs, unless otherwise specified in the contract.

(4) The Contractor shall use Wide Area WorkFlow in accordance with DFARS Appendix F, Material Inspection and Receiving Report, to report the shipment of reparable items after completion of repair, maintenance, modification, or overhaul.

(5) When Government property is in the possession of subcontractors, the Contractor shall ensure that reporting is accomplished using the data elements required in paragraph (c) of this clause.

(c) *Records of Government property.* To facilitate reporting of Government property to the GFP module, the Contractor's property records, in addition to the requirements of paragraph (f)(1)(iii) of the FAR 52.245–1 clause of this contract, shall enable recording of the following data elements:

(1) National stock number (NSN). If an NSN is not available, use either the combination of the manufacturer's CAGE code and part number, or model number.

(2) CAGE code on the accountable Government contract.

(3) Received/sent (shipped) date.

(4) Accountable Government contract number.

(5) Serial number (for serially-managed items that do not have a UII); and

(6) Supply condition code (only required for reporting of reparable items). For information on Federal supply condition codes, see DLM 4000.25, Defense Logistics Management Standards (DLMS), Volume 2, Supply Standards and Procedures, Appendix 2.5 at *https://www.dla.mil/HQ/InformationOperations/DLMS/elibrary/manuals/v2/.*

(d) *Marking, reporting, and UII registration of GFP requirements.* The Contractor—

(1) Shall assign the UII and mark the reparable items identified as serially managed in the GFP attachment to this contract with an item unique identification (IUID) data matrix, when the technical drawing for the item is accessible to the Contractor and includes IUID data matrix location and marking method;

(2) Shall report the UII either before or during shipment of the repaired item;

(3) Is not required to mark items that were previously marked with an IUID data matrix and registered in accordance with DFARS 252.211–7003, Item Unique Identification and Valuation; and

(4) Shall assign a new UII, then mark and register the item, when the conditions of paragraph (d)(1) are met, if an item is found to be marked but not registered in the IUID Registry.

(e) *Disposing of Government property.* (1) The Contractor shall complete the plant clearance inventory schedule using the plant clearance capability of the GFP module of the PIEE to generate an electronic equivalent of the SF 1428, Inventory Disposal Schedule. The plant clearance inventory schedule requires the following:

(i) If known, the applicable Federal supply code (FSC) for all items, except items in scrap condition.

(ii) If known, the manufacturer name for all aircraft components under Federal supply group 16 or 17 and FSCs 2620, 2810, 2915, 2925, 2935, 2945, 2995, 4920, 5821, 5826, 5841, 6340, and 6615.

(iii) The manufacturer name, make, model number, model year, and serial number for all aircraft under FSCs 1510 and 1520.

(2) If the schedules are acceptable, the plant clearance officer will confirm acceptance in the GFP module plant clearance capability, which will transmit a notification to the Contractor. The electronic acceptance is equivalent to the DD Form 1637, Notice of Acceptance of Inventory.

(f) *Demilitarization, mutilation, and destruction.* If demilitarization, mutilation, or destruction of contractor inventory is required, the Contractor shall demilitarize, mutilate, or destroy contractor inventory, in accordance with the terms and conditions of the contract and consistent with Defense Demilitarization Manual, DoD Manual (DoDM) 4160.28–M, edition in effect as of the date of this contract. If the property is available for purchase, the plant clearance officer may authorize the purchaser to demilitarize, mutilate, or destroy as a condition of sale provided the property is not inherently dangerous to public health and safety.

(g) *Classified Contractor inventory.* The Contractor shall dispose of classified contractor inventory in accordance with applicable security guides and regulations or as directed by the Contracting Officer.

(h) *Inherently dangerous Contractor inventory.* Contractor inventory that is dangerous to public health or safety shall not be disposed of unless rendered innocuous or until adequate safeguards are provided.

(i) *Contractor inventory located in foreign countries.* Consistent with contract terms and conditions, property disposition shall be in accordance with foreign and U.S. laws and regulations, including laws and regulations involving export controls, host nation requirements, final governing standards, and government-to-government agreements. The Contractor's responsibility to comply with all applicable laws and regulations regarding export-controlled items exists independent of, and is not established or limited by, the information provided by this clause.

(j) *Disposal of scrap*—(1) *Contractor scrap procedures.* (i) The Contractor shall include, within its property management procedure, a process for the accountability and management of Government-owned scrap. The process shall, at a minimum, provide for the effective and efficient disposition of scrap, including sales to scrap dealers, so as to minimize costs, maximize sales proceeds, and contain the necessary internal controls for mitigating the improper release of non-scrap property.

(ii) The Contractor may commingle Government and contractor-owned scrap and provide routine disposal of scrap, with plant clearance officer concurrence, when determined to be effective and efficient.

(2) *Scrap warranty.* The plant clearance officer may require the Contractor to secure from scrap buyers a DD Form 1639, Scrap Warranty.

(k) *Sale of surplus Contractor inventory*—(1)*Sales procedures.* (i) The Contractor shall conduct sales of contractor inventory (both useable property and scrap) in accordance with the requirements of this contract and plant clearance officer direction. The Contractor shall include in its invitation for bids the sales terms and conditions provided by the plant clearance officer.

(ii) The Contractor may conduct internet-based sales, to include use of a third party.

(iii) If the Contractor wishes to bid on the sale, the Contractor or its employees shall submit bids to the plant clearance officer prior to soliciting bids from other prospective bidders.

(iv) The Contractor shall solicit bids to obtain adequate competition. Negotiated sales are subject to obtaining such competition as is feasible under the circumstances of the negotiated sale.

(v) The Contractor shall solicit bids at least 15 calendar days before bid opening to allow adequate opportunity to inspect the property and prepare bids.

(vi) For large sales, the Contractor may use summary lists of items offered as bid sheets with detailed descriptions attached.

(vii) In addition to providing notice of the proposed sale to prospective bidders, the Contractor may, when the results are expected to justify the additional expense, display a notice of the proposed sale in appropriate public places, *e.g.,* publish a sales notice on the internet, in appropriate trade journals or magazines, and in local newspapers.

(viii) The plant clearance officer or designated Government representative will witness the bid opening. The Contractor shall submit the bid abstract in electronic format to the plant clearance officer within 2 days of bid opening. If the Contractor is unable to submit the bid abstract electronically, the Contractor may submit 2 copies of the abstract manually within 2 days of bid opening. The plant clearance officer will not approve award to any bidder who is an ineligible transferee.

(2) *Required terms and conditions for sales contracts.* The Contractor shall include the following terms and conditions in sales contracts:

(i) For sales contracts or other documents transferring title:

''The Purchaser certifies that the property covered by this contract will be used in *[insert name of country].* In the event of resale or export by the Purchaser of any of the property, the Purchaser agrees to obtain the appropriate U.S. and foreign export or re-export license approval.''

(ii) For sales contracts that require demilitarization, mutilation, or destruction of property:

''The following items *[insert list provided by plant clearance officer]* require demilitarization, mutilation, or destruction by the Purchaser. Additional instructions are provided in accordance with Defense Demilitarization Manual, DoDM 4160.28–M, edition in effect as of the date of this sales contract. A Government representative will certify and verify demilitarization of items. Prepare demilitarization certificates in accordance with DoDM 4160.28, Volume 2, section 4.5, DEMIL Certificate (see figure 2, Example DEMIL Certificate).''

(iii) Removal and title transfer:

''Property requiring demilitarization shall not be removed, and title shall not pass to the Purchaser, until demilitarization has been accomplished and verified by a Government representative.''

(iv) Assumption of cost incident to demilitarization:

''The Purchaser agrees to assume all costs incident to the demilitarization and to restore the working area to its present condition after removing the demilitarized property.''

(v) Failure to demilitarize:

''If the Purchaser fails to demilitarize, mutilate, or destroy the property as specified in the sales contract, the Contractor may, upon giving 10 days written notice to the Purchaser—

(A) Repossess, demilitarize, and return the property to the Purchaser, in which case the Purchaser hereby agrees to pay to the Contractor, prior to the return of the property, all costs incurred by the Contractor in repossessing, demilitarizing, and returning the property;

(B) Repossess, demilitarize, and resell the property, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the purchase price and refund the balance of the purchase price, if any, to the Purchaser. In the event the costs exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor; or

(C) Repossess and resell the property under similar terms and conditions, and charge the defaulting Purchaser with all costs incurred by the Contractor. The Contractor shall deduct these costs from the original purchase price and refund the balance of the purchase price, if any, to the defaulting Purchaser. Should the excess costs to the Contractor exceed the purchase price, the defaulting Purchaser hereby agrees to pay these costs to the Contractor.''

(l) *Restrictions on purchase or retention of Contractor inventory.* The Contractor may not knowingly sell the inventory to any person or that person's agent, employee, or household member if that person—

(1) Is a civilian employee of DoD or the U.S. Coast Guard;

(2) Is a member of the Armed Forces of the United States, including the U.S. Coast Guard; or

(3) Has any functional or supervisory responsibilities for or within DoD's property disposal, disposition, or plant clearance programs or for the disposal of contractor inventory.

(m) *Proceeds from sales of surplus property.* Unless otherwise provided in the contract, the proceeds of any sale, purchase, or retention shall be—

(1) Forwarded to the Contracting Officer;

(2) Credited to the Government as part of the settlement agreement pursuant to the termination of the contract;

(3) Credited to the price or cost of the contract; or

(4) Applied as otherwise directed by the Contracting Officer.

(End of clause)

[FR Doc. 2023–27939 Filed 12–21–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221223–0282; RTID 0648–XD599]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfers From NC and VA to NJ

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

ACTION: Notification of quota transfers.

SUMMARY: NMFS announces that the State of North Carolina and the Commonwealth of Virginia are transferring a portion of their 2023 commercial summer flounder quotas to the State of New Jersey. These adjustments to the 2023 fishing year quota are necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2023 commercial quotas for North Carolina, Virginia, and New Jersey.

DATES: Effective December 19, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2023 allocations were published on January 3, 2023 (88 FR 11).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (FMP), as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: the transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfers approved in this notification.

North Carolina is transferring 110,000 pounds (lb; 49,895 kilograms (kg)) and Virginia is transferring 50,000 lb (22,680 kg) to New Jersey through mutual agreements between the states. These transfers were requested to ensure New Jersey would not exceed its 2023 quota. The revised summer flounder quotas for 2023 are North Carolina, 3,147,764 lb (1,427,802 kg), Virginia, 2,738,223 lb (1,242,037 kg), and New Jersey, 2,470,420 (1,120,564 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: December 18, 2023.

Everett Wayne Baxter,

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

[FR Doc. 2023–28225 Filed 12–19–23; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 88, No. 245
Friday, December 22, 2023

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2397; Project Identifier MCAI–2023–00601–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by the discovery that existing maintenance tasks do not detect the potential failure of the passenger door detent mechanism because there is no procedure for inspecting the passenger door locking mechanism. This proposed AD would require revising the maintenance or inspection program, as applicable, to require use of a certain aircraft maintenance manual (AMM) task during accomplishment of a specified maintenance check. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 5, 2024.

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

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2397; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2397; Project Identifier MCAI–2023–00601–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

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

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2023–25, dated April 13, 2023 (Transport Canada AD CF–2023–25) (also referred to after this as the MCAI), to correct an unsafe condition on certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The MCAI states time limited maintenance check (TLMC) item 52–11–00–201, ''Passenger Door Mechanism Functional Test,'' does not detect potential failure of the passenger door detent mechanism. Associated aircraft maintenance manual (AMM) task 52–11–00–720–801, ''Passenger Door Mechanism Functional Test,'' does not provide a procedure for inspecting the passenger door locking mechanism.

The FAA is proposing this AD to address potential failures of the uninspected detents (external handle detent and torque tube detent) in combination with a failure of the tension pot spring assembly. The unsafe condition, if not addressed, could result in the main passenger door opening during unpressurized flight.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2397.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following documents.

- Task 52–11–00–720–801, Bombardier Global Express Aircraft Maintenance Manual, Part Two—Publication No. BD–700 AMM, Revision 97, dated March 30, 2023. (For obtaining the task for Bombardier Global Express AMM, Part Two—Publication No. BD–700 AMM, use Document Identification No. GL 700 AMM.)
- Task 52–11–00–720–801, Bombardier Global 5000 Aircraft Maintenance Manual, Part Two—Publication No. BD–700 AMM, Revision 78, dated March 30, 2023. (For obtaining the task for Bombardier Global 5000 AMM, Part Two—Publication No. BD–700 AMM, use Document Identification No. GL 5000 AMM.)
- Task 52–11–00–720–801, Bombardier Global 5000 Aircraft Maintenance Manual—Part Two—Publication No. GL 5000 GVFD AMM, Revision 45, dated March 30, 2023.
- Task 52–11–00–720–801, Bombardier Global 5500 Aircraft Maintenance Manual—Part Two—Publication No. GL 5500 AMM, Revision 14, dated March 30, 2023.
- Task 52–11–00–720–801, Bombardier Global 6000 Aircraft Maintenance Manual—Part Two—Publication No. GL 6000 AMM, Revision 46, dated March 30, 2023.
- Task 52–11–00–720–801, Bombardier Global 6500 Aircraft Maintenance Manual—Part Two—Publication No. GL 6500 AMM, Revision 15, dated March 30, 2023.
- Task 52–11–00–720–801, Bombardier Global Express XRS Aircraft Maintenance Manual—Part Two—Publication No. BD–700 XRS AMM, Revision 75, dated March 30, 2023. (For obtaining the task for Bombardier Global Express XRS AMM, Part Two—Publication No. BD–700 XRS AMM, use Document Identification No. GL XRS AMM.)

This service information specifies new inspection instructions for the passenger door detent mechanisms.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require the use of AMM Task 52–11–00–720–801, dated August 16, 2022, during accomplishment of TLMC Item 52–11–00–201. It also prohibits using AMM Task 52–11–00–720–801, dated 19 May 2022 or earlier.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 482 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2023–2397; Project Identifier MCAI–2023–00601–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 5, 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 (S/Ns) 9002 through 60065 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by the discovery that existing maintenance tasks do not detect the potential failure of the passenger door detent mechanism because there is no procedure for inspecting the passenger door locking mechanism. The FAA is proposing

this AD to address potential failures of the uninspected detents (external handle detent and torque tube detent) in combination with a failure of the tension pot spring assembly. The unsafe condition, if not addressed, could result in the main passenger door opening during unpressurized flight.

(f) Compliance

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

(g) Maintenance or Inspection Program Task Restrictions

Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to use Aircraft Maintenance Manual (AMM) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' as specified in the applicable AMMs identified in figure 1 to paragraph (g) of this AD, when performing time limited maintenance check item 52–11–00–201.

FIGURE 1 TO PARAGRAPH (g)—BOMBARDIER AMM

Airplane model	Bombardier AMM
BD–700–1A10	Bombardier Global Express Aircraft Maintenance Manual—Part Two, Publication No. BD–700 AMM, Revision 97, dated March 30, 2023.
BD–700–1A11	Bombardier Global 5000 Aircraft Maintenance Manual—Part Two, Publication No. BD–700 AMM, Revision 78, dated March 30, 2023.
BD–700–1A11	Bombardier Global 5000 Aircraft Maintenance Manual—Part Two, Publication No. GL 5000 GVFD AMM, Revision 45, dated March 30, 2023.
BD–700–1A11	Bombardier Global 5500 Aircraft Maintenance Manual—Part Two, Publication No. GL 5500 AMM, Revision 14, dated March 30, 2023.
BD–700–1A10	Bombardier Global 6000 Aircraft Maintenance Manual—Part Two, Publication No. GL 6000 AMM, Revision 46, dated March 30, 2023.
BD–700–1A10	Bombardier Global 6500 Aircraft Maintenance Manual—Part Two, Publication No. GL 6500 AMM, Revision 15, dated March 30, 2023.
BD–700–1A10	Bombardier Global Express XRS Aircraft Maintenance Manual—Part Two, Publication No. BD–700 XRS AMM, Revision 75, dated March 30, 2023.

(h) AMM Revision Prohibition

After revising the maintenance or inspection program as required by paragraph (g) of this AD, it is prohibited to use AMM Task 52–11–00–720–801, dated May 19, 2022, or earlier.

(i) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2023–25, dated April 13, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–2397.

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

(k) Material Incorporated by Reference

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

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

(i) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' of Part 2, Bombardier Global 5000 Aircraft Maintenance Manual, Part Two—Publication No. BD–700 AMM, Revision 78, dated March 30, 2023. (For obtaining the task for Bombardier Global 5000 AMM, Part Two—Publication No. BD–700 AMM, use Document Identification No. GL 5000 AMM.)

(ii) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' of Part 2, Bombardier Global 5000 Aircraft Maintenance Manual—Part Two—Publication No. GL 5000 GVFD AMM, Revision 45, dated March 30, 2023.

(iii) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' of Part 2, Bombardier Global 5500 Aircraft Maintenance Manual—Part Two—Publication No. GL 5500 AMM, Revision 14, dated March 30, 2023.

(iv) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' of Part 2, Bombardier Global 6000 Aircraft Maintenance Manual—Part Two—Publication No. GL 6000 AMM, Revision 46, dated March 30, 2023.

(v) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' of Part 2, Bombardier Global 6500 Aircraft Maintenance Manual—Part Two—Publication No. GL 6500 AMM, Revision 15, dated March 30, 2023.

(vi) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' of Part 2, Bombardier Global Express Aircraft Maintenance Manual, Part Two—Publication No. BD–700 AMM, Revision 97, dated March 30, 2023. (For obtaining the task for Bombardier Global Express AMM, Part Two—Publication No. BD–700 AMM, use Document Identification No. GL 700 AMM.)

(vii) Task 52–11–00–720–801, ''Functional Test of the Passenger Door Mechanism,'' of Part 2, Bombardier Global Express XRS Aircraft Maintenance Manual—Part Two—Publication No. BD–700 XRS AMM, Revision 75, dated March 30, 2023. (For obtaining the task for Bombardier Global Express XRS AMM, Part Two—Publication No. BD–700 XRS AMM, use Document Identification No. GL XRS AMM.)

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

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

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

Issued on December 14, 2023.

Victor Wicklund,

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

[FR Doc. 2023–28003 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2398; Project Identifier AD–2023–00423–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by a report indicating that the oxygen supply tubing can become kinked when certain passenger service unit (PSU) oxygen panel assemblies are installed in the forward-most position of a center stow bin. This proposed AD would require a one-time inspection of the affected PSU oxygen panel assemblies and applicable on-condition actions. This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 5, 2024.

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

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

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–2398; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2023–2398.

FOR FURTHER INFORMATION CONTACT: Samuel Nalbandian, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone 206–231–3993; email: *Samuel.K.Nalbandian@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2398; Project Identifier AD–2023–00423–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Samuel Nalbandian, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3993; email: *Samuel.K.Nalbandian@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that a pinching condition may exist between the oxygen supply tube on the PSU oxygen panel and the stowage bin end blade on affected PSU oxygen panel assemblies and may result in the inability of the oxygen system to provide oxygen to the airplane's passengers in a cabin depressurization event. The PSU reverse bottle oxygen panel assembly drawing restructure introduced a conflict between lower- and upper-level assembly drawings. After the drawing restructure, the upper-level assembly drawings had corrected routing design intent, but the lower-level assembly drawings had incorrect routing definition. Installation of a PSU reverse bottle oxygen panel assembly with incorrect routing can lead to a condition where the oxygen supply tubing becomes kinked in the forward-most position of a center stowage bin. Incorrect routing of the tubing, if not addressed, could result in kinked tubing and consequent passengers' injury because of a lack of supplemental oxygen during a cabin depressurization event.

FAA's Determination

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

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletins B787–81205–SB250277–00 RB and B787–81205–SB250278–00 RB, both Issue 001, both dated February 15, 2023. This service information specifies procedures for verifying the identification label of the

oxygen panel assembly, doing a general visual inspection of the oxygen supply tube and initiator cable assembly for correct installation, and doing a general visual inspection for damage of the oxygen supply tubing. The service information also specifies procedures for on-condition actions: replacing the oxygen supply tubing, re-routing of the oxygen supply tubing and initiator cable assembly, and re-identifying equipment. These documents are distinct since they apply to different airplanes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES.**

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Difference Between this Proposed AD and the Service Information,'' and except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also prohibit the installation of affected parts. For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2023–2398.

Difference Between This Proposed AD and the Service Information

The effectivity of Boeing Alert Requirements Bulletins B787–81205–SB250277–00 RB and B787–81205–SB250278–00 RB, both Issue 001, both dated February 15, 2023, is limited to Model 787–8, 787–9, and 787–10 airplanes having certain line numbers. However, the applicability of this proposed AD includes all Model 787–8, 787–9, and 787–10 airplanes. Because the affected PSU oxygen panel assemblies are rotatable parts, the FAA has determined that these parts could later be installed on airplanes that were initially delivered with acceptable parts, thereby subjecting those airplanes to the unsafe condition. Therefore, Model 787–8, –9, and –10 airplanes not listed in the service information would be subject only to the parts installation prohibition of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 19 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections and rerouting	Up to 25 work-hours × $85 per hour = Up to $2,125.	$0	Up to $2,125	Up to $40,375.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of oxygen supply tube	Up to 9 work-hours × $85 per hour = Up to $765	$30	$795

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2023–2398; Project Identifier AD–2023–00423–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by February 5, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report indicating that the oxygen supply tubing can become kinked when certain passenger service unit (PSU) oxygen panel assemblies are installed in the forward-most position of a center stow bin. The FAA is issuing this AD to address incorrect installation of the oxygen supply tubing in the PSU oxygen panel assemblies. The unsafe condition, if not addressed, could result in kinked tubing and consequent injury of the airplane's passengers because of a lack of supplemental oxygen during a cabin depressurization event.

(f) Compliance

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

(g) Inspection of the Affected Parts

For airplanes identified in Boeing Alert Requirements Bulletins B787–81205–SB250277–00 RB, Issue 001, dated February 15, 2023, and B787–81205–SB250278–00 RB, Issue 001, dated February 15, 2023: Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletins B787–81205–SB250277–00 RB, Issue 001, dated February 15, 2023, or B787–81205–SB250278–00 RB, Issue 001, dated February 15, 2023, as applicable, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB250277–00 RB, Issue 001, dated February 15, 2023, or B787–81205–SB250278–00 RB, Issue 001, dated February 15, 2023, as applicable.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250277–00 RB, Issue 001, dated February 15, 2023, use the phrase ''the Issue 001 date of the Requirements Bulletin B787–81205–SB250277–00 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB250278–00 RB, Issue 001, dated February 15, 2023, use the phrase ''the Issue 001 date of the Requirements Bulletin B787–81205–SB250278–00 RB'' this AD requires using ''the effective date of this AD.''

(3) Where Boeing Alert Requirements Bulletin B787–81205–SB250277–00 RB, Issue 001, dated February 15, 2023, and Boeing Alert Requirements Bulletin B787–81205–SB250278–00 RB, Issue 001, dated February 15, 2023, specify that the corrective actions for Conditions 2, 2.2, 2.2.2, and 3 must be done before further flight, this AD requires that the corrective actions for those conditions must be done within 24 months after the effective date of this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install, on any airplane, a PSU oxygen panel assembly part number 4572105–XXX–0D0, or 4572175–XXX–0D0, or 4572185–XXX–0D0, where the ''XXX'' in the affected PSU oxygen panel assembly part numbers is any combination of numerals, that was manufactured in May 2020 or before, and does not have a supplier service bulletin modification label marked with an applicable supplier service bulletin number and date.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, AIR–520, Continued Operational Safety Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(k) Related Information

For more information about this AD, contact Samuel Nalbandian, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3993; email: *Samuel.K.Nalbandian@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB250277–00 RB, Issue 001, dated February 15, 2023.

(ii) Boeing Alert Requirements Bulletin B787–81205–SB250278–00 RB, Issue 001, dated February 15, 2023.

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

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

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

Issued on December 18, 2023.

Victor Wicklund,

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

[FR Doc. 2023–28153 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1758; Airspace Docket No. 23–AWP–44]

RIN 2120–AA66

Modification of Class E Airspace; Mammoth Lakes Airport, Mammoth Lakes, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class E airspace designated as a surface area, modify the Class E airspace extending upward from 700 feet above the surface, and remove the Class E airspace extending upward from 1,200 feet above the surface at Mammoth Lakes Airport, Mammoth Lakes, CA. Additionally, this action proposes administrative amendments to update the airport's existing Class E

airspace legal descriptions. These actions would support the safety and management of instrument flight rules (IFR) operations at the airport.

DATES: Comments must be received on or before February 5, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1758 and Airspace Docket No. 23–AWP–44 using any of the following methods:

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

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

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Drasin, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2248.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class E2 and E5 airspace designations are published in paragraph 6002 and 6005 respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would modify the Class E airspace designated as a surface area, modify the Class E airspace extending upward from 700 feet above the surface, and remove Class E airspace extending upward from 1,200 feet above the surface at Mammoth Lakes Airport, Mammoth Lakes, CA.

The Class E surface area extension east of the airport centered on the 099° bearing should be recentered on the airport's 096° bearing instead. Additionally, the width should be reduced from 1.8 miles to 1 mile either side of the bearing, and the extension length should be reduced from 5.6 miles to 4.6 miles east of the airport. This would better contain arriving IFR operations between the surface and 1,000 feet above the surface while executing the Area Navigation (RNAV) (Global Positioning System [GPS]) Runway (RWY) 27 approach.

The existing Class E airspace extending from 700 feet above the surface should be extended eastward to include that airspace within 2.6 miles either side of the airport's 091° bearing extending from the 6.6-mile radius to 13.1 miles east of the airport. This would contain arriving IFR operations below 1,500 feet above the surface while executing the RNAV (GPS) RWY 27 approach.

The existing Class E airspace extending upward from 1,200 feet above

the surface should be removed, as the area is already within the Coaldale Class E en route domestic airspace area.

Finally, the FAA proposes administrative modifications to the airport's legal descriptions. The text header of both legal descriptions should be changed to match the new airport name, Mammoth Yosemite Airport. The geographic coordinates located in the text header of both legal descriptions should be updated to match the FAA's database. The text of the Class E airspace extending upward from the surface should be updated to show the new airport name and replace the outdated use of the phrases ''Notice to Airmen'' and ''Airport/Facility Directory.'' These phrases should be amended to read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, to align with the FAA's current nomenclature. The text of the Class E airspace extending upward from 700 feet above the surface should be updated to show the new airport name.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

AWP CA E2 Mammoth Lakes, CA [Amended]

Mammoth Yosemite Airport, CA
(Lat. 37°37′27″ N, long. 118°50′20″ W)

That airspace within a 4.1-mile radius of the airport and within 1 mile either side of the 096° bearing from the airport, extending from the 4.1-mile radius to 4.6 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

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

* * * * *

AWP CA E5 Mammoth Lakes, CA [Amended]

Mammoth Yosemite Airport, CA
(Lat. 37°37′27″ N, long. 118°50′20″ W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the airport and within 2.6 miles either side of the airport's 091° bearing, extending from the 6.6-mile radius to 13.1 miles east.

* * * * *

Issued in Des Moines, Washington, on December 18, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–28227 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–1660; Airspace Docket No. 23–AWP–37]

RIN 2120–AA66

Establishment of Class D Airspace and Modification of Class E Airspace; McClellan Airfield, Sacramento, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class D airspace extending upward from the surface up to and including 2,600 feet at McClellan Airfield, Sacramento, CA. Additionally, this action proposes administrative modifications to update the airport's Class E airspace legal description. These actions would support the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Comments must be received on or before February 5, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–1660 and Airspace Docket No. 23–AWP–37 using any of the following methods:

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

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

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

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

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

FAA Order JO 7400.11H, Airspace Designations and Reporting Points, and subsequent amendments can be viewed

online at *www.faa.gov/air_traffic/publications/.* You may also contact the Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would establish Class D airspace and modify Class E airspace at McClellan Airfield, Sacramento, CA, to support IFR and VFR operations at the airport.

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

The Class D and Class E2 airspace designations are published in paragraphs 5000 and 6002, respectively, of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

Background

An FAA Contract Tower is being established at the airport and the FAA is proposing to establish Class D airspace and modify Class E airspace to support and coincide with the tower's activation.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish Class D airspace and modify the Class E airspace designated as a surface area at McClellan Airfield, Sacramento, CA.

The proposed Class D airspace extending from the surface up to and including 2,500 feet above the surface at McClellan Airfield would contain IFR arrival operations while between the surface and 1,000 feet above the surface, and IFR departure operations while between the surface and the base of adjacent controlled airspace. The proposed airspace is centered on the McClellan Airfield reference point and is within a 4.5-nautical mile radius of the airport.

Finally, the FAA proposes administrative modifications to the airport's Class E legal description. The Class E legal description should be modified to correct the Sacramento Class C airspace exclusionary language and add exclusionary language for the Mather Airport Class D surface area. As such, the text header, line 3, should include reference to Sacramento International Airport and Sacramento Mather Airport, and their associated geographic coordinates.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial, and unlikely to result in adverse or negative comments. It therefore: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D Sacramento, CA

McClellan Airfield, CA
(Lat. 38°40′04″ N, long. 121°24′02″ W)
Sacramento International Airport
(Lat. 38°41′44″ N, long. 121°35′27″ W)
Sacramento Mather Airport
(Lat. 38°33′19″ N, long. 121°17′50″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.5-mile radius of McClellan Airfield, excluding that airspace within the Sacramento International Airport Class C Airspace Area and that airspace within the Sacramento Mather Airport Class D Surface Area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6002 Class E Airspace Designated as a Surface Areas.

* * * * *

AWP CA E2 Sacramento, CA

McClellan Airfield, CA
(Lat. 38°40′04″ N, long. 121°24′02″ W)
Sacramento International Airport
(Lat. 38°41′44″ N, long. 121°35′27″ W)
Sacramento Mather Airport
(Lat. 38°33′19″ N, long. 121°17′50″ W)

That airspace extending upward from the surface within a 4.5-mile radius of McClellan Airfield excluding that airspace within the Sacramento International Airport Class C Airspace Area and that airspace within the Sacramento Mather Airport Class D Surface Area.

* * * * *

Issued in Des Moines, Washington, on December 18, 2023.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2023–28226 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2362; Airspace Docket No. 23–AEA–25]

RIN 2120–AA66

Amendment of Class D and Class E Airspace and Revocation of Class E Airspace; Clarksburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class D and Class E airspace and revoke Class E airspace at Clarksburg, WV. The FAA is proposing this action as the result of a biennial airspace review. This action will bring the airspace into compliance with FAA orders to support instrument flight rule (IFR) operations.

DATES: Comments must be received on or before February 5, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2362 and Airspace Docket No. 23–AEA–25 using any of the following methods:

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

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

Incorporation by Reference

Class D and E airspace is published in paragraphs 5000, 6004, and 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, dated August 11, 2023, and effective September 15, 2023. These updates would be published subsequently in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing to amend 14 CFR part 71 by:

Modifying the Class D airspace extending upward from the surface to 3,700 feet MSL to within a 7.1-mile (increased from 4.1-mile) radius of the North Central West Virginia Airport, Clarksburg, WV, excluding that airspace within a 1-mile radius of Wade F. Maley Field, Shinnston, WV; and updating the outdated terms ''Notice to Airmen'' and ''Airport Facility Directory'' to ''Notice to Air Missions'' and ''Chart Supplement'';

Revoking the Class E airspace designated as an extension to Class D airspace at North Central West Virginia Airport as it is no longer required;

And modifying the Class E airspace extending upward from 700 feet above the surface to within a 9.6-mile (increased from a 8.9-mile) radius of North Central West Virginia Airport.

This FAA is proposing this action as the result of a biennial airspace review conducted in accordance with FAA orders, to bring the airspace into compliance with current FAA orders, and to support IFR operations at this airport.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AEA WV D Clarksburg, WV [Amended]

North Central West Virginia Airport, WV
(Lat. 39°17′52″ N, long. 80°13′39″ W)
Wade F. Maley Field, WV
(Lat. 39°24′22″ N, long. 80°16′37″ W)

That airspace extending upward from the surface up to and including 3,700 feet within a 7.1-mile radius of North Central West Virginia Airport excluding that airspace within a 1-mile radius of Wade F. Maley Field. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Air Missions. The effective dates and times will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designates as an Extension to a Class D or Class E Surface Area.

* * * * *

AEA WV E4 Clarksburg, WV [Remove]

* * * * *

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

* * * * *

AEA WV E5 Clarksburg, WV [Amended]

North Central West Virginia Airport, WV
(Lat. 39°17′52″ N, long. 80°13′39″ W)

That airspace extending upward from 700 feet above the surface within an 9.6-mile radius of North Central West Virginia Airport.

* * * * *

Issued in Fort Worth, Texas, on December 19, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–28237 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2503; Airspace Docket No. 20–AGL–14]

RIN 2120–AA66

Establishment of Class E Airspace; Desmet, SD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

DATES: Comments must be received on or before February 5, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2023–2503 and Airspace Docket No. 20–AGL–14 using any of the following methods:

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

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

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

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

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

Availability of Rulemaking Documents

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

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

Incorporation by Reference

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

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

The Proposal

The FAA is proposing to amend 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface to within a 7-mile radius of Wilder Airport, Desmot, SD.

The FAA is proposing this action due to the development of new public

instrument procedures and to support IFR operations.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AGL SD E5 Desmet, SD [Establish]

Wilder Airport, SD

(Lat. 44°25′59″ N, long. 97°33′29″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Wilder Airport.

* * * * *

Issued in Fort Worth, Texas, on December 19, 2023.

Martin A. Skinner,

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

[FR Doc. 2023–28238 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2019–0392; FRL–5949.1–02–OAR]

RIN 2060–AV70

National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing Amendments: Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On November 16, 2023, the U.S. Environmental Protection Agency (EPA) proposed a rule titled ''National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing Amendments.'' The EPA is extending the comment period on this proposed rule that currently closes on January 2, 2024, by 13 days. The comment period will now remain open until January 15, 2024, to allow additional time for stakeholders and Tribal Nations to review and comment on the proposal.

DATES: The public comment period for the proposed rule published in the **Federal Register** (FR) on November 16, 2023 (88 FR 78692), originally ending January 2, 2024, is being extended by 13 days. Written comments must be received on or before January 15, 2024.

ADDRESSES: Submit comments, identified by Docket ID No. EPA–HQ–OAR–2019–0392, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2019–0392 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2019–0392.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2019–0392, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions. All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact U.S. EPA, Attn: Mr. Korbin Smith, Sector Policies and Programs Division, Mail Drop: D243–04, 109 T.W. Alexander Drive, P.O. Box 12055, RTP, North Carolina 27711; telephone number: (919) 541–2416; and email address: *smith.korbin@epa.gov.*

SUPPLEMENTARY INFORMATION:

Rationale. Based on consideration of a request letter received from an industry representative (U.S. Tire Manufacturers Association), which is available in the docket for this proposed rule, the EPA is extending the public comment period for an additional 13 days. Therefore, the public comment period will end on January 15, 2024.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2019–0392. All documents in the docket are listed in *https://www.regulations.gov/.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) 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. With the exception of such material, publicly available docket materials are available electronically in *Regulations.gov.*

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2019–0392. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information

claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit electronically to *https://www.regulations.gov/* any information that you consider to be CBI or other information whose disclosure is restricted by statute. This type of information should be submitted as discussed below.

The EPA may publish any comment received to its public docket. 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.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/.* Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, note the docket ID, mark the outside of the digital storage media as CBI, and identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI and note the docket ID. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2.

Our preferred method to receive CBI is for it to be transmitted electronically using email attachments, File Transfer Protocol, or other online file sharing services (*e.g.,* Dropbox, OneDrive, Google Drive). Electronic submissions must be transmitted directly to the Office of Air Quality Planning and Standards (OAQPS) CBI Office at the email address *oaqpscbi@epa.gov,* and as described earlier in this preamble, should include clear CBI markings and note the docket ID. If assistance is needed with submitting large electronic files that exceed the file size limit for email attachments, and if you do not have your own file sharing service, please email *oaqpscbi@epa.gov* to request a file transfer link. If sending CBI information through the postal service, please send it to the following address: U.S. Environmental Protection Agency, Attention Docket ID No. EPA–HQ–OAR–2019–0392, OAQPS Document Control Officer (C404–02), OAQPS, 109 T.W. Alexander Drive, P.O. Box 12055, Research Triangle Park, North Carolina 27711. The mailed CBI material should be double wrapped and clearly marked. Any CBI markings should not show through the outer envelope.

Penny Lassiter,

Director, Sector Policy and Programs Division.

[FR Doc. 2023–28252 Filed 12–21–23; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 215, 234, and 252

[Docket DARS–2023–0047]

RIN 0750–AL83

Defense Federal Acquisition Regulation Supplement: Data Requirements for Commercial Products for Major Weapon Systems (DFARS Case 2023–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 that clarifies the data to be provided for certain procurements related to major weapon systems.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before February 20, 2024, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2023–D010, using either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Search for DFARS Case 2023–D010. Select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2023–D010'' on any attached documents.
- *Email: osd.dfars@mail.mil.* Include DFARS Case 2023–D010 in the subject line of the message.

Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette Snyder, 703–508–7524.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 803 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023 (Pub. L. 117–263). Section 803 modifies 10 U.S.C. 3455 to

provide additional guidance regarding data requirements to support a determination of commerciality and price reasonableness for certain procurements associated with major weapon systems.

II. Discussion and Analysis

This rule proposes to modify DFARS 234.7002 to implement section 803 of the James M. Inhofe NDAA for FY 2023. Section 803 clarifies the data an offeror is required to provide when a subsystem of major weapon system or a component or spare part for a major weapon system or subsystem is proposed as a commercial product. This proposed rule also clarifies the data to be provided to the contracting officer to determine price reasonableness for such actions. This proposed rule affords the offeror the flexibility to either submit the data or provide the contracting officer access to the data and to redact certain customer information.

This proposed rule modifies the solicitation provision at DFARS 252.215–7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data, to align with the revisions made to DFARS 234.7002. This proposed rule also makes conforming changes to DFARS parts 212 and 215 to add cross-references to DFARS 234.7002.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT), for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), and for Commercial Services

This proposed rule amends the provision at DFARS 252.215–7010, Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data. However, this proposed rule does not impose any new requirements on contracts at or below the SAT, for commercial products including COTS items, or for commercial services. The provision will continue to apply to acquisitions at or below the SAT, to acquisitions of commercial products, excluding COTS items, and to acquisitions of commercial services.

IV. Expected Impact of the Rule

DoD does not expect this proposed rule, when finalized, to have a significant impact on offerors because it merely clarifies the data an offeror is required to provide to the contracting officer when a subsystem of a major weapon system or a component or spare part of a major weapon system or subsystem is proposed as a commercial product. Specifically, this proposed rule clarifies the data an offeror is required to provide to support the contracting officer's determination of price reasonableness and commerciality. This proposed rule will also allow an offeror to give the contracting officer access to the data, in lieu of submitting it, and to redact certain customer information from such data.

This proposed rule is expected to result in the timely submission of data, which may decrease the time it takes for a contracting officer to determine a product to be commercial, to determine price reasonableness, and to award the contract.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, as amended.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule, when finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule merely clarifies the data to be provided for certain procurements related to major weapon systems. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This proposed rule is necessary to implement section 803 of the James M. Inhofe National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2023. Section 803 clarifies the data an offeror is required to provide when a subsystem of a major weapon system or a component or spare part for a major weapon system or subsystem is proposed as a commercial product. Section 803 also clarifies the data to be provided to the contracting officer to determine price reasonableness for such actions. In addition, section 803 affords the offeror the flexibility to either submit the data or provide the contracting officer access to the data and to redact certain customer information.

The objective of this proposed rule is to implement section 803 of the James M. Inhofe NDAA for FY 2023, which modifies 10 U.S.C. 3455. The legal basis of the rule is section 803 of the James M. Inhofe NDAA for FY 2023.

Based on data from the Federal Procurement Data System for fiscal years 2021 through 2023, DoD awarded an average of approximately 50,260 commercial contracts related to major weapon systems to an average of 2,685 unique small entities per year. Therefore, this proposed rule is expected to apply to approximately 2,685 small entities per fiscal year.

This proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities. The information being collected falls under the currently approved information collection recordkeeping requirements under OMB control number 0704–0574, Defense Federal Acquisition Regulation Supplement (DFARS) Part 215; Only One Offer and Related Clauses in DFARS 252.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives that would accomplish the stated objectives of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2023–D010), in correspondence.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this proposed rule. However, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0574, entitled Defense Federal Acquisition Regulation Supplement (DFARS) Part 215; Only One Offer and Related Clauses in DFARS 252.

List of Subjects in 48 CFR Parts 212, 215, 234, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 215, 234, and 252 are proposed to be amended as follows:

■ 1. The authority citation for parts 212, 215, 234, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

■ 2. Amend section 212.102 by revising paragraph (a)(iii)(A) to read as follows:

212.102 Applicability.

(a) * * *

(iii) * * *

(A) Determine in writing that the acquisition meets the ''commercial product'' or ''commercial service'' definition in FAR 2.101. See 234.7002(b) and (c) for subsystems of major weapon systems and components and spare parts of major weapon systems and subsystems;

* * * * *

■ 3. Amend section 212.209 by revising paragraph (a)(1) to read as follows:

212.209 Determination of price reasonableness.

(a) * * *

(1) In the case of major weapon systems, for subsystems of major weapon systems and components and spare parts of major weapon systems and subsystems acquired as commercial products in accordance with subpart 234.70, shall use information submitted under 234.7002(e); and

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Amend section 215.403–1 by revising paragraph (c)(3)(A) to read as follows:

215.403–1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).

* * * * *

(c) * * *

(3) * * *

(A) Follow the procedures at PGI 215.403–1(c)(3) for pricing commercial products or commercial services, except see 234.7002(e) for pricing commercial subsystems of major weapon systems and components and spare parts of major weapon systems and subsystems.

* * * * *

215.403–3 [Amended]

■ 5. Amend section 215.403–3 in paragraph (c) by removing ''234.7002(d)'' and adding ''234.7002(e)'' in its place.

PART 234—MAJOR SYSTEM ACQUISITION

■ 6. Amend section 234.7002—

■ a. By revising paragraph (b)(2);

■ b. By adding paragraph (b)(3);

■ c. By revising paragraphs (c)(1)(ii) and (c)(2);

■ d. By redesignating paragraph (d) as paragraph (e);

■ e. By adding a new paragraph (d); and

■ f. By revising newly redesignated paragraphs (e) introductory text, and (e)(1) through (3);

■ g. In newly redesignated paragraph (e)(4), by removing ''paragraph (d)(3)'' and ''paragraphs (d)(1) and (2)'' and adding ''paragraph (e)(1)'' in their places; and

■ h. In newly redesignated paragraph (e)(5), by removing ''paragraphs (d)(1) and (2)'' and ''PGI 234.7002(d)(5)'' and adding ''paragraph (e)(1)'' and ''PGI 234.7002(e)(5)'' in their places, respectively.

The revisions and additions read as follows:

234.7002 Policy.

* * * * *

(b) * * *

(2) The contracting officer determines in writing that the subsystem is a commercial product in accordance with 212.102(a)(iii). For a subsystem of a major weapon system proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)), follow the procedures in paragraph (d) of this section.

(3) This paragraph (b) shall apply only to subsystems of major weapon systems that are acquired by DoD through a—

(i) Prime contract;

(ii) Modification to a prime contract; or

(iii) Subcontract under a prime contract for the acquisition of a subsystem proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)).

(c) * * *

(1) * * *

(ii) The contracting officer determines in writing that the component or spare part is a commercial product in accordance with 212.102(a)(iii). For a component or spare part proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)), follow the procedures in paragraph (d) of this section.

(2) This paragraph (c) shall apply only to components and spare parts that are acquired by DoD through a—

(i) Prime contract;

(ii) Modification to a prime contract; or

(iii) Subcontract under a prime contract for the acquisition of a component or spare part proposed as a commercial product that has not previously been determined to be a commercial product (see 212.102(a)(ii)).

(d) *Commerciality determination.* To the extent necessary to make a commercial product determination in accordance with 212.102(a)(iii) that relies on paragraph (1), (2), (3), (4), or (5) of the ''commercial product'' definition at FAR 2.101 for a subsystem, component, or spare part as described in paragraphs (b) and (c) of this section, the contracting officer shall require the offeror to—

(1) Identify the comparable commercial product the offeror sells to the general public or nongovernmental entities for other than governmental purposes;

(2) Provide a comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—

(i) For products under paragraph (3)(i) of the ''commercial product'' definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or

(ii) For products under paragraph (3)(ii) of the ''commercial product'' definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (*e.g.,* information on production processes and material differences); and

(3) Provide the national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part, if one is assigned; or

(4) If the offeror does not sell a comparable commercial product to the general public or nongovernmental entities for other than governmental purposes—

(i) Notify the contracting officer in writing that it does not sell such a comparable product; and

(ii) Provide the contracting officer a comparison of the physical

characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, if available.

(e) *Relevant information to determine price reasonableness.* For products relying on paragraph (3)(ii) of the commercial product definition at FAR 2.101, see FAR 15.403–1(c)(3)(iii)(C). See 212.209(a) for requirements of 10 U.S.C. 3453 with regard to market research.

(1) Unless an exception at FAR 15.403–1(b)(1) or (2) applies—

(i) To the extent necessary to make a determination of price reasonableness, the contracting officer shall require the offeror to submit or provide to the contracting officer access to a representative sample, as determined by the contracting officer, of prices paid for the same or similar commercial products under comparable terms and conditions by both Government and commercial customers and the terms and conditions of such sales.

(ii) If the contracting officer determines that the offeror cannot provide or give access to sufficient information described in this paragraph (e)(1) to determine the reasonableness of price, the contracting officer shall require the offeror to submit or provide the contracting officer access to a representative sample, as determined by the contracting officer, of the prices paid for the same or similar commercial products sold under different terms and conditions and the terms and conditions of such sales.

(2) The contracting officer shall allow the offeror to redact only information provided pursuant to paragraph (e)(1) of this section that identifies the customer, if the offeror certifies in writing for each sale that the customer is a—

(i) Government customer (*e.g.,* Federal, State, local, or foreign government);

(ii) Commercial customer purchasing the product for governmental purposes; or

(iii) Commercial customer purchasing the product for a commercial, mixed, or unknown purpose.

(3) If the contracting officer determines—

(i) That the information submitted pursuant to paragraph (e)(1) of this section is not sufficient to determine the reasonableness of price because the comparable commercial product(s) provided by the offeror are not a valid basis for a price analysis; or

(ii) That the proposed price is not reasonable after evaluating sales data, then the contracting officer shall obtain approval from an official one level above the contracting officer, without power of delegation, to require the offeror to submit other relevant information regarding the basis for price or cost, including information on labor costs, material costs, and overhead rates.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 252.215–7010—
■ a. By removing the provision date ''JAN 2023'' and adding ''DATE'' in its place;
■ b. In paragraph (a) in the definition of ''Sufficient non-Government sales'' by removing ''by FAR'' and adding ''by Federal Acquisition Regulation (FAR)'' in its place;
■ c. By redesignating paragraphs (b)(1)(ii)(B) through (E) as (b)(1)(ii)(C) through (F);
■ d. By adding a new paragraph (b)(1)(ii)(B);
■ e. In paragraph (d)(1) by removing ''DFARS 215.402(a)(i) and 215.404–1(b)'' and adding ''Defense Federal Acquisition Regulation Supplement (DFARS) 215.402(a)(i), 215.404–1(b), and 234.7002(e)'' in its place;
■ f. By redesignating paragraphs (d)(3) and (4) as (d)(4) and (5);
■ g. By adding a new paragraph (d)(3);
■ h. In newly redesignated paragraph (d)(4) by removing ''FAR 15.403–3'' and adding ''FAR 15.403–3 or DFARS 234.7002(e)'' in its place;
■ i. In Alternate I—
■ i. By revising the provision title and date;
■ ii. In paragraph (a) in the definition of ''Sufficient non-Government sales'' by removing ''by FAR'' and adding ''by Federal Acquisition Regulation (FAR)'';
■ iii. By redesignating paragraphs (b)(1)(ii)(B) through (E) as (b)(1)(ii)(C) through (F);
■ iv. By adding a new paragraph (b)(1)(ii)(B);
■ v. In paragraph (d)(1) by removing ''DFARS 215.402(a)(i) and 215.404–1(b)'' and adding ''Defense Federal Acquisition Regulation Supplement (DFARS) 215.402(a)(i), 215.404–1(b), and 234.7002(e)'' in its place;
■ vi. By redesignating paragraphs (d)(3) and (4) as (d)(4) and (5);
■ vii. By adding a new paragraph (d)(3); and
■ viii. In newly redesignated paragraph (d)(4) by removing ''*FAR 15.403–3*'' and adding ''*FAR 15.403–3 or DFARS 234.7002(e)*'' in its place.

The additions and revision read as follows:

252.215–7010 Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) For subsystems of a major weapon system and components and spare parts of a major weapon system or subsystem of a major weapon system that have not previously been determined to be commercial—

(*1*) The comparable commercial product the Offeror sells to the general public or nongovernmental entities;

(*2*) A comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—

(*i*) For products under paragraph 3(i) of the ''commercial product'' definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or

(*ii*) For products under paragraph (3)(ii) of the ''commercial product'' definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (*e.g.,* information on production processes and material differences); and

(*3*) The national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part, if one is assigned; or

(*4*) If the Offeror does not sell a comparable commercial product to the general public or nongovernmental entities for purposes other than government purposes, the Offeror shall—

(*i*) Notify the Contracting Officer in writing that it does not sell such a comparable product; and

(*ii*) Provide the Contracting Officer with a comparison of the physical characteristics and functionality of the most comparable commercial product in the commercial market.

* * * * *

(d) * * *

(3) If the Offeror redacts data that identifies the customer, then the Offeror shall include, for each sale, the following signed statement with the data submitted:

''By submission of this data, the Offeror *[Offeror insert company name]* certifies that the customer was *[Offeror insert one or more of the following as applicable: a government customer; a commercial customer purchasing the same or similar product for governmental purposes (e.g., Federal, state, local, or foreign government); or a commercial customer purchasing the same or similar product for a commercial, mixed, or unknown purpose].*''

* * * * *

Alternate I. * * *

Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Alternate I (Date)

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) For subsystems of a major weapon system and components and spare parts of a major weapon system or subsystem of a major weapon system that have not previously been determined to be commercial—

(*1*) The comparable commercial product the Offeror sells to the general public or nongovernmental entities;

(*2*) A comparison between the physical characteristics and functionality of the comparable commercial product and the subsystem, component, or spare part, including—

(*i*) For products under paragraph 3(i) of the ''commercial product'' definition at FAR 2.101, a description of the modification and documentation to support that the modification is customarily available in the marketplace; or

(*ii*) For products under paragraph (3)(ii) of the ''commercial product'' definition at FAR 2.101, a detailed description of the modification and detailed technical data to demonstrate that the modification is minor (*e.g.,* information on production processes and material differences); and

(*3*) The national stock number (NSN) for the comparable commercial product, if one is assigned, and the NSN for the subsystem, component, or spare part; or

(*4*) If the Offeror does not sell a comparable commercial product to the general public or nongovernmental entities for purposes other than government purposes, the Offeror shall—

(*i*) Notify the Contracting Officer in writing that it does not sell such a comparable product; and

(*ii*) Provide the Contracting Officer with a comparison of the physical characteristics and functionality of the most comparable commercial product in the commercial market.

* * * * *

(d) * * *

(3) If the Offeror redacts data that identifies the customer, then the Offeror shall include, for each sale, the following signed statement with the data submitted:

''By submission of this data, the Offeror *[Offeror insert company name]* certifies that the customer was *[Offeror insert one or more of the following as applicable: a government customer (e.g., Federal, state, local, or foreign government); a commercial customer purchasing the same or similar product for governmental purposes; or a commercial customer purchasing the same or similar product for a commercial, mixed, or unknown purpose]*.''

* * * * *

[FR Doc. 2023–27941 Filed 12–21–23; 8:45 am]

BILLING CODE 6001–FR–P

Notices

Federal Register
Vol. 88, No. 245
Friday, December 22, 2023

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 or other forms of information technology.

Comments regarding this information collection received by January 22, 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 and Nutrition Service

Title: How Have SNAP State Agencies Shifted Operations in the Aftermath of COVID–19? Study.

OMB Control Number: 0584–NEW.

Summary of Collection: As the cornerstone of the nation's nutrition safety net, the Supplemental Nutrition Assistance Program (SNAP) provides monthly benefits to households with low incomes to reduce food insecurity and improve health and well-being. The COVID–19 pandemic and its economic fallout created extraordinary challenges for SNAP and the broader safety net as whole. To keep processing applications and issuing benefits, SNAP agencies had to pivot sharply to adapt their core operations and deliver services primarily or entirely virtually. Drawing on both new and existing waivers and policy options in this uncharted environment required a host of complicated decisions and choices on the part of State SNAP agencies. The study titled ''How Have SNAP State Agencies Shifted Operations in the Aftermath of COVID–19? (SNAP COVID study)'' will provide the U.S. Department of Agriculture (USDA) Food and Nutrition Service (FNS) with a comprehensive picture of how State SNAP agencies responded to the pandemic, including their decision-making processes, experiences with program changes in the short and long terms, and how these experiences have prepared States for major disruptions in the future.

The SNAP COVID study will provide information about State SNAP agencies' experiences with the wide range and mix of operational changes made in response to the evolving pandemic. This gives FNS and State SNAP agencies an important opportunity to assess what did and did not work and why; to describe the decision-making processes that led to States' responses to date and their plans for the period after the public health emergency; to identify changes that are here to stay for the foreseeable future; and to consider the lessons learned to inform continued program improvement and increase preparedness for any future disruptions that affect service delivery.

Need and Use of the Information: The SNAP COVID study will provide information about State SNAP agencies' experiences with the wide range and mix of operational changes made in response to the evolving pandemic. This gives FNS and State SNAP agencies an important opportunity to assess what did and did not work and why; to describe the decision-making processes that led to States' responses to date and their plans for the period after the public health emergency; to identify changes that are here to stay for the foreseeable future; and to consider the lessons learned to inform continued program improvement and increase preparedness for any future disruptions that affect service delivery.

Description of Respondents: State, Local and Tribal Governments.

Number of Respondents: 288.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 389.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2023–28171 Filed 12–21–23; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Fats and Oils

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on January 23, 2024. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 28th Session of the Codex Committee on Fats and Oils (CCFO28) of the Codex Alimentarius Commission (CAC). CCFO28 will be held in Kuala Lumpur, Malaysia, from February 19–23, 2024. The U.S. Manager for Codex Alimentarius and the Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 28th Session of the CCFO and to address items on the agenda.

DATES: The public meeting is scheduled for January 23, 2024, from 1–2:30 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 28th Session of the CCFO will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/jp/?meeting=CCFO&session=28.*

The U.S. Delegate to the 28th Session of the CCFO invites interested U.S. parties to submit their comments electronically to the following email address: *Girdhari.sharma@fda.hhs.gov* or *doreen.chenmoulec@usda.gov.*

Registration: Attendees may register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJIsdOCtqzsjHRhu5Zl-hKwftuzVhRNchlo.* After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 28th Session of the CCFO, contact Dr. Girdhari Sharma of the U.S. Food and Drug Administration, *Girdhari.sharma@fda.hhs.gov.* For additional information about the public meeting, contact the U.S. Codex Office by email at: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Fats and Oils (CCFO) are:

(a) To elaborate worldwide standards for fats and oils of animal, vegetable and marine origin including margarine and olive oil.

The CCFO is hosted by Malaysia. The United States attends the CCFO as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the forthcoming Agenda for the 28th Session of the CCFO will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or its subsidiary bodies
- Consideration of the recommendations of the Reports of the 90th and 91st Meeting of the Joint FAO/WHO Expert Committee on Food Additives (JECFA)
- Proposed draft Amendment/revision to the *Standard for Named Vegetable Oils* (CXS 210–1999)
  - Inclusion of avocado oil
  - Inclusion of camellia seed oil
  - Inclusion of sacha inchi oil
  - Inclusion of high oleic acid soya bean oil
- Proposed draft revision to the *Standard for Olive Oils and Olive Pomace Oils* (CXS 33–1981): Revision of Sections 3, 8 and Appendix
- Proposed draft amendment/revision of the *Standard for Fish Oils* (CXS 329–2017): Inclusion of Calanus oil
- Review of the *List of Acceptable Previous Cargoes* (Appendix II to CXC 36–1987)
- Discussion paper on possible work that CCFO could undertake to reduce trans fatty acids (TFAs) or eliminate partially hydrogenated oils (PHOs)
- Consideration of the proposals for new work and or amendments to existing Codex Standards

Public Meeting

At the January 23, 2024 public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Girdhari Sharma of the U.S. Food and Drug Administration at *Girdhari.sharma@fda.hhs.gov* or Ms. Doreen Chen Moulec of the U.S. Codex Office at *Doreen.chenmoulec@usda.gov.* Written comments should state that they relate to activities of the 28th Session of the CCFO.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/oascr/filing-program-discrimination-complaint-usda-customer,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email. Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410; Fax: (202) 690–7442; Email: *program.intake@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on December 19, 2023.

Julie Chao,

Deputy U.S. Manager for Codex Alimentarius.

[FR Doc. 2023–28269 Filed 12–21–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2023–0029]

2024 Rate Changes for the Basetime, Overtime, Holiday, Laboratory Services, and Export Application Fees

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: FSIS is announcing the 2024 rates it will charge meat, poultry, and egg products establishments, and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services. Additionally, FSIS is announcing that there will be no changes to the fee FSIS assesses to exporters that choose to apply for export certificates electronically through the export component of the Agency's Public Health Information System. The 2024 basetime, overtime, holiday, and laboratory services rates will be applied on January 14, 2024.

DATES: FSIS will charge the rates announced in this notice beginning January 14, 2024.

FOR FURTHER INFORMATION CONTACT: For further information contact Michael Toner, Director, Budget Division, Office of the Chief Financial Officer; Email: *Michael.toner@usda.gov,* Telephone: (202) 365–1352.

SUPPLEMENTARY INFORMATION:

Background

On April 12, 2011, FSIS published a final rule amending its regulations to establish formulas for calculating the rates it charges meat, poultry, and egg products establishments and importers and exporters for providing voluntary, overtime, and holiday inspection and identification, certification, and laboratory services (76 FR 20220). In the final rule, FSIS stated that it would use the formulas to calculate the annual rates, publish the rates in **Federal Register** notices prior to the start of each calendar year, and apply the rates on the first FSIS pay period at the beginning of the calendar year. This notice provides the 2024 rates, which will be applied starting on January 14, 2024.

On September 6, 2017, FSIS published the **Federal Register** notice, ''Public Health Information System (PHIS) Export Component Country Implementation'' (82 FR 42056). The notice announced the delayed implementation of the export component to ensure sufficient testing and outreach to stakeholders and that the application fee would be recalculated based on available costs and number of applications but would not be assessed prior to January 1, 2019. In addition, FSIS announced that it would implement the PHIS Export Component with a limited number of countries and gradually expand implementation to additional countries.

On April 29, 2019, FSIS published the **Federal Register** notice, ''Public Health Information System Export Component Fee'' (84 FR 17999). The notice announced that starting June 1, 2019, FSIS would assess a fee of $4.01 to exporters that chose to apply for export certificates electronically through the export component of PHIS. As noted below, that fee remains unchanged since 2019.

2024 Rates and Calculations

The following table lists the 2024 Rates per hour, per employee, by type of service:

Service	2024 Rate (estimates rounded to reflect billable quarter hour)
Basetime	$71.64
Overtime	87.96
Holiday	104.28
Laboratory	103.24
Export Application	*4.01

*Per application.

The regulations that cover these fees (other than the export application fee) state that FSIS will calculate the rates using formulas that include the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay and regular hours (9 CFR 391.2, 391.3, 391.4, 590.126, 590.128, 592.510, 592.520, and 592.530). The final rates have been rounded to make the amount divisible by the quarter hour (15 minutes). Fifteen minutes is the minimum charge for the services covered by these rates.

FSIS determined the 2024 rates using the following calculations:

Basetime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage of cost-of-living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2024 basetime rate per hour per program employee is:

[FY 2023 OFO Regular Direct Pay divided by the previous fiscal year's Regular Hours ($476,421,039/15,341,750)] = $31.05 + ($31.05 * 5.2% (calendar year 2024 Cost of Living Increase)) = $32.67 + $13.34 (benefits rate) + $2.75 (travel and operating rate) + $22.86 (overhead rate) + $0.00 (bad debt allowance rate) = $71.62, rounded up to $71.64, so that it is divisible by 4.

Overtime Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost-of-living increase, multiplied by 1.5 (for overtime), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2024 overtime rate per hour per program employee is:

[FY 2023 OFO Regular Direct Pay divided by previous fiscal year's Regular Hours ($476,421,039/15,341.750)] = $31.05 + ($31.05 * 5.2% (calendar year 2024 Cost of Living Increase)) = $32.67 * 1.5 = $49.01 + $13.34 (benefits rate) + $2.75 (travel and operating rate) + $22.86 (overhead rate) + $0.00 (bad debt allowance rate) = $87.95, rounded up to $87.96, so that it is divisible by 4.

Holiday Rate = The quotient of dividing the Office of Field Operations (OFO) inspection program personnel's previous fiscal year's regular direct pay by the previous fiscal year's regular hours, plus that quotient multiplied by the calendar year's percentage of cost-of-living increase, multiplied by 2 (for holiday pay), plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2024 holiday rate per hour per program employee calculation is:

[FY 2023 OFO Regular Direct Pay divided by Regular Hours ($476,421,039/15,341,750)] = $31.05 + ($31.05 * 5.2% (calendar year 2024 Cost of Living Increase)) = $32.67 * 2 = $65.34 + $13.34 (benefits rate) + $2.75 (travel and operating rate) + $22.86 (overhead rate) + $0.00 (bad debt allowance rate) = $104.29, rounded down to $104.28, so that it is divisible by 4.

Laboratory Services Rate = The quotient of dividing the Office of Public Health Science (OPHS) previous fiscal year's regular direct pay by the OPHS previous fiscal year's regular hours, plus the quotient multiplied by the calendar year's percentage cost of living increase, plus the benefits rate, plus the travel and operating rate, plus the overhead rate, plus the allowance for bad debt rate.

The calculation for the 2024 laboratory services rate per hour per program employee is:

[FY 2023 OPHS Regular Direct Pay/OPHS Regular hours ($28,365,622/464,251)] = $61.10 + ($61.10 * 5.2% (calendar year 2024 Cost of Living Increase)) = $64.28 + $13.34 (benefits rate) + $2.75 (travel and operating rate) + $22.86 (overhead rate) + $0.00 (bad debt allowance rate) = $103.23, rounded up to $103.24, so that it is divisible by 4.

Calculations for the Benefits, Travel and Operating, Overhead, and Allowance for Bad Debt Rates

These rates are components of the basetime, overtime, holiday, and laboratory services rates formulas.

Benefits Rate: The quotient of dividing the previous fiscal year's direct benefits costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage cost of living increase. Some examples of direct benefits are health insurance, retirement, life insurance, and Thrift Savings Plan basic and matching contributions.

The calculation for the 2024 benefits rate per hour per program employee is:

[FY 2023 Direct Benefits/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($236,947,058/18,687,290)] = $12.68 + ($12.68 * 5.2% (calendar year 2024 Cost of Living Increase)) = $13.34.

Travel and Operating Rate: The quotient of dividing the previous fiscal year's total direct travel and operating costs by the previous fiscal year's total hours (regular, overtime, and holiday), plus that quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2024 travel and operating rate per hour per program employee is:

[FY 2023 Total Direct Travel and Operating Costs/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($50,219,960/18,687,290)] = $2.69 + ($2.69 * 2.3% (2024 Inflation) = $2.75.

Overhead Rate: The quotient of dividing the previous fiscal year's indirect costs plus the previous fiscal year's information technology (IT) costs in the Public Health Data Communication Infrastructure System Fund plus the provision for the operating balance less any Greenbook costs (*i.e.,* costs of USDA support services prorated to the service component for which fees are charged) that are not related to food inspection by the previous fiscal year's total hours (regular, overtime, and holiday) worked across all funds, plus the quotient multiplied by the calendar year's percentage of inflation.

The calculation for the 2024 overhead rate per hour per program employee is:

[FY 2023 Total Overhead/(Total Regular hours + Total Overtime hours + Total Holiday hours) ($417,650,727/18,687,290)] = $22.35 + ($22.35 * 2.3% (2024 Inflation) = $22.86.

Allowance for Bad Debt Rate: Previous fiscal year's total allowance for bad debt (for example, debt owed for overtime and holiday inspection services that is not paid in full by establishments that declare bankruptcy) divided by previous fiscal year's total hours (regular, overtime, and holiday) worked.

The 2024 calculation for bad debt rate per hour per program employee is:

[FY 2023 Total Bad Debt/(Total Regular hours + Total Overtime hours + Total Holiday hours) = ($73,707/18,687,290)] = $0.00.

2024 Electronic Export Application Fee

The 2024 Electronic Export Application Fee:

$$\frac{\text{Labor Cost } (\$560{,}901.60 + (\$337{,}369)) + \text{IT Cost } (\$1{,}414{,}285.60 + \$0)}{576{,}192} = \$4.01$$

As published in FSIS' final rule, *Electronic Export Application and Certification Charge; Flexibility in the Requirements for Export Inspection Marks, Devices, and Certificates; Egg Products Export Certification* (81 FR 42225), the Electronic Export Application Fee Formula is:

$$\frac{\text{Labor Cost (Technical Support + Export Library Maintenance) + IT Cost (Ongoing Operations and Maintenance + eAuthentication)}}{\text{Number of Export Applications}}$$

FSIS stated in the 2016 final rule (81 FR 42225) and the 2017 **Federal Register** notice (82 FR 42056) that it would update and recalculate the fee based on the best available estimates for costs and number of applications; however, the number of export applications (the denominator in the formula) cannot be accurately assessed until a majority of countries are included in the export component. Therefore, because a majority of countries are not yet included in the PHIS Export component, the cost estimates and projected export applications in the final rule remain the best estimate for 2024, leaving the electronic export application fee unchanged.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the

option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, 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, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form, AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/forms/electronic-forms,* 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 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.*

USDA is an equal opportunity provider, employer, and lender.

Done at Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2023–28231 Filed 12–21–23; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2023–0021]

Urban Agriculture and Innovative Production Advisory Committee Meeting

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture (USDA).

ACTION: Notice of public and virtual meeting.

SUMMARY: The Natural Resources Conservation Service (NRCS) will hold a public meeting of the Urban Agriculture and Innovative Production Advisory Committee (UAIPAC). UAIPAC will convene to discuss proposed recommendations for the Secretary of Agriculture on the development of policies and outreach relating to urban, indoor, and other emerging agriculture production practices. UAIPAC is authorized under the Agriculture Improvement Act of 2018 (2018 Farm Bill) and operates in compliance with the Federal Advisory Committee Act, as amended.

DATES:

Written Comments: Written comments will be accepted until 11:59 p.m. EDT on Wednesday, February 14, 2023.

Meeting: The UAIPAC meeting will be held on Wednesday, January 31, 2024, from 2 p.m. to 3 p.m. Eastern Daylight Time (EDT).

ADDRESSES:

Meeting Location: The meeting will be held virtually via Zoom webinar. Pre-registration is required to attend the UAIPAC meeting and access informaton will be provided to registered individuals via email. Registration details can be found at: *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag.*

Written Comments: We invite you to send comments in response to this notice. Go to *https://www.regulations.gov* and search for Docket ID NRCS–2023–0021. Follow the instructions for submitting comments. All written comments received will be publicly available on *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brian Guse; Designated Federal Officer; telephone: (202) 205–9723; email: *UrbanAgricultureFederalAdvisoryCommittee@usda.gov*.

Individuals who require alternative means for communication may contact the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

UAIPAC Purpose

The Federal Advisory Committee for Urban Agriculture and Innovative Production is one of several ways that USDA is extending support and building frameworks to support urban agriculture, including issues of equity and food and nutrition access. Section 222 of the Department of Agriculture Reorganization Act of 1994, as amended by section 12302 of the 2018 Farm Bill (7 U.S.C. 6923; Pub. L. 115–334) directed the Secretary to establish an ''Urban Agriculture and Innovative Production Advisory Committee'' to advise the Secretary of Agriculture on any aspect of section 222, including the development of policies and outreach relating to urban, indoor, and other emerging agricultural production practices as well as identify any barriers to urban agriculture. UAIPAC will host public meetings to deliberate on recommendations for the Secretary of Agriculture. These recommendations provide advice to the Secretary on supporting urban agriculture and innovative production through USDA's programs and services.

Meeting Agenda

The agenda items may include, but are not limited to, welcome and introductions; administrative matters; presentations from the UAIPAC or USDA staff; and deliberations for proposed recommendations and plans. The USDA UAIPAC website (*https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag*) will be updated with the final agenda at least 24 hours prior to the meeting.

Written Comments

Comments should address specific topics pertaining to urban agriculture and innovative production. Written comments will be accepted until 11:59 p.m. EDT on Wednesday, February 14, 2024. General questions and comments are also accepted at any time via email: *UrbanAgricultureFederal AdvisoryCommittee@usda.gov.*

Meeting Materials

All written comments received by Wednesday, February 14, 2024, will be compiled for UAIPAC review and will be included in the meeting minutes. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received.

Please visit *https://www.usda.gov/partnerships/federal-advisory-committee-urban-ag* to view the agenda and minutes from the meeting.

Meeting Accomodations

If you require reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation, to the person listed under the **FOR FURTHER INFORMATION CONTACT** section. Determinations for reasonable accommodation will be made on a case-by-case basis.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Individuals who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or the USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunicaions Relay Service (both voice and text telephone users can initiate this call from any phone). Additionally, program information may be made available in languages other than English.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the FACA Committee: UAIPAC. To ensure that the recommendations of UAIPAC have taken in account the needs of the diverse groups served by USDA, membership will include to the extent possible, individuals with demonstrated ability to represent minorities, women and person with disabilities. USDA is an equal opportunity provider, employer, and lender.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *OAC@usda.gov.USDA* is an equal opportunity provider, employer, and lender.

Dated: December 18, 2023.

Cikena Reid,

Committee Management Officer, USDA.

[FR Doc. 2023–28143 Filed 12–21–23; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

[Docket No. 231218–0310]

Business Diversity Principles

AGENCY: Office of the Secretary, U.S. Department of Commerce.

ACTION: Request for information on Business Diversity Principles; extension of comment period.

SUMMARY: On November 29, 2023, the Department of Commerce (DOC) published in the **Federal Register** a notice entitled ''Request for Information (RFI) on Business Diversity Principles.'' This RFI invited comments from the public on the draft Business Diversity Principles (BDP), which describe best practices related to diversity, equity, inclusion, and accessibility (DEIA) in the private sector, and on the impact of DEIA initiatives. DOC is seeking input to inform the content of the BDP, share success stories and best practices related to Business Diversity, and comment on the impact of DEIA initiatives. In response from prospective commenters that they would benefit from additional time to adequately consider and respond to the RFI, DOC has determined that an extension of the comment period until February 2, 2024, is appropriate.

DATES: The end of the comment period for the notice entitled ''Request for Information (RFI) on Business Diversity Principles,'' published on November 29, 2023 (88 FR 83380), is extended from January 5, 2024, to February 2, 2024. All comments must be received by February 2, 2024. Comments received after this date may not be accepted.

ADDRESSES: To respond to the Request for Information (RFI), please submit electronic public comments via the Federal e-Rulemaking Portal.

1. *Go to www.regulations.gov and enter DOC–2023–0003 in the search field,*

2. *Click the ''Comment Now!'' icon, complete the required fields, and*

3. *Enter or attach your comments.*

Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

FOR FURTHER INFORMATION CONTACT: Roosevelt Holmes, Deputy Chief of Staff, Minority Business Development Agency, at 202–482–1079 or *rholmes1@doc.gov.* Please direct media inquiries to Valerie Keys in the Office of Public Affairs at 202–802–8166 or *vkeys@doc.gov.*

SUPPLEMENTARY INFORMATION: The DOC is committed to implementing Executive Orders 13985 and 14091 and is developing the BDP Initiative as part of its 2022–2026 Strategic Plan goal of promoting inclusive capitalism and equitable economic growth for all Americans. The DOC published draft Business Diversity Principles on November 29, 2023 (88 FR 83380) and sought public comment until January 5, 2024. The DOC has received requests to extend the comment period. An extension of the comment period will provide additional opportunity for the public to consider the RFI and prepare comments to address the topics listed therein. Therefore, DOC is extending the comment period for the RFI from January 5, 2024, to February 2, 2024.

Dated: December 19, 2023.

Ines Hernandez-Siqueira,

Counselor for Equity, Office of the Secretary.

[FR Doc. 2023–28251 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–20–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Rolondo Alexei Pupo-Abrahantes, Inmate Number: 76860–509, FCI Pollock, P.O. Box 4050, Pollock, LA 71467; Order Denying Export Privileges

On November 16, 2022, in the U.S. District Court for the Southern District of Florida, Rolondo Alexei Pupo-Abrahantes (''Pupo-Abrahantes'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554. Specifically, Pupo-Abrahantes was convicted of conspiring to smuggle various firearms from the United States to Ecuador. As a result of his conviction, the Court sentenced him to 30 months in prison, two years of

supervised release and a $300 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Pupo-Abrahantes conviction for violating 18 U.S.C. 371 and 18 U.S.C 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Pupo-Abrahantes to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Pupo-Abrahantes.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Pupo-Abrahantes's export privileges under the Regulations for a period of ten years from the date of Pupo-Abrahantes's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Pupo-Abrahantes had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until November 16, 2032, Rolondo Alexei Pupo-Abrahantes, with a last known address of Inmate Number: 76860–509, FCI Pollock, P.O. Box 4050, Pollock, LA 71467, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Pupo-Abrahantes by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Pupo-Abrahantes may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Pupo-Abrahantes and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 16, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28277 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jonathan Yet Wing Soong, Inmate Number: 03089–510, USP LOMPOC, U.S. Penitentiary, 3901 Klein Blvd., Lompoc, CA 93436; Order Denying Export Privileges

On April 28, 2023, in the U.S. District Court for the Northen District of California, Jonathan Yet Wing Soong (''Soong''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*) (''IEEPA''). Specifically, Soong was convicted of knowingly and willfully exporting from the United States to Beihang University, an entity on the Department of Commerce's Entity List, EAR99 CIFER (Comprehensive Identification from Frequency Responses) software, a tool that allows a user to develop a dynamic model of an aircraft using system identification techniques, without having first obtained the required authorization from the Department of Commerce. As a result of his conviction, the Court sentenced Soong to 20 months of imprisonment, three years of supervised release, $100 assessment and $168,885 in restitution.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses,

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Soong's conviction for violating IEEPA, and has provided notice and opportunity for Soong to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has not received a written submission from Soong.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Soong's export privileges under the Regulations for a period of 10 years from the date of Soong's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Soong had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until April 28, 2033, Jonathan Yet Wing Soong, with a last known address of Inmate Number: 03089–510, USP LOMPOC, U.S. Penitentiary, 3901 Klein Blvd., Lompoc, CA 93436, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Soong by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Soong may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Soong and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 28, 2033.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28268 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Javier Alonso Galvan-Hernandez Inmate Number: 79786–509, FCI Bastrop, P.O. Box 1010, Bastrop, TX 78602; Order Denying Export Privileges

On May 11, 2022, in the U.S. District Court for the Southern District of Texas, Javier Alonso Galvan-Hernandez (''Galvan-Hernandez'') was convicted of violating 18 U.S.C. 554. Specifically, Galvan-Hernandez was convicted of smuggling various firearms from the United States to Mexico. As a result of his conviction, the Court sentenced him to 84 months in prison, three years of supervised release, and a $200 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Galvan-Hernandez's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Javier Alonso Galvan-Hernandez to make a written submission to BIS. 15 CFR 766.25.[2] BIS

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

has not received a written submission from Galvan-Hernandez.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Galvan-Hernandez's export privileges under the Regulations for a period of 10 years from the date of Galvan-Hernandez's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Galvan-Hernandez had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until May 11, 2032, Javier Alonso Galvan-Hernandez, with a last known address of Inmate Number: 79786–509, FCI Bastrop, P.O. Box 1010, Bastrop, TX 78602, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Javier Alonso Galvan-Hernandez by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Galvan-Hernandez may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Galvan-Hernandez and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 11, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28274 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Stephanie Joahna Gloria Inmate Number: 74313–509, FCI Aliceville, Federal Correctional Institution, P.O. Box 4000, Aliceville, AL 35442; Order Denying Export Privileges

On May 23, 2022, in the U.S. District Court for the Southern District of Texas, Stephanie Joahna Gloria (''Gloria'') was convicted of violating 18 U.S.C. 554(a). Specifically, Gloria was convicted of smuggling from the United States to Mexico 3,200 rounds of Winchester 5.56-millimeter ammunition. As a result of her conviction, the Court sentenced Gloria to 70 months of imprisonment, three years of supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Gloria's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Gloria to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Gloria.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Gloria's export privileges under the Regulations for a period of seven years from the date of Gloria's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Gloria had an interest at the time of her conviction.[3]

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

Accordingly, it is hereby *ordered:*

First, from the date of this Order until May 23, 2029, Stephanie Joahna Gloria, with a last known address of Inmate Number: 74313–509, FCI Aliceville, Federal Correctional Institution, P.O. Box 4000, Aliceville, AL 35442, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Gloria by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Gloria may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Gloria and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until May 23, 2029.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28273 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Angel Huerta-Garay, Inmate Number: 67193–509, FCI Beaumont, P.O. Box 26020, Beaumont, TX 77720; Order Denying Export Privileges

On April 26, 2022, in the U.S. District Court for the Southern District of Texas, Angel Huerta-Garay (''Huerta-Garay'') was convicted of violating 18 U.S.C. 554. Specifically, Huerta-Garay was convicted of exporting and sending, and attempting to export and send, various firearms from the United States to Mexico. As a result of his conviction, the Court sentenced him to 52 months in prison, three years of supervised release, and a $100 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Huerta-Garay's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Huerta-Garay to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Huerta-Garay.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Huerta-Garay's export privileges under the Regulations for a period of 10 years from the date of Huerta-Garay's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Huerta-Garay had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until April 26, 2032, Angel Huerta-Garay, with a last known address of Inmate Number: 67193–509, FCI Beaumont, P.O. Box 26020, Beaumont, TX 77720, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying,

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Huerta-Garay by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Huerta-Garay may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Huerta-Garay and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until April 26, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28276 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Donald Robert Witherow, 6651 Buffalo Road, Cresson, PA 16421; Order Denying Export Privileges

On October 13, 2022, in the U.S. District Court for the Western District of Pennsylvania, Donald Robert Witherow (''Witherow'') was convicted of violating 18 U.S.C. 554(a). Specifically, Witherow was convicted of smuggling firearms ammunition and firearms magazines from the United States to the Netherlands.

As a result of his conviction, the Court sentenced Witherow to 12 months and one day of imprisonment, one year of supervised release and a $200 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Witherow's conviction for violating 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Witherow to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Witherow.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Witherow's export privileges under the Regulations for a period of three years from the date of Witherow's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Witherow had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until October 13, 2025, Donald Robert Witherow, with a last known address of 6651 Buffalo Road, Cresson, PA 16421, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Witherow by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Witherow may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Witherow and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until October 13, 2025.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28275 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Jose Luis Garcia, Inmate Number: 21856–509, FCI Bastrop, Federal Correctional Institution, P.O. Box 1010, Bastrop, TX 78602; Order Denying Export Privileges

On December 14, 2021, in the U.S. District Court for the Eastern District of Texas, Jose Luis Garcia (''Garcia'') was convicted of violating 18 U.S.C. 371 and 18 U.S.C. 554(a). Specifically, Garcia was convicted of conspiring to smuggle firearms from the United States to Mexico without first having obtained the required export license and authorization from the U.S. Department of State or U.S. Department of Commerce. As a result of his conviction, the Court sentenced Garcia to 57 months of imprisonment, three years of supervised release, $20,000 criminal fine and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371 and 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Garcia's conviction for violating 18 U.S.C. 371 and 18 U.S.C. 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Garcia to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Garcia.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Garcia's export privileges under the Regulations for a period of 10 years from the date of Garcia's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Garcia had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until December 14, 2031, Jose Luis Garcia, with a last known address of Inmate Number: 21856–509, FCI Bastrop, Federal Correctional Institution, P.O. Box 1010, Bastrop, TX 78602, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Garcia by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Garcia may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Garcia and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until December 14, 2031.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28270 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Edson Daniel Montelongo, Inmate Number: 75304–509, FCI Bastrop. P.O. Box 1010, Bastrop, TX 78602; Order Denying Export Privileges

On July 22, 2022, in the U.S. District Court for the Southern District of Texas, Edson Daniel Montelongo (''Montelongo'') was convicted of violating 18 U.S.C. 554. Specifically, Montelongo was convicted of smuggling various firearms from the United States to Mexico. As a result of his conviction, the Court sentenced him to 70 months in prison, three years of supervised release, and a $500 special assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Montelongo's conviction for violating 18 U.S.C 554. As provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for Edson Daniel Montelongo to make a written submission to BIS. 15 CFR 766.25.[2] BIS has not received a written submission from Montelongo.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Montelongo's export privileges under the Regulations for a period of 10 years from the date of Montelongo's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Montelongo had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until July 22, 2032, Edson Daniel Montelongo, with a last known address of Inmate Number: 75304–509, FCI Bastrop, P.O. Box 1010, Bastrop, TX 78602 and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of ECRA and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Edson Daniel Montelongo by

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Montelongo may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Montelongo and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until July 22, 2032.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28271 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

In the Matter of: Tina Chen a/k/a Ya When Chen, a/k/a Wen Tina Chen, a/k/a Tina Dunbar, a/k/a Tina Dubner, Inmate Number: 47268–509, FMC Carswell, Federal Medical Center, P.O. Box 27137, Fort Worth, TX 76127; Order Denying Export Privileges

On February 23, 2023, in the U.S. District Court for the District of Nevada, Tina Chen, a/k/a Ya When Chen, a/k/a Wen Tina Chen, a/k/a Tina Dunbar, a/k/a Tina Dubner (''Chen''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C 1701, *et seq.*) (''IEEPA''). Specifically, Chen was convicted of exporting goods from the United States to Iran without the required licenses from the Office of Foreign Assets Control. As a result of her conviction, the Court sentenced Chen to 13 months of confinement, three years of supervised release, and a $100 assessment.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Chen's conviction for violating IEEPA, and has provided notice and opportunity for Chen to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[2] BIS has received and considered a written submission from Chen.

Based upon my review of the record, including Chen's submission, and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Chen's export privileges under the Regulations for a period of ten years from the date of Chen's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Chen had an interest at the time of her conviction.[3]

Accordingly, it is hereby *ordered:*

First, from the date of this Order until February 23, 2033, Tina Chen, a/k/a Ya When Chen, a/k/a Wen Tina Chen, a/k/a Tina Dunbar, a/k/a Tina Dubner, with a last known address of Inmate Number: 47268–509, FMC Carswell, Federal Medical Center, P.O. Box 27137, Fort Worth, TX 76127, and when acting for or on her behalf, her successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Chen by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Chen may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and, as amended, is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to amendments to the Regulations (85 FR 73411, November 18, 2020).

provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Chen and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until February 23, 2033.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2023–28278 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–895, A–583–861]

Low Melt Polyester Staple Fiber From the Republic of Korea and Taiwan: Continuation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on low melt polyester staple fiber (low melt PSF) from the Republic of Korea (Korea) and Taiwan would likely lead to the continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of these AD orders.

DATES: Applicable December 19, 2023.

FOR FURTHER INFORMATION CONTACT: Andrew Hart, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1058.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 2018, Commerce published in the **Federal Register** the AD orders on low melt PSF from Korea and Taiwan.[1] On July 3, 2023, the ITC instituted,[2] and Commerce initiated,[3] the first sunset review of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its reviews, Commerce determined that revocation of the *Orders* would likely lead to the continuation or recurrence of dumping, and therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* be revoked.[4]

On December 19, 2023, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Orders* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Orders

The merchandise subject to the *Orders* is synthetic staple fibers, not carded or combed, specifically bi-component polyester fibers having a polyester fiber component that melts at a lower temperature than the other polyester fiber component (low melt PSF). The scope includes bi-component polyester staple fibers of any denier or cut length. The subject merchandise may be coated, usually with a finish or dye, or not coated.

Low melt PSF is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 5503.20.0015. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of the *Orders* is dispositive.

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Orders* will be December 19, 2023.[6] Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year reviews of the *Orders* not later than 30 days prior to fifth anniversary of the date of the last determination by the ITC.

Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction 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 the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These five-year (sunset) reviews and this notice are in accordance with sections 751(c) and 751(d)(2) of the Act and published in accordance with section 777(i) of the Act, and 19 CFR 351.218(f)(4).

Dated: December 19, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–28266 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–803]

Large Diameter Welded Pipe From Greece: 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) determines that Corinth Pipeworks Pipe Industry S.A. (CPW) did not make sales of subject merchandise at less than normal value during the period of review (POR), May 1, 2021, through April 30, 2022.

DATES: Applicable December 22, 2023.

FOR FURTHER INFORMATION CONTACT: David Crespo, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: 202–482–3693.

SUPPLEMENTARY INFORMATION:

Background

On June 20, 2023, Commerce published in the **Federal Register** the

[1] *See Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Antidumping Duty Orders,* 83 FR 40752 (August 16, 2018) (*Orders*).

[2] *See Low Melt Polyester Staple Fiber from South Korea and Taiwan; Institution of Five-Year Reviews,* 88 FR 42748 (July 3, 2023).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 42688 (July 3, 2023).

[4] *See Low Melt Polyester Staple Fiber from the Republic of Korea and Taiwan: Final Results of the Expedited First Sunset Review of the Antidumping Duty Orders,* 88 FR 72045 (October 19, 2023), and accompanying Issues and Decision Memorandum.

[5] *See Low Melt Polyester Staple Fiber from South Korea and Taiwan,* 88 FR 87814 (December 19, 2023).

[6] *Id.*

preliminary results of the 2021–2022 administrative review [1] of the antidumping duty order on large diameter welded pipe (LDWP) from Greece.[2] This review covers one producer/exporter of the subject merchandise, CPW. We invited interested parties to comment on the *Preliminary Results*.[3] On August 3, 2023, we received case briefs from the petitioner [4] and CPW.[5] On August 14, 2023, we received rebuttal briefs from the petitioner [6] and CPW.[7] On September 22, 2023, Commerce extended the deadline for the final results of review until December 15, 2023.[8] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[9] Commerce conducted this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The product covered by the *Order* is large diameter welded pipe. A complete description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this administrative review are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Changes Since the Preliminary Results

Based on a review of the record and the comments received from interested parties regarding the *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, we made certain changes to the weighted-average dumping margin calculation for CPW for the final results of review.[10]

Final Results of Review

As a result of this review, we determine that the following weighted-average dumping margin exists for the period May 1, 2021, through April 30, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Corinth Pipeworks Pipe Industry S.A	0.00

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to interested parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(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 the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales. 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 assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by CPW for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation of 10.26 percent *ad valorem,*[11] 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 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

Upon publication of this notice in the **Federal Register**, the following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for CPW will be zero, as established in these final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 10.26 percent, the all-others rate established in the LTFV investigation for this proceeding.[12] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility

[1] *See Large Diameter Welded Pipe from Greece: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022,* 88 FR 39823 (June 20, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Large Diameter Welded Pipe from Greece: Amended Final Affirmative Antidumping Determination and Antidumping Duty Order,* 84 FR 18769 (May 2, 2019) (*Order*).

[3] *See Preliminary Results,* 88 FR at 39823.

[4] *See* Petitioner's Letter, ''Case Brief,'' dated August 3, 2023. The petitioner is the American Line Pipe Producers Association Trade Committee (the petitioner).

[5] *See* CPW's Letter, ''Case Brief,'' dated August 3, 2023.

[6] *See* Petitioner's Letter, ''Rebuttal Brief,'' dated August 14, 2023.

[7] *See* CPW's Letter, ''Rebuttal Brief,'' dated August 14, 2023.

[8] *See* Memorandum, ''Extension of Deadline for Final Results of Antidumping Duty Administrative Review,'' dated September 22, 2023.

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021–2022 Administrative Review of the Antidumping Duty Order on Large Diameter Welded Pipe from Greece,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[10] *Id.*

[11] *See Order,* 84 FR at 18769.

[12] *Id.*

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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the 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 the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: December 15, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–28235 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission in Part; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and exporters of crystalline silicon photovoltaic cells, whether or not assembled into modules, (solar cells) from the People's Republic of China (China) during the period of review (POR), January 1, 2021, through December 31, 2021. We are rescinding this review with respect to 65 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Jose Rivera or Peter Shaw, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0842 or (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 2023, Commerce initiated this administrative review of the countervailing duty (CVD) order on solar cells from China with respect to 86 companies.[1] Chint Solar (Zhejiang) Co., Ltd. (Chint Solar) and High Hope Zhongtian Corporation (High Hope Zhongtian) are the mandatory respondents. On August 1, 2023, Commerce extended the deadline for completion of these preliminary results until no later than December 15, 2023.[2] On December 14, 2023, Commerce further extended the deadline until no later than December 18, 2023.[3]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade/gov/public/FRNoticesListLayout.aspx*.

Scope of the Order

The products covered by this order are crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels, and building integrated materials. For a complete description of the scope of this order, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received a timely-filed withdrawal of review request with respect to Shenzhen Glory Industries Co., Ltd (Glory).[5] Commerce also received a timely-filed withdrawal of review request with respect to: (1) Canadian Solar Manufacturing, Inc.; (2) New East Solar Energy Cambodia Co., Ltd.; (3) Trina Solar (Hefei) Science and Technology Co., Ltd.; (4) Trina Solar (Singapore) Science and Technology Pte. Ltd.; (5) Trina Solar Energy Development Company Limited; (6) Vina Cell Technology Company Limited; and (7) Vina Solar Technology

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 88 FR 7060 (February 2, 2023).

[2] *See* Memorandum, ''Extension of the Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated August 1, 2023.

[3] *See* Memorandum, ''Second Extension of the Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated December 14, 2023.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, and Rescission in Part: Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China; 2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Glory Industries Co., Ltd., ''Withdrawal of Request for Administrative Review,'' dated March 30, 2023.

Company Limited.[6] Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no reviewable suspended entries. Based on our analysis of U.S. Customs and Border Protection (CBP) information, we preliminarily determine that 57 companies had no entries of subject merchandise during the POR. On November 17, 2023, we notified parties that we intended to rescind this administrative review with respect to the 65 companies for which all requests for review have been withdrawn or have no reviewable suspended entries.[7] No parties commented on the notification of intent to rescind the review, in part. We are, therefore, rescinding the administrative review of these companies. For additional information regarding this determination, *see* the Preliminary Decision Memorandum. For a complete list of the companies, *see* Appendix III to this notice.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs preliminarily found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution from an authority that gives rise to a benefit to the recipient and that the subsidy is specific.[8] For a full description of the methodology underlying our preliminary conclusions, including our reliance, in part, on facts available with adverse inferences pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Preliminary Rate for Non-Selected Companies Under Review

There are 14 companies for which a review was requested, which had reviewable entries, and which were not selected as mandatory respondents or found to be cross-owned with a mandatory respondent. *See* Appendix II. For these companies, because the rates calculated for the mandatory respondents, Chint Solar and High Hope Zhongtian, were above *de minimis* and not based entirely on facts available, we are applying to the non-selected companies a rate using a weighted average of the individual subsidy rates calculated for Chint Solar and High Hope Zhongtian. This methodology is consistent with our practice for establishing an all-others rate pursuant to section 705(c)(5)(A) of the Act.[9]

Preliminary Results of Review

Commerce preliminarily determines the net countervailable subsidy rates for the period January 1, 2021, through December 31, 2021, are as follows:

Company	Subsidy rate (percent)
Chint Solar (Zhejiang) Co., Ltd. (Chint Solar)[10]	26.16
High Hope Zhongtian Corporation (High Hope Zhongtian)[11]	3.46
Non-Selected Companies Under Review[12]	8.47

Assessment Rates

In accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.221(b)(4)(i), we preliminarily determined subsidy rates in the amounts shown above for the producer/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review.

For the companies for which this review is rescinded with these preliminary results, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2021, through December 31, 2021, in accordance with 19 CFR 351.212(c)(l)(i). For the companies remaining in the review, we intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.

If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rates

Pursuant to section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits in the amounts indicated for the producers/exporters listed above with regard to shipments of subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most-recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[13]

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be provided to interested parties at a later date.[14]

Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[15] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[16] As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we

[6] *See* Auxin's Letter, ''Withdrawal of Request for Administrative Review,'' dated May 3, 2023.

[7] *See* Memorandum, ''Intent to Rescind Review,'' dated November 17, 2023.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] *See Truck and Bus Tires from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, and Rescission of Review, in Part; 2019,* 86 FR 33644 (June 25, 2021).

[10] This rate applies to: Chint Solar (Zhejiang) Co., Ltd. and its cross-owned companies: Chint New Energy Technology Co., Ltd.; Haining Chint Solar Energy Technology Co., Ltd.; Chint New Energy Technology (Yancheng) Co., Ltd.; Chint Solar (Yancheng) Co., Ltd.; Jiuquan Ching New Energy Technology Co., Ltd.; Chint Group Co., Ltd.; Zhejiang Chint Electrics Co., Ltd.; Zhejiang Chint New Energy Development Co., Ltd.; Chint Solar (Jiuquan) Co., Ltd.; and Chint Solar (Shanghai) Co., Ltd.

[11] This rate applies to: High Hope Zhongtian Corporation and its cross-owned companies: Jiangsu Highhope International Group Corporation and Jiangsu Suhui Asset Management Co., Ltd.

[12] *See* Appendix II of this notice for a list of all companies that remain under review but were not selected for individual examination and to which Commerce has preliminarily assigned the non-selected company rate.

[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(c).

[15] *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings,* 88 FR 67069, 67077 (September 29, 2023).

[16] *See* 19 351.309(c)(2) and (d)(2).

instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[17] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results of this review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[18]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days of the publication date of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[19] Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Final Results of Review

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Interested Parties

These preliminary results and notice are issued and published in accordance with sections 751(a)(l) and 777(i)(l) of the Act, and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

[17] We use the term ''issue'' here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

[18] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

[19] *See* 19 CFR 351.310.

Dated: December 18, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Rescission of Review, In Part
V. Rate for Non-Selected Companies Under Review
VI. Scope of the *Order*
VII. Diversification of China's Economy
VIII. Subsidies Valuation
IX. Interest Rate Benchmarks, Discount Rates, and Benchmarks for Measuring Adequacy of Remuneration
X. Use of Facts Otherwise Available and Application of Adverse Inferences
XI. Analysis of Programs
XII. Recommendation

Appendix II

Non-Selected Companies Under Review

1. Anji Dasol Solar Energy Science & Technology Co., Ltd.
2. Baoding Jiasheng Photovoltaic Technology Co. Ltd.
3. BYD (Shangluo) Industrial Co., Ltd.; BYD H.K. CO., Ltd.; Shanghai BYD Co., Ltd.
4. Chint Solar (Hong Kong) Company Limited.
5. Baotou JA Solar Technology Co., Ltd.; Beijing JA Solar PV Technology Co., Ltd.; Beijing Jinfeng Investment Co., Ltd.; Donghai JA Solar Technology Co., Ltd.; Donghai JingAo Solar Energy Science and Technology Co., Ltd.; Hebei Jingle Optoelectronic Technology Co., Ltd.; Hebei Jinglong New Materials Technology Group Co., Ltd.; Hebei Jinglong Sun Equipment Co. Ltd.; Hebei Ningjin Songgong Semiconductor Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; Hebei Ningtong Electronic Materials Co., Ltd.; Hebei Yujing Electronic Science and Technology Co., Ltd.; Hefei JA Solar Technology Co., Ltd.; JA (Hefei) Renewable Energy Co., Ltd; JA PV Technology Co., Ltd.; JA Solar (Xingtai) Co., Ltd.; JA Solar Investment China Co., Ltd; JA Solar Technology Co., Ltd.; JA Solar Technology Yangzhou Co., Ltd.; Jing Hai Yang Semiconductor Material (Donghai) Co., Ltd.; JingAo Solar Co., Ltd.; Jinglong Industry and Commerce Group Co., Ltd.; Jinglong Technology Holdings Co., Ltd.; Jingwei Electronic Materials Co., Ltd.; Ningjin County Jing Tai Fu Technology Co., Ltd.; Ningjin County Jingyuan New Energy Investment Co., Ltd.; Ningjin Guiguang Electronics Investment Co., Ltd.; Ningjin Jinglong PV Industry Investment Co., Ltd.; Ningjin Jingxing Electronic Material Co., Ltd.; Ningjin Longxin Investment Co., Ltd.; Ningjin Saimei Ganglong Electronic Materials Co., Ltd.; Ningjin Songgong Electronic Materials Co., Ltd.; Shanghai JA Solar Technology Co., Ltd.; Solar Silicon Peak Electronic Science and Technology Co., Ltd.; Solar Silicon Valley Electronic Science and Technology Co., Ltd.; Taicang Juren PV Material Co., Ltd.; Xingtai Jinglong Electronic Material Co., Ltd.; Xingtai Jinglong New Energy Co., Ltd.; Xingtai Jinglong PV Materials Co., Ltd.
6. Jinko Solar Co., Ltd.; Jinko Solar Import and Export Co., Ltd.; Jiangxi Jinko Photovoltaic Materials Co., Ltd.; Jinko Solar Technology (Haining) Co., Ltd.; JinkoSolar (Chuzhou) Co., Ltd.; JinkoSolar (Shangrao) Co., Ltd.; JinkoSolar (Sichuan) Co., Ltd.; JinkoSolar (Yiwu) Co., Ltd.; Ruixu Industrial Co., Ltd.; Xinjiang Jinko Solar Co., Ltd.; Yuhuan Jinko Solar Co., Ltd.; Zhejiang Jinko Solar Co., Ltd.; Jinko Solar (Shanghai) Management Co., Ltd.
7. LONGi Solar Technology Co., Ltd.
8. Shanghai Nimble Co., Ltd.
9. Shenzhen Sungold Solar Co., Ltd.
10. Toenergy Technology Hangzhou Co., Ltd.
11. Trina Solar Science & Technology (Thailand) Ltd.; Changzhou Trina PV Ribbon Materials Co., Ltd.; Changzhou Trina Solar Energy Co., Ltd. (a.k.a. Trina Solar Co., Ltd.); Changzhou Trina Solar Yabang Energy Co., Ltd.; Hubei Trina Solar Energy Co., Ltd.; Trina Solar (Changzhou) Science and Technology Co., Ltd.; Trina Solar Co., Ltd.; Turpan Trina Solar Energy Co., Ltd.; Yancheng Trina Solar Energy Technology Co., Ltd.
12. Wuxi Suntech Power Co., Ltd.
13. Yancheng Trina Solar Energy Technology Co., Ltd.
14. Yingli Energy (China) Co., Ltd.

Appendix III

Companies To Be Rescinded

1. Astronergy Co., Ltd.
2. Astronergy Solar
3. Baoding Tianwei Yingli New Energy Resources Co., Ltd.
4. Beijing Tianneng Yingli New Energy Resources Co., Ltd.
5. Boviet Solar Technology Co., Ltd.
6. Canadian Solar International Limited
7. Canadian Solar Manufacturing, Inc.
8. Canadian Solar Inc.; Canadian Solar Manufacturing (Changshu) Inc.; Canadian Solar Manufacturing (Luoyang) Inc.; Changshu Tegu New Materials Technology Co., Ltd.; Changshu Tlian Co., Ltd.; CSI Cells Co., Ltd.; CSI New Energy Holding Co., Ltd.; CSI Solar Manufacture Inc. (a.k.a. CSI New Energy Holding Co., Ltd.); CSI Solar Power (China) Inc.; CSI Solar Power Group Co., Ltd. (f.k.a. CSI Solar Power (China) Inc.); CSI Solar Technologies Inc.; CSI Solartronics (Changshu) Co., Ltd. CSI–GCL Solar Manufacturing (Yancheng) Co., Ltd.; CSI Manufacturing (FuNing) Co., Ltd. (f.k.a. CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd.); Suzhou Sanysolar Materials Technology Co., Ltd.
9. Changzhou Trina Hezhong Photoelectric Co., Ltd.
10. CSI Modules (Dafeng) Co., Ltd.
11. CSI Solar Power (China) Inc.
12. DelSolar (Wujiang) Ltd.
13. DelSolar Co., Ltd.
14. De-Tech Trading Limited HK

15. Dongguan Sunworth Solar Energy Co., Ltd.
16. Eoplly New Energy Technology Co., Ltd.
17. ERA Solar Co., Ltd.
18. ET Solar Energy Limited
19. Fuzhou Sunmodo New Energy Equipment Co., Ltd.
20. GCL System Integration Technology Co., Ltd.
21. Hainan Yingli New Energy Resources Co., Ltd.
22. Haining Chint Solar Energy Technology Co., Ltd.;
23. Hangzhou Sunny Energy Science and Technology Co., Ltd.
24. Hengdian Group DMEGC Magnetics Co., Ltd.
25. Hengshui Yingli New Energy Resources Co., Ltd.
26. Hongkong Hello Tech Energy Co., Ltd.
27. JA Solar, Co., Ltd.
28. JA Technology Yangzhou Co., Ltd.
29. Jiangsu Jinko Tiansheng Solar Co., Ltd.
30. Jinko Solar International Limited
31. Light Way Green Energy Co., Ltd.
32. Lixian Yingli New Energy Resources Co., Ltd.
33. Longi (HK) Trading Ltd.
34. Luoyang Suntech Power Co., Ltd.
35. New East Solar Energy Cambodia Co., Ltd.
36. Nice Sun PV Co., Ltd.
37. Ningbo ETDZ Holdings, Ltd.
38. ReneSola Jiangsu Ltd.
39. Renesola Zhejiang Ltd.
40. Changzhou Jintan Ningsheng Electricity Power Co., Ltd.; Changzhou Sveck New Material Technology Co., Ltd.; Changzhou Sveck Photovoltaic New Material Co., Ltd. (including Changzhou Sveck Photovoltaic New Material Co., Ltd. Jintan Danfeng Road Branch); Jiangsu Sveck New Material Co., Ltd.; JiuJiang Shengchao Xinye Technology Co., Ltd. (including JiuJang Shengshao Xinye Technology Co., Ltd. Ruichang Branch); Jiujiang Shengchao Xinye Trade Co., Ltd.; Ninghai Risen Energy Power Development Co., Ltd.; Risen (Changzhou) Import and Export Co., Ltd.; Risen (Luoyang) New Energy Co., Ltd.; Risen (Ningbo) Electric Power Development Co., Ltd.; Risen (Wuhai) New Energy Co., Ltd.; Risen Energy (Changzhou) Co., Ltd.; Risen Energy (HongKong) Co., Ltd.; Risen Energy (Ningbo) Co., Ltd.; Risen Energy (Yiwu) Co., Ltd.; Risen Energy Co., Ltd.; Zhejiang Boxin Investment Co., Ltd.; Zhejiang Twinsel Electronic Technology Co., Ltd.
41. Shenzhen Glory Industries Co., Ltd.
42. Shenzhen Topray Solar Co., Ltd.
43. Shenzhen Yingli New Energy Resources Co., Ltd.
44. Sumec Hardware & Tools Co., Ltd.
45. Sunpreme Solar Technology (Jiaxing) Co., Ltd.
46. Suntech Power Co., Ltd.
47. Suntimes Technology Co., Limited
48. Systemes Versilis, Inc.
49. Taimax Technologies Inc.
50. Taizhou BD Trade Co., Ltd.
51. Talesun Energy
52. Talesun Solar
53. tenKsolar (Shanghai) Co., Ltd.
54. Tianjin Yingli New Energy Resources Co., Ltd.
55. Trina (Hefei) Science and Technology Co., Ltd.
56. Trina Solar (Hefei) Science and Technology Co., Ltd.
57. Trina Solar (Singapore) Science and Technology Pte. Ltd.
58. Vina Cell Technology Company Limited
59. Vina Solar Technology Company Limited
60. Wuxi Tianran Photovoltaic Co., Ltd.
61. Yingli Green Energy International Trading Company Limited
62. Yuhuan Jinko Solar Co., Ltd.
63. Zhejiang ERA Solar Technology Co., Ltd.
64. Zhejiang Jinko Solar Co., Ltd.
65. Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company

[FR Doc. 2023–28162 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–149]

Gas Powered Pressure Washers From the People's Republic of China: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies are being provided to producers and exporters of gas powered pressure washers (pressure washers) from the People's Republic of China (China). The period of investigation is January 1, 2021, through December 31, 2021.

DATES: Applicable December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Theodore Pearson, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2631.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 2023, Commerce published its *Preliminary Determination* [1] in the **Federal Register**. Commerce invited parties to comment on the *Preliminary Determination.*[2]

For a complete description of the events that followed the *Preliminary Determination, see* the Issues and Decision Memorandum.[3] The Issues and Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are pressure washers from China. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

During the investigation, Commerce received scope comments from interested parties. Commerce issued a Preliminary Scope Memorandum to address these comments and set aside a period of time for parties to address scope issues in scope-specific case and rebuttal briefs.[4] We received comments from interested parties on the Preliminary Scope Memorandum, which we address in the Final Scope Memorandum.[5] We did not make any changes to the scope of this investigation from the scope published in the *Preliminary Determination,* as noted in Appendix I.

Analysis of Subsidy Programs and Comments Received

The subsidy programs under investigation, and the issues raised in the case and rebuttal briefs that were submitted by parties in this investigation, are discussed in the Issues and Decision Memorandum. For a list of the issues raised by interested parties and addressed in the Issues and Decision Memorandum, *see* Appendix II to this notice.

[1] *See Gas Powered Pressure Washers from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, in Part, and Alignment of Final Determination with Final Antidumping Duty Determination,* 88 FR 36531 (June 5, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *Id.*

[3] *See* Memorandum, ''Decision Memorandum for the Final Affirmative Determination in the Countervailing Duty Investigation of Gas Powered Pressure Washers from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See* Memorandum, ''Preliminary Scope Decision,'' dated June 8, 2023 (Preliminary Scope Memorandum).

[5] *See* Memorandum, ''Final Scope Decision,'' dated August 22, 2023 (Final Scope Memorandum).

Methodology

Commerce conducted this investigation in accordance with section 701 of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, Commerce determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our final determination, *see* the Issues and Decision Memorandum.

In making this final determination, Commerce relied, in part, on facts otherwise available, including with an adverse inference, pursuant to sections 776(a) and (b) of the Act. For a full discussion of our application of adverse facts available (AFA), *see* the *Preliminary Determination* and the section ''Use of Facts Otherwise Available and Application of Adverse Inferences'' in the accompanying Issues and Decision Memorandum.[7]

Verification

Commerce was unable to conduct on-site verification of the information relied on in making its final determination in this investigation. However, in July 2023, we took additional steps in lieu of on-site verifications to verify the information relied upon in making this final determination, in accordance with section 782(i) of the Act by conducting virtual verification of Jiangsu Jianghuai Engine Co., Ltd. (JD Power).

Final Affirmative Determination of Critical Circumstances, in Part

In accordance with sections 703(e)(1) and 776(a) and (b) of the Act and 19 CFR 351.206, as well as our analysis of comments received regarding our affirmative preliminary determination of critical circumstances,[8] Commerce continues to find that critical circumstances exist with respect to imports of pressure washers from China for JD Power and the non-responsive companies. In addition, we continue to find that critical circumstances do not exist with respect to imports of pressure washers from companies not individually examined. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Issues and Decision Memorandum.

Changes Since the Preliminary Determination

Based on our review and analysis of the information at verification and comments received from interested parties, we made no changes to the subsidy rate calculations for JD Power. For a discussion of the comments received, *see* the Issues and Decision Memorandum.

All-Others Rate

Pursuant to section 705(c)(5)(A)(i) of the Act, Commerce will determine an all-others rate equal to the weighted-average countervailable subsidy rates established for exporters and/or producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. In this investigation, Commerce calculated a total subsidy rate for Chongqing Dajiang Power Equipment Co., Ltd. determined entirely under section 776 of the Act. Therefore, the only rate that is not zero, *de minimis,* or based entirely on facts otherwise available is the rate calculated for JD Power. Consequently, the rate calculated for JD Power is also assigned as the rate for all other producers and exporters.

Final Determination

Commerce determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Jiangsu Jianghuai Engine Co., Ltd[9]	11.19
Chongqing Dajiang Power Equipment Co., Ltd	206.57
China GTL Tools Group, Ltd	206.57
Loncin Motor Co., Ltd	206.57
Maxworld Home Co., Ltd	206.57
Ningbo Jugang Machinery Manufacturing Co., Ltd	206.57
Powerful Machinery & Electronics Technology Developing Co., Ltd	206.57
Pinghu Biyi Cleaning Equipment Co., Ltd	206.57
Senci Electric Machinery Co., Ltd	206.57
Taizhou Bison Machinery Co., Ltd	206.57
Taizhou Longfa Machinery Co., Ltd	206.57
Taizhou Newland Machinery Co., Ltd	206.57
Zhejiang Anlu Cleaning Machinery Co., Ltd	206.57
Zhejiang Constant Power Machinery Co., Ltd	206.57
Zhejiang Lingben Machinery & Electronics Co., Ltd	206.57
Zhejiang Xinchang Bigyao Power Tool Co., Ltd	206.57
Zhejiang Zhinanche Cleaning Equipment Co., Ltd	206.57
All Others	11.19

Disclosure

Commerce intends to disclose to interested parties the calculations and analysis performed in this final determination within five days of any public announcement or, if there is no public announcement, within five days of the date of the publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).[10]

Continuation of Suspension of Liquidation

As a result of our *Preliminary Determination* and pursuant to section 703(d)(1)(B) and (d)(2) of the Act, we

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; *see also* section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See Preliminary Determination* PDM at 7–30; *see also* Issues and Decision Memorandum at the section entitled ''Use of Facts Otherwise Available and Adverse Inferences.''

[8] *See* Issues and Decision Memorandum at Comment 5.

[9] Commerce finds the following company to be cross-owned with JD Power: Jiangsu Nonghua Intelligent Agriculture Technology Co., Ltd.

[10] JD Power submitted certain minor corrections during verification that do not affect the *ad valorem* subsidy rates calculated for individual programs or the total *ad valorem* subsidy rate. *See* Memorandum, ''Final Determination Calculations for Jiangsu Jianghuai Engine Co., Ltd.,'' dated concurrently with this memorandum.

instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise from China that were entered, or withdrawn from warehouse, for consumption, on or after June 5, 2023. Because we preliminarily determined that critical circumstances existed with respect to JD Power and the non-responsive companies, we instructed CBP to suspend such entries on or after March 7, 2023, which is 90 days prior to the date of the publication of the *Preliminary Determination* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed CBP to discontinue the suspension of liquidation of all entries of subject merchandise entered or withdrawn from warehouse, on or after October 3, 2023, but to continue the suspension of liquidation of all entries of subject merchandise between June 5 and October 2, 2023.

If the U.S. International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated countervailing duties for entries of subject merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated, and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our final affirmative determination that countervailable subsidies are being provided to producers and exporters of pressure washers from China. Because the final determination in this proceeding is affirmative, in accordance with section 705(b) of the Act, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of pressure washers from China no later than 45 days after our final determination. In addition, we are making available to the ITC all non-privileged and nonproprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all cash deposits will be refunded. If the ITC determines that such injury does exist, Commerce will issue a countervailing duty order directing CBP to assess, upon further instruction by Commerce, countervailing duties on all imports of the subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation, as discussed above in the ''Continuation of Suspension of Liquidation'' section.

Administrative Protective Order

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO, in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This determination is issued and published pursuant to sections 705(d) and 777(i) of the Act, and 19 CFR 351.210(c).

Dated: December 18, 2023.

/S/James Maeder

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is cold water gas powered pressure washers (also commonly known as power washers), which are machines that clean surfaces using water pressure that are powered by an internal combustion engine, air-cooled with a power take-off shaft, in combination with a positive displacement pump. This combination of components (*i.e.,* the internal combustion engine, the power take-off shaft, and the positive displacement pump) is defined as the ''power unit.'' The scope of this investigation covers cold water gas powered pressure washers, whether finished or unfinished, whether assembled or unassembled, and whether or not containing any additional parts or accessories to assist in the function of the ''power unit,'' including, but not limited to, spray guns, hoses, lances, and nozzles. The scope of this investigation covers cold water gas powered pressure washers, whether or not assembled or packaged with a frame, cart, or trolley, with or without wheels attached.

For purposes of this investigation, an unfinished and/or unassembled cold water gas powered pressure washer consists of, at a minimum, the power unit or components of the power unit, packaged or imported together. Importation of the power unit whether or not accompanied by, or attached to, additional components including, but not limited to a frame, spray guns, hoses, lances, and nozzles constitutes an unfinished cold water gas powered pressure washer for purposes of this scope. The inclusion in a third country of any components other than the power unit does not remove the cold water gas powered pressure washer from the scope. A cold water gas powered pressure washer is within the scope of this investigation regardless of the origin of its engine. Subject merchandise also includes finished and unfinished cold water gas powered pressure washers that are further processed in a third country or in the United States, including, but not limited to, assembly or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope cold water gas powered pressure washers.

The scope excludes hot water gas powered pressure washers, which are pressure washers that include a heating element used to heat the water sprayed from the machine. Also specifically excluded from the scope of this investigation is merchandise covered by the scope of the antidumping and countervailing duty orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof from the People's Republic of China. *See Certain Vertical Shaft Engines Between 99 cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders,* 86 FR 023675 (May 4, 2021).

The cold water gas powered pressure washers subject to this investigation are classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings 8424.30.9000 and 8424.90.9040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–28282 Filed 12–21–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–113]

Certain Collated Steel Staples From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that countervailable subsidies were provided to producers and exporters of certain collated steel staples (collated staples) from the People's Republic of China (China) during the period of review (POR) from January 1, 2021, through December 31, 2021.

DATES: Applicable December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Jinny Ahn or Shane Subler, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0339 or (202) 482–6241, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 7, 2023, Commerce published the *Preliminary Results*.[1] For a complete description of the events that occurred subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[2] On October 16, 2023, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), Commerce extended the deadline for issuing the final results until December 15, 2023.[3]

Scope of the Order [4]

The merchandise subject to the *Order* is collated staples from China. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised by interested parties in briefs are addressed in the Issues and Decision Memorandum. A list of the issues addressed in the Issues and Decision Memorandum is provided in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain revisions to the countervailable subsidy rate calculations for Tianjin Hweschun Fasteners Manufacturing Co. Ltd. (Tianjin Hweschun), the sole mandatory respondent in this review.[5] As a result of the changes to Tianjin Hweschun's program rates, the final rate for the four companies under review which were not selected for individual examination also changed.[6] These changes are explained in the Issues and Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Act. For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] The Issues and Decision Memorandum contains a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available pursuant to sections 776(a) and (b) of the Act.

Companies Not Selected for Individual Review

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for determining the all-others rate in an investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 705(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero or *de minimis* countervailable subsidy rates, and any rates determined entirely on the basis of facts available.

As stated above, there are four companies for which a review was requested and not rescinded, and which were not selected as mandatory respondents or found to be cross-owned with the mandatory respondent. Because the rate calculated for the only mandatory respondent in this review, Tianjin Hweschun, was above *de minimis* and not based entirely on facts available, we are applying Tianjin Hweschun's subsidy rate to these non-selected companies,. This methodology used to establish the rate for the non-selected companies is consistent with our practice regarding the calculation of the all-others rate, pursuant to section 705(c)(5)(A)(i) of the Act.

This is the same methodology Commerce applied in the *Preliminary Results* for determining a rate for companies not selected for individual examination. However, due to changes

[1] *See Certain Collated Steel Staples from the People's Republic of China: Preliminary Results and Partial Rescission of the Countervailing Duty Administrative Review; 2021,* 88 FR 43288 (July 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2021 Countervailing Duty Administrative Review of Certain Collated Steel Staples from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See* Memorandum, ''Extension of Deadline for the Final Results of Countervailing Duty Administrative Review; 2021,'' dated October 16, 2023.

[4] *See Certain Collated Steel Staples from the People's Republic of China: Countervailing Duty Order,* 85 FR 43813 (July 20, 2020) (*Order*).

[5] *See* Memorandum, ''Final Results Calculations for Tianjin Hweschun Fasteners Manufacturing Co., Ltd.,'' dated concurrently with this notice; *see also Preliminary Results,* 88 FR at 43289.

[6] The four non-selected companies under review are: Ningbo Pacrim Manufacturing Co., Ltd., Shanghai Jade Shuttle Hardware, Shaoxing Bohui Import Export Co., Ltd., and Youngwoo (Cangzhou) Fasteners Co., Ltd. *See Preliminary Results,* 88 FR at 43289.

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

in the calculation for Tianjin Hweschun, we revised the non-selected rate accordingly. Consequently, for the four companies not selected for individual examination and for which the review was not rescinded, we are applying an *ad valorem* subsidy rate of 50.58 percent.

Final Results of Review

We find the net countervailable subsidy rates for the mandatory and non-selected respondents under review for the period of January 1, 2021, through December 31, 2021, to be as follows:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Tianjin Hweschun Fasteners Manufacturing Co., Ltd	50.58
Review-Specific Rate Applicable to Non-Selected Companies	
Ningbo Pacrim Manufacturing Co., Ltd	50.58
Shanghai Jade Shuttle Hardware	50.58
Shaoxing Bohui Import Export Co., Ltd	50.58
Youngwoo (Cangzhou) Fasteners Co., Ltd	50.58

Disclosure

We intend to disclose the calculations and analysis performed in connection with the final results of review to parties to the proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise in accordance with the final results of this review for the above-listed companies at the applicable *ad valorem* assessment rates listed. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(1) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of the final results of review, shall remain in effect until further notice.

Administrative Protective Order (APO)

This notice also serves as a reminder to parties subject to an APO of their responsibility concerning the return or destruction 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 the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing these final results of administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: December 15, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2023–28209 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–871]

Finished Carbon Steel Flanges From India: 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) determines that Norma (India) Limited, USK Exports Private Limited, Uma Shanker Khandelwal & Co., and Bansidhar Chiranjilal (collectively, the Norma Group), and R.N. Gupta & Co. Ltd. (RNG), and made sales of subject merchandise below normal value. The period of review (POR) is August 1, 2021, through July 31, 2022.

DATES: Applicable December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Fred Baker, Preston Cox, or Theodora Mattei, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924, (202) 482–5041, or (202) 482–4834, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2017, Commerce published in the **Federal Register** the antidumping duty (AD) order on finished carbon steel flanges from India.[1] On September 7, 2023, Commerce published in the **Federal Register** the preliminary results of the 2021–2022 administrative review of the *Order*.[2] We invited interested parties to comment on the *Preliminary Results;* however, no interested party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results,* and there is no decision memorandum accompanying this notice. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by the *Order* is finished carbon steel flanges. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Rate for Non-Selected Respondents

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this administrative review, we preliminarily calculated weighted-average dumping margins for Norma group and RNG that are not zero, *de minimis* (*i.e.,* less than 0.5 percent), or determined entirely on the basis of facts available. For these final results, we continue to calculate weighted-average dumping margins for Norma group and RNG that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce is assigning to the companies not individually examined, listed in the appendix to this notice, a margin of 1.00 percent, which is the weighted average of Norma group's and RNG's margins based on publicly ranged data.[3]

Final Results of Review

As noted above, the final results of this administrative review remain unchanged from the *Preliminary Results.* Thus, Commerce determines that the following weighted-average dumping margins exist for the period August 1, 2021, through July 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)
Norma (India) Limited/USK Exports Private Limited/Uma Shanker Khandelwal & Co./ Bansidhar Chiranjilal	0.70
R.N. Gupta & Co. Ltd	1.15
Non-Selected Companies	1.00

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with the final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, Commerce received no comments on the *Preliminary Results,* and we have made no adjustments to the margin calculation methodology used in the *Preliminary Results.* Consequently, there are no calculations to disclose for these final results of the administrative review.

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For Norma group and RNG, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1). Where an importer-specific assessment rate is zero or *de minimis,* the entries by that importer will be liquidated without regard to antidumping duties. For entries of subject merchandise during the POR produced by Norma group and RNG for which the producer did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate in the less-than-fair-value investigation if there is no rate for the intermediate company(ies) involved in the transaction.[4] For the companies identified in the appendix to this notice that were not selected for individual examination, we will instruct CBP to liquidate entries at the rates established in these final results of the review.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the zero margin established in the final results of this administrative review; (2) for

[1] *See Finished Carbon Steel Flanges from India and Italy: Antidumping Duty Orders,* 82 FR 40136 (August 24, 2017) (*Order*).

[2] *See Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review;* 2021–2022, 88 FR 61520 (September 7, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[3] *See* Memorandum, ''Antidumping Duty Order on Finished Carbon Steel Flanges from India; Administrative Review; 2021–2022: Preliminary Results Calculation of Margin for Respondents Not Selected for Individual Examination,'' dated August 31, 2023.

[4] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

merchandise exported by a company 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 in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 20.33 percent, the all-others rate established in the less-than-fair-value investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice 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 review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

The final results of this review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: December 18, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix

Non-Selected Respondent Companies

1. Adinath International
2. Allena Group.
3. Alloyed Steel.
4. Balkrishna Steel Forge Pvt. Ltd.
5. Bansidhar Chiranjilal.
6. Bebitz Flanges Works Private Limited.
7. BFN Forgings Private Limited.
8. C.D. Industries.
9. Cetus Engineering Private Limited.
10. CHW Forge.
11. CHW Forge Pvt. Ltd.
12. Citizen Metal Depot.
13. Corum Flange.
14. DN Forge Industries.
15. Echjay Forgings Limited.
16. Falcon Valves and Flanges Private Limited.
17. Heubach International.
18. Hindon Forge Pvt. Ltd.
19. Jai Auto Private Limited.
20. Kinnari Steel Corporation.
21. M F Rings and Bearing Races Ltd.
22. Mascot Metal Manufactures
23. Munish Forge Private Limited.
24. Norma (India) Limited.
25. OM Exports.
26. Punjab Steel Works (PSW).
27. R. D. Forge.
28. R. N. Gupta & Company Limited.
29. Raaj Sagar Steel.
30. Ravi Ratan Metal Industries.
31. Rolex Fittings India Pvt. Ltd.
32. Rollwell Forge Engineering Components and Flanges.
33. Rollwell Forge Pvt. Ltd.
34. SHM (ShinHeung Machinery).
35. Siddhagiri Metal & Tubes.
36. Sizer India.
37. Steel Shape India.
38. Sudhir Forgings Pvt. Ltd.
39. Tirupati Forge
40. Uma Shanker Khandelwal & Co.
41. Umashanker Khandelwal Forging Limited.
42. USK Exports Private Limited.

[5] *See Order,* 81 FR at 64434.

[FR Doc. 2023–28265 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Organization of Scientific Area Committees (OSAC) for Forensic Science Membership Application

AGENCY: National Institute of Standards and Technology (NIST), 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 February 20, 2024.

ADDRESSES: Interested persons are invited to submit written comments by mail to Maureen O'Reilly, Management Analyst, NIST, at *PRAcomments@doc.gov.* Please reference OMB Control Number 0693–0070 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 John Paul Jones II, Program Manager, Special Programs Office, NIST, 301–975–2782; *john.jones@nist.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NIST established the Organization of Scientific Area Committees (OSAC) for Forensic Science to enable a coordinated U.S. approach to standards for the forensic science disciplines. NIST seeks broad participation from forensic science practitioners, researchers, metrologists, statisticians, accreditation bodes, defense, and prosecution. NIST solicits self-nominations from these communities, using the OSAC Membership Application, to identify individuals interested and qualified to contribute.

II. Method of Collection

The OSAC Membership Application may be completed and submitted only via web-based application.

III. Data

OMB Control Number: 0693–0070.

Form Number(s): None.

Type of Review: Regular submission, extension of a current information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 42.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Under Secretary for Economic Affairs, Commerce Department.

[FR Doc. 2023–28297 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD591]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of hybrid meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Bering Sea Aleutian Islands Crab Plan Team (BSAI CPT) will meet January 8, 2024, to January 12, 2024.

DATES: The meeting will be held on Monday, January 8, 2024, through Friday, January 12, 2024, from 9 a.m. to 5 p.m., AK time.

ADDRESSES: The meeting will be a hybrid meeting. Attend in-person at the North Pacific Fishery Management Council office, 1007 West Third Ave., Suite 400, Anchorage, AK 99501, or join the meeting online through the link at *https://meetings.npfmc.org/Meeting/Details/3025*.

Council address: North Pacific Fishery Management Council, 1007 West 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting via video conference are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Sarah Rheinsmith, Council staff; phone: (907) 271–2809; email: *sarah.rheinsmith@noaa.gov*. For technical support, please contact our admin Council staff, email: *npfmc.admin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, January 8, 2024 Through Friday, January 12, 2024

The agenda will include: (a) Norton Sound Red King crab (NSRKC) survey updates; (b) NSRKC assessment; (c) recommend crab research priorities; (d) unobserved fishing mortality working group (UFMWG) report; (e) discuss biomass that enables a fish stock to deliver maximum sustainable yield (BMSY) time period; (f) Aleutian Island golden king crab (AIGKC) proposed model run; (g) Economic Stock Assessment and Fishery Evaluation (SAFE) report; (h) snow crab assessment model currency of management discussion; (i) Bering Sea Fisheries Research Foundation (BSFRF) update; (j) risk tables; (k) stock prioritization; (l) handling mortality consistencies; (m) environmental and socioeconomic profile updates; (n) research updates; and (o) other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3025* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone, or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3025*.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/3025*.

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

Dated: December 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–28215 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD577]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 87 Post Data Workshop webinar II for Gulf of Mexico white, pink, and brown shrimp.

SUMMARY: The SEDAR 87 assessment process of Gulf of Mexico white, pink, and brown shrimp will consist of a Data Workshop, and a series of assessment webinars, and a Review Workshop. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 87 Post Data Workshop webinar will be held January 8, 2024, from 10 a.m. to 12 p.m., Eastern Time.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data

Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Post Data Workshop webinar II are as follows:

Participants will discuss and finalize any outstanding data issues remaining from the Data Workshop.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified 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 intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–28213 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD581]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: South Atlantic Fishery Management Council (Council) Seminar Series presentation via webinar.

SUMMARY: The Council will host a presentation on wind energy development in the South Atlantic region on January 9, 2024.

DATES: The webinar presentation will be held on Tuesday, January 9, 2024 from 1 p.m. until 2:30 p.m.

ADDRESSES: *Meeting address:* The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-seminar-series/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION: The Council will host a presentation on wind energy development in the South Atlantic region. The presentation will provide information on three wind energy projects planned in the South Atlantic region and potential impacts of the projects. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–28214 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD592]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of webconference.

SUMMARY: The North Pacific Fishery Management Council (Council) Bering Sea Fishery Ecosystem Plan (BS FEP) Team will be held on January 9, 2024.

DATES: The meeting will be held on Tuesday, January 9, 2024, from 9:30 a.m. to 12:30 p.m., Alaska Time.

ADDRESSES: The meeting will be a webconference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/3027*.

Council address: North Pacific Fishery Management Council, 1007 W 3rd Ave., Suite 400, Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Diana Evans, Council staff; phone: (907) 271–2809 and email: *diana.evans@noaa.gov*. For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, January 9, 2024

The agenda will include: (a) recommend top 3–5 research priorities for Scientific and Statisical Committee; (b) discuss next steps for BS FEP team; and (c) other business. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3027* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3027*.

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/3027*.

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

Dated: December 18, 2023.

Rey Israel Marquez,

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

[FR Doc. 2023–28216 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 231120–0274]

RIN 0648–BJ52

Endangered and Threatened Species; Critical Habitat for the Threatened Indo-Pacific Corals, Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: We, NMFS, will hold seven public hearings related to our proposed rule to designate critical habitat for five threatened corals in U.S. waters in the Indo-Pacific (*Acropora globiceps, Acropora retusa, Acropora speciosa, Euphyllia paradivisa,* and *Isopora crateriformis*) under the Endangered Species Act (ESA).

DATES: Please see Public Hearings in **SUPPLEMENTARY INFORMATION** section for date information. Comments on the proposed rule (88 FR 83644, November 30, 2023) must be received by February 28, 2024. Comments received after this date may not be accepted.

ADDRESSES: The addresses for the venues of the in-person hearings and instructions for joining the virtual hearing are provided below.

- *Guam Public Hearing:* Lotte Hotel Guam, 185 Gun Beach Road, Tamuning, 96913 Guam.
- *Saipan Public Hearing:* Crowne Plaza Resort, Coral Tree Ave., Garapan, Saipan, CNMI 96950.
- *Tinian Public Hearing:* Tinian Elementary School, 8th Avenue, San Jose, Tinian, CNMI 96952.
- *Rota Public Hearing:* Northern Marianas College Rota Campus, Song Song Village, Rota, CNMI 96951.
- *Tutuila Public Hearing #1:* Tradewinds Hotel, Tafuna, Western District, American Samoa 96799.
- *Tutuila Public Hearing #2:* Rex H. Lee Auditorium, Utulei, Eastern District, American Samoa 96799.
- *Virtual Hearing:* This hearing will be conducted as a Webex meeting. You may join the Webex meeting using a web browser, the Webex desktop app (app installation required), a mobile app on a phone (app installation required), or audio-only using just a phone call, as specified below.
  - To join the hearing, click on the link *https://noaanmfs-meets.webex.com/noaanmfs-meets/j.php?MTID=mce25d9e1660a3b2fcd5133fb38aaac55*.
  - Webinar number (access code): 2763 694 3109 Webinar password: kPRDGpXS246 (57734797 from phones and video systems).
  - Join from a mobile device (attendees only) +1–415–527–5035, 27636943109# 57734797#.

You may submit comments verbally or in writing at the public hearings, or in writing by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal. Go to *https://www.regulations.gov/commenton/NOAA-NMFS-2016-0131-0070,* complete the required fields, and enter or attach your comments.
- *Mail:* Lance Smith, Protected Resources Division, NMFS, Pacific Islands Regional Office, NOAA Inouye Regional Center, 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: You must submit comments by one of the previously described methods to ensure that we receive, document, and consider them. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted to *https://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Lance Smith, NMFS, Pacific Islands Regional Office, at *lance.smith@noaa.gov* or 808–725–5131.

SUPPLEMENTARY INFORMATION:

Background

On November 30, 2023, NMFS proposed to designate critical habitat for five Indo-Pacific corals listed as threatened under the ESA within U.S. waters in Guam, CNMI, American Samoa, the Pacific Remote Island Area (PRIA) and Papahānaumokuākea Marine National Monument (MNM) in Hawai'i (88 FR 83644). The five species are *Acropora globiceps, A. retusa, A. speciosa, Euphyllia paradivisa,* and *Isopora crateriformis.* Proposed coral critical habitat consists of substrate and water column habitat characteristics essential for the reproduction, recruitment, growth, and maturation of the listed corals.

Proposed critical habitat consists of 16 island units. There are four units in American Samoa (Tutuila, Ofu-Olosega, Tā'u, Rose Atoll), eight in CNMI (Rota, Aguijan, Tinian, Saipan, Alamagan, Pagan, Maug Islands, Uracas), two in PRIA (Palmyra and Johnston Atolls), one in Guam, and one in Papahānaumokuākea MNM (Lalo, also known as French Frigate Shoals). Between one and five listed corals occur within each unit. The following areas were deemed ineligible for proposed critical habitat because they are within areas covered by final Department of Defense Integrated Natural Resources Management Plans that are likely to benefit listed corals: parts of Guam, parts of Tinian, all of Farallon de Medinilla, and all of Wake Atoll (88 FR 83644, November 30, 2023).

Critical habitat protections apply only to Federal actions under section 7 of the ESA; activities that are not funded, authorized, or carried out by a Federal agency are not subject to these protections. The proposed rule and other materials prepared in support of this action, including maps showing the proposed critical habitat, are available at: *https://www.fisheries.noaa.gov/action/proposed-rule-designate-critical-habitat-threatened-indo-pacific-corals.* We are accepting public comments on the proposed rule through a 90-day public comment period, which ends on February 28, 2024 (see **ADDRESSES** for instructions on how to submit a public comment).

Public Hearings

Public hearings on the proposed rule to designate critical habitat for the five threatened Indo-Pacific corals will be held on the following dates in the evening hours of the affected jurisdictions (Guam, the Commonwealth of the Northern Mariana Islands (CNMI), American Samoa, Hawai'i). Times are given in Chamorro Standard Time (ChST), Samoa Standard Time (SST), and Hawai'i Standard Time (HST). For the six in-person hearings, doors will open at 5:30 p.m. local time, an information meeting by NOAA Fisheries staff will begin at 6 p.m. local time, and the public hearing will begin at 7 p.m. local time, as specified below. For the virtual hearing, an information meeting by NOAA Fisheries staff will begin at 6 p.m. HST, and the public hearing will begin at 7 p.m. HST. Addresses for the venues of the in-person hearings and instructions for joining the virtual hearing are provided under **ADDRESSES**.

- *Guam:* A public hearing is scheduled for Tuesday, January 16, 2024, at the Lotte Hotel Guam. Doors will open at 5:30 p.m. ChST, the information meeting will begin at 6 p.m. ChST, and the public hearing will begin at 7 p.m. ChST.
- *CNMI, Saipan:* A public hearing is scheduled for Thursday, January 18, 2024, at the Crowne Plaza Resort. Doors will open at 5:30 p.m. ChST, the information meeting will begin at 6 p.m. ChST, and the public hearing will begin at 7 p.m. ChST.
- *CNMI, Tinian:* A public hearing is scheduled for Tuesday, January 23, 2024, at the Tinian Elementary School. Doors will open at 5:30 p.m. ChST, the information meeting will begin at 6 p.m. ChST, and the public hearing will begin at 7 p.m. ChST.
- *CNMI, Rota:* A public hearing is scheduled for Thursday, January 25, 2024, at the Northern Marianas College. Doors will open at 5:30 p.m. ChST, the information meeting will begin at 6 p.m. ChST, and the public hearing will begin at 7 p.m. ChST.
- *American Samoa, Tutuila #1:* A public hearing is scheduled for Thursday, January 18, 2024, at the Tradewinds Hotel. Doors will open at 5:30 p.m. SST, the information meeting will begin at 6 p.m. SST, and the public hearing will begin at 7 p.m. SST.
- *American Samoa, Tutuila #2:* A public hearing is scheduled for Tuesday, January 23, 2024, at the Rex H. Lee Auditorium. Doors will open at 5:30 p.m. SST, the information meeting will begin at 6 p.m. SST, and the public hearing will begin at 7 p.m. SST.
- A virtual hearing is scheduled for Wednesday, February 7, 2024. The information meeting will begin at 6 p.m. HST, and the public hearing will begin at 7 p.m. HST.

Six of the public hearings will be conducted in-person and the final hearing will be conducted online as a Webex meeting, as specified in **ADDRESSES** above. The hearings will begin with a brief presentation by NMFS that gives an overview of critical habitat under the ESA and a summary of proposed coral critical habitat in Guam, CNMI, American Samoa, PRIA, and Papahānaumokuākea MNM. After the presentation but before public comments, there will be a question and answer session during which members of the public may ask NMFS staff clarifying questions about the proposed coral critical habitat.

Following the question and answer session, members of the public will have the opportunity to provide oral comments on the record regarding the proposed coral critical habitat. Members of the public will also have the opportunity to submit written comments at the hearings. Written comments may also be submitted at any time during the relevant public comment period as described above (see **DATES** and **ADDRESSES**). All oral comments will be recorded, transcribed, and added to the public comment record for this proposed rule.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: December 19, 2023.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2023–28261 Filed 12–21–23; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* January 21, 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:

Additions

On 9/22/2023, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to 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 material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Enterprise Services Center Support
Mandatory for: NASA, NASA Shared Services Center, Stennis Space Center, MS
Designated Source of Supply: InspiriTec, Inc., Philadelphia, PA
Contracting Activity: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION, NASA SHARED SERVICES CENTER

Deletions

On 11/17/2023, 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):
7530–01–463–2324—Folder, File, ⅓ Cut Tab, Classification, Pressboard, 2 Dividers, 6 Part, Earth Red, Legal
7530–01–463–2326—Folder, File, ⅓ Cut Tab, Classification, Pressboard, 2 Dividers, 6 Part, Blue, Legal
7530–01–463–2330—Folder, File, ⅓ Cut Tab Classification, Pressboard, 1 Divider, 4 Part, Light Green, Letter
7530–01–517–1781—Folder, File, ⅓ Cut Tab, Classification, Pressboard, 2 Dividers, 6 Part, Green, Legal
7530–01–523–4594—Folder, File, ⅓ Cut Tab, Classification, Pressboard, 1 Divider, 4 Part, Earth Red, Letter
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

NSN(s)—Product Name(s):
8455–00–NIB–0139—Name Tape, Embroidered, USAF, Tigerstripe
8455–00–NIB–0140—Service Tape, Embroidered, USAF, Tigerstripe
Designated Source of Supply: LIONS INDUSTRIES FOR THE BLIND, INC, Kinston, NC
Contracting Activity: FA3016 502 CONS CL JBSA, FORT SAM HOUSTON, TX

Service(s)

Service Type: Switchboard Operation
Mandatory for: US Air Force, Telephone Operator Consolidated Call Center, Joint Base Langley-Eustis, VA; 180 Benedict Avenue; Joint Base Langley-Eustis, VA
Designated Source of Supply: VersAbility Resources, Inc., Hampton, VA
Contracting Activity: DEPT OF THE AIR FORCE, FA4890 ACC AMIC
Service Type: Janitorial/Custodial
Mandatory for: Hannibal Federal Building, Hannibal, MO; 801 Broadway; Hannibal, MO
Contracting Activity: PUBLIC BUILDINGS SERVICE, GSA/PUBLIC BUILDINGS SERVICE
Service Type: Laundry/Dry Cleaning
Mandatory for: US Air Force, 911th Airlift Wing, Pittsburg International Airport ARS; 2375 Defense Avenue; Coraopolis, PA
Designated Source of Supply: Hancock County Sheltered Workshop, Inc., Weirton, WV
Contracting Activity: DEPT OF THE AIR FORCE, FA6712 911 AW LGC

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–28281 Filed 12–21–23; 8:45 am]

BILLING CODE 6353–01–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 service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) and service(s) previously furnished by such agencies.

DATES: Comments must be received on or before: January 21, 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 service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Grounds Maintenance/ Vegetation Control
Mandatory for: National Park Service, Chesapeake and Ohio Canal National Historical Park, Palisades Maintenance District, Potomac, MD
Designated Source of Supply: Portco, Inc., Portsmouth, VA
Contracting Activity: NATIONAL PARK SERVICE, NATIONAL PARK SERVICE

Deletions

The following product(s) and service(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
PSIN 01251B—Marker, Postal Tray, BBM—Clearance—Tuesday, Orange
PSIN 01251C—Marker, Postal Tray, BBM—Clearance—Wednesday, Green
PSIN 01251D—Marker, Postal Tray, BBM—Clearance—Thursday, Violet
PSIN 01251E—Marker, Postal Tray, BBM—Clearance—Friday, Yellow
PSIN 01251F—Marker, Postal Tray, BBM—Clearance—Saturday, Pink
PSIN 01251G—Marker, Postal Tray, BBM—Clearance—Sunday, White
PSIN 01251A—Marker, Postal Tray, BBM—Clearance—Monday, Blue
PSIN 01250F—Marker, Postal Tray, BBM—Delivery—Saturday, Pink
PSIN 01250E—Marker, Postal Tray, BBM—Delivery—Friday, Yellow
PSIN 01250D—Marker, Postal Tray, BBM—Delivery—Thursday, Violet
PSIN 01250C—Marker, Postal Tray, BBM—Delivery—Wednesday, Green
PSIN 01250B—Marker, Postal Tray, BBM—Delivery—Tuesday, Orange
PSIN 01250A—Marker, Postal Tray, BBM—Delivery—Monday, Blue
PSIN 01249F—Marker, Postal Tray, First Class—Saturday, Pink
PSIN 01249E—Marker, Postal Tray, First Class—Friday, Yellow
PSIN 01249D—Marker, Postal Tray, First Class—Thursday, Violet
PSIN 01249C—Marker, Postal Tray, First Class—Wednesday, Green
PSIN 01249B—Marker, Postal Tray, First Class—Tuesday, Orange
PSIN 01249A—Marker, Postal Tray, First Class—Monday, Blue
Contracting Activity: USPS Vehicles &

Delivery and Industrial Equipment CMC, Philadelphia, PA

NSN(s)—Product Name(s):

7045–01–599–2657—Encrypted Compact Disc, Recordable, 25 CDs on Spindle, Silver

7045–01–436–7853—Compact Disc, Recordable, Gold, BX/5

7045–01–470–3596—Compact Disc, Rewritable, EA/1

Designated Source of Supply: North Central Sight Services, Inc., Williamsport, PA

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s): 8970–00–NIB–0034—Personal Hygiene Kit

Designated Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX

Contracting Activity: GSA/FSS SPECIAL PROGRAMS DIVISION, ARLINGTON, VA

NSN(s)—Product Name(s): 7520–01–619–0302—Portable Desktop Clipboard, 9½″ W x 1½″ D x 13½″ H, Army Green

Designated Source of Supply: LC Industries, Inc., Durham, NC

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Service(s)

Service Type: Janitorial

Designated for: US Army Corps of Engineers, Transatlantic Middle East District, Admiral Byrd; Facility, Winchester, VA; 222 Admiral Byrd Drive; Winchester, VA

Designated Source of Supply: NW Works, Inc., Winchester, VA

Contracting Activity: DEPT OF THE ARMY, W31R ENDIS MIDDLE EAST

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2023–28280 Filed 12–21–23; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0062, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx* or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

[1] 17 CFR 145.9.

FOR FURTHER INFORMATION CONTACT: Philip Newsom, Special Counsel, Market Participants Division, Commodity Futures Trading Commission, (202) 418–5301; email: *pnewsom@cftc.gov,* and refer to OMB Control No. 3038–0062.

SUPPLEMENTARY INFORMATION:

Title: Off-Exchange Foreign Currency Transactions (OMB Control No. 3038–0062). This is a request for an extension/revision of a currently approved information collection.

Abstract: Part 5 of the Commission's regulations under the CEA establishes rules applicable to retail foreign exchange dealers (''RFEDs''), futures commission merchants (''FCMs''), introducing brokers (''IBs''), commodity trading advisors (''CTAs''), and commodity pool operators (''CPOs'') engaged in the offer and sale of off-exchange forex contracts to retail customers. Specifically:

- Regulation 5.5 requires RFEDs, FCMs, and IBs to distribute risk disclosure statements to new retail forex customers.
- Regulation 5.6 requires RFEDs and FCMs to report any failures to maintain the minimum capital required by Commission regulations.
- Regulation 5.8 requires RFEDs and FCMs to calculate their total retail forex obligation.
- Regulation 5.10 requires RFEDs to maintain and preserve certain risk assessment documentation.
- Regulation 5.11(a)(1) requires RFEDs to submit certain risk assessment documentation to the Commission within 60 days of the effective date of their registration.
- Regulation 5.11(a)(2) requires RFEDs to submit certain financial documentation to the Commission within 105 calendar days of the end of each fiscal year. RFEDs must also submit additional information, if requested, regarding affiliates' financial impact on an RFED's organizational structure.
- Regulation 5.12(a) requires RFED applicants to submit a Form 1–FR–FCM concurrently with their registration application.
- Regulation 5.12(b) requires registered RFEDs to file a Form 1–FR–FCM on a monthly and annual basis.
- Regulation 5.12(g) states that, in the event that an RFED cannot file its Form 1–FR–FCM for any period within the time specified in Regulation 5.12(b), the RFED may file an application for an extension of time with its self-regulatory organization.

• Regulation 5.13(a) requires RFEDs and FCMs to provide monthly account statements to their customers.
• Regulation 5.13(b) requires RFEDs and FCMs to provide confirmation statements to their customers within one business day after the execution of any retail forex or forex option transaction.
• Regulation 5.14 requires RFEDs and FCMs to maintain current ledgers of each transaction affecting its asset, liability, income, expense and capital accounts.
• Regulation 5.18(g) requires each RFED, FCM, CPO, CTA, and IB subject to part 5 to maintain a record of all communications received that give rise to possible violations of the Act, rules, regulations or orders thereunder related to their retail forex business.
• Regulation 5.18(i) requires each RFED and FCM to prepare and maintain on a quarterly basis a calculation of nondiscretionary retail forex customer accounts open for any period of time during the quarter that were profitable, and the percentage of such accounts that were not profitable.
• Regulation 5.18(j) requires the chief compliance officer of each RFED and FCM to certify annually that the firm has in place processes to establish, maintain, review, modify and test policies and procedures reasonably designed to achieve compliance with the Act, rules, regulations and orders thereunder.
• Regulation 5.19 requires each RFED, FCM, CPO, CTA, and IB subject to part 5 to submit to the Commission copies of any dispositive or partially dispositive decision for which a notice of appeal has been filed in any material legal proceeding (1) to which the firm is a party to or to which its property or assets is subject with respect to retail forex transactions, or (2) instituted against any person who is a principal of the firm arising from conduct in such person's capacity as a principal of that firm.
• Regulation 5.20 requires RFEDs, FCMs and IBs to submit documentation requested pursuant to certain types of special calls by the Commission.
• Regulation 5.23 requires RFEDs, FCMs and IBs to notify the Commission regarding bulk transfers and bulk liquidations of customer accounts.

The rules establish reporting and recordkeeping requirements that are necessary to implement the provisions of the Food, Conservation, and Energy Act of 2008 [2] regarding off-exchange transactions in foreign currency with members of the public. The rules are intended to promote customer protection by providing safeguards against irresponsible or fraudulent business practices.[3]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.[4] On October 16, 2023, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 88 FR 71341 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its burden estimate for 81 respondents, which include RFEDs, FCMs, IBs, CPOs, and CTAs. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 81.

Estimated Average Burden Hours per Respondent: 1,757.[5]

Estimated Total Annual Burden Hours: 142,324.

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: December 19, 2023.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2023–28243 Filed 12–21–23; 8:45 am]

BILLING CODE 6351–01–P

[2] Public Law 110–246, 122 Stat. 1651, 2189–220 (2008).

[3] *See* Regulation of Off-Exchange Retail Foreign Exchange Transactions and Intermediaries, 75 FR 55410, 55416 (Sept. 10, 2010).

[4] 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

[5] This figure has been rounded from 1,757.09 to the nearest whole number.

DEPARTMENT OF DEFENSE

Department of the Air Force

[ARW–231206A–PL]

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant an exclusive patent license to ValorTrac Inc. having a place of business at 9213 Bolero Ave., Bakersfield, CA, 93312.

DATES: Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

ADDRESSES: Submit written objections to the Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Room 260, Wright-Patterson AFB, OH 45433–7109; Facsimile: (937) 255–3733; or Email: *afmclo.jaz.tech@us.af.mil.* Include Docket No. ARW–231206A–P in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: William Loux, AFRL/RWSP, 101 W Eglin Blvd., Eglin AFB, FL 32542–6810; Phone: 850–882–3920; or Email: *william.loux.2@us.af.mil.*

SUPPLEMENTARY INFORMATION:

Abstract of Patent Application(s)

A touch-based tracking method comprises starting a GUI which displays an environment; observing at least one of the presence or absence of one or more targets in relation to features in the environment; when an observation is made, reporting the observation through the GUI to form an input; reporting the observation in the GUI with a hand gesture; applying an algorithm to convert the input into a probability distribution; and updating a target state estimate and alters the environment display. The environment may be an area or a map, and the map may include a plurality of features, *e.g.* roads, building structures, forest, and water. The observation indicates the presence or non-presence of the one or more targets. The hand gesture is made on the map, such as a swiping motion with one or more fingers on the GUI, wherein the hand gesture indicates the strength of the observation.

Intellectual Property

CURTIS et al., U.S. Patent no. 11,429,273 B1 issued 30 August 2022 and entitled ''*Touch-Based Tracking system and Method.*''

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

(Authority: 35 U.S.C. 209; 37 CFR 404)

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2023–28208 Filed 12–21–23; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2023–0036; OMB Control Number 0704–0497]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Part 215 Negotiation

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dodinformation-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 215 Negotiation; OMB Control Number 0704–0497.

Type of Request: Extension of a currently approved collection.

Respondent's Obligation: Required to obtain or retain benefits.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Number of Respondents: 157.

Responses per Respondent: 1.

Annual Responses: 157.

Average Burden per Response: 4 hours.

Annual Burden Hours: 628.

Frequency: On Occasion.

Needs and Uses: The purpose of this information collection is to improve the efficiency of the negotiations process by ensuring the submission of thorough, accurate, and complete forward pricing rate proposals. If the contracting officer determines that a forward pricing rate proposal should be obtained pursuant to Federal Acquisition Regulation 42.1701, then contractors following the contract cost principles for commercial organizations in FAR subpart 31.2 will be required to submit a forward pricing rate proposal that complies with Federal Acquisition Regulation 15.408, Table 15–2, and DFARS 215.403–5 and 215.407–5–70. DFARS 215.403–5 provides contractors with guidance for the submittal of forward pricing rate proposals, including a checklist for contractors to use in preparing their proposals. The checklist is submitted to DoD with the forward pricing rate proposal. The forward pricing rate proposal adequacy checklist at Table 215.403–1 is used by the contracting officer and the contractor to ensure the proposal is complete.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–28168 Filed 12–21–23; 8:45 am]

BILLING CODE 6820–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2023–0031; OMB Control Number 0704–0245]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Transportation

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dodinformation-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Transportation, and related clauses—DoD FAR Supplement Part 247, OMB Control Number 0704–0245.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 16,950.

Responses per Respondent: 6.76, approximately.

Annual Responses: 114,655.

Hours per Response: 0.55, approximately.

Estimated Hours: 63,354.

Reporting Frequency: On occasion.

Needs and Uses: DoD contracting officers use this information to verify that prospective contractors have adequate insurance prior to award of stevedoring contracts; to provide appropriate price adjustments to stevedoring contracts; to assist the Maritime Administration in monitoring compliance with requirements for use of U.S.-flag vessels in accordance with the Cargo Preference Act of 1904 (10 U.S.C. 2631); and to provide appropriate and timely shipping documentation and instructions to contractors.

The clause at DFARS 252.247–7000, Hardship Conditions, is prescribed at DFARS 247.270–4(a) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (a) of the clause requires the contractor to notify the contracting officer of unusual conditions associated with loading or unloading a particular cargo, for potential adjustment of contract labor rates; and to submit any associated request for price adjustment to the contracting officer within 10 working days of the vessel sailing time.

The clause at DFARS 252.247–7002, Revision of Prices, is prescribed at DFARS 247.270–4(b) for use in solicitations and contracts when using negotiation to acquire stevedoring services. Paragraph (c) of the clause provides that, at any time, either the contracting officer or the contractor may deliver to the other a written demand that the parties negotiate to revise the prices under the contract. Paragraph (d) of the clause requires that, if either party makes such a demand, the contractor must submit relevant data upon which to base negotiations.

The clause at DFARS 252.247–7007, Liability and Insurance, is prescribed at DFARS 247.270–4(c) for use in all solicitations and contracts for the acquisition of stevedoring services. Paragraph (f) of the clause requires the contractor to furnish the contracting officer with satisfactory evidence of insurance.

The provision at DFARS 252.247–7022, Representation of Extent of Transportation by Sea, is prescribed at DFARS 247.574(a) for use in all solicitations except those for direct purchase of ocean transportation services or those with an anticipated value at or below the simplified acquisition threshold. Paragraph (b) of the provision requires the offeror to represent whether or not it anticipates that supplies will be transported by sea in the performance of any contract or subcontract resulting from the solicitation.

The clause at DFARS 252.247–7023, Transportation of Supplies by Sea, is prescribed at DFARS 247.574(b) for use in all solicitations and contracts except those for direct purchase of ocean transportation services. Paragraph (d) of the clause requires the contractor to submit any requests for use of other than U.S.-flag vessels in writing to the contracting officer. Paragraph (e) of the clause requires the contractor to submit one copy of the rated on board vessel operating carrier's ocean bill of landing. Paragraph (f) of the clause, if the contract exceeds the simplified acquisition threshold, requires the contractor to represent, with its final invoice, that: (1) no ocean transportation was used in the performance of the contract; (2) only U.S.-flag vessels were used for all ocean shipments under the contract; (3) the contractor had the written consent of the contracting officer for all non-U.S.-flag ocean transportation; or (4) shipments were made on non-U.S.-flag vessels without the written consent of the contracting officer. Contractors must flow down these requirements to noncommercial subcontracts and certain types of commercial subcontracts. Subcontracts at or below the simplified acquisition threshold are excluded from the requirements of paragraph (f) stated above. Paragraph (h) of the clause requires the contractor, after award, to notify the contracting officer if the contractor learns that supplies will be transported by sea and the contractor indicated, in the solicitation, that the contractor did not anticipate transporting any supplies by sea.

The provision at DFARS 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, is prescribed at DFARS 247.574(d) in solicitations that require a covered vessel for carriage of cargo for DoD. Paragraph (c) of the provision requires the offeror to provide information with its offer, addressing all covered vessels for which overhaul, repair, and maintenance work has been performed during the period covering the current calendar year, up to the date of proposal submission, and the preceding four calendar years.

The clause at DFARS 252.247.7028, Application for U.S. Government Shipping Documentation/Instructions, is prescribed at DFARS 247.207(2) for inclusion in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when shipping under Bills of Lading and Domestic Route Order under FOB origin contracts, Export Traffic Release regardless of FOB terms, or foreign military sales shipments. Paragraph (a) of the clause requires contractors to complete DD Form 1659, Application for U.S. Government Shipping Documentation/Instructions, to request shipping instructions, unless an automated system is available (paragraph (b) of the clause).

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–28163 Filed 12–21–23; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0035; OMB Control Number 0704–0386]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Small Business Programs

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dodinformation-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 219, Small Business Programs, and Associated Clause in Part 252; OMB Control Number 0704–0386.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 41.

Responses per Respondent: 1.

Annual Responses: 41.

Average Burden per Response: 1 hour.

Annual Burden Hours: 41.

Needs and Uses: This information collection includes requirements relating to DFARS part 219, Small Business Programs, and the clause at

DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts). DoD needs this information to improve administration under the small business subcontracting program and to evaluate a contractor's past performance in complying with its small business subcontracting plan.

The clause at DFARS 252.219–7003 is prescribed for use in solicitations and contracts that include the clause at Federal Acquisition Regulation 52.219–9, Small Business Subcontracting Plan. Paragraph (e) of the DFARS clause requires the contractor to notify the contracting officer, in writing, of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. The notification is necessary when (1) a prime contractor has identified specific small business concerns in its subcontracting plan, and (2) after contract award, substitutes one of the small businesses identified in its subcontracting plan with a firm that is not a small business. The intent of this information collection is to alert the contracting officer of this situation.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–28167 Filed 12–21–23; 8:45 am]

BILLING CODE 6820–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket DARS–2023–0032; OMB Control Number 0704–0248]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Inspection and Receiving Report

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed revision and extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dodinformation-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; OMB Control Number 0704–0248.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Number of Respondents: 126,047.

Responses per Respondent: Approximately 21.

Annual Responses: 2,643,899.

Average Burden per Response: 0.05 hour.

Annual Burden Hours: 132,195.

Reporting Frequency: On occasion.

Needs and Uses: This information collection is necessary to process shipping and receipt documentation for contractor-provided goods and services and permit payment under DoD contracts. This information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report. Appendix F contains procedures and instructions for submission of contractor payment requests and receiving reports using Wide Area WorkFlow (WAWF). 10 U.S.C. 4601 requires electronic submission and processing of claims for contract payments under DoD contracts. DoD has designated WAWF as the designated platform for contractors to submit payment requests and supporting documentation, including receiving reports. WAWF supports the preparation and distribution of electronic equivalents for the DD Form 250, Material Inspection and Receiving Report, and DD Form 250 series equivalents for repair of Government property and energy-related overland or waterborne shipments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–28164 Filed 12–21–23; 8:45 am]

BILLING CODE 6820–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2023–0033; OMB Control Number 0704–0252]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement Part 251, Use of Government Sources by Contractors

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dodinformation-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Part 251, Use of Government Sources by Contractors, and related clause at DFARS 252.251; OMB Control Number 0704–0252.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Number of Respondents: 1,684.

Responses per Respondent: Approximately 9.1.

Annual Responses: 15,347.

Average Burden per Response: 0.5 hour.

Annual Burden Hours: 7,674.

Needs and Uses: This information collection permits contractors to place orders from Government supply sources, including Federal Supply Schedules, requirements contracts, and Government stock. Contractors are required to provide a copy of their written authorization to use Government supply sources with their order. The authorization is used by the Government source of supply to verify that a contractor is authorized to place such orders and under what conditions. The clause at DFARS 252.251–7000, Ordering from Government Supply Sources, requires a contractor to provide a copy of the authorization when placing an order under a Federal Supply Schedule, a Personal Property Rehabilitation Price Schedule, or an Enterprise Software Agreement.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–28165 Filed 12–21–23; 8:45 am]

BILLING CODE 6820–FR–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number: DARS–2023–0034; OMB Control Number 0704–0272]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Occupational Safety, Drug-Free Work Force and Related Clauses

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB for clearance, the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You may also submit comments, identified by docket number and title, by the following method: Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dodinformation-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-free Workplace—DoD FAR Supplement Part 223; OMB Control Number 0704–0272.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Respondents: 2,283.

Responses per Respondent: 31.5, approximately.

Annual Responses: 71,857.

Hours per Response: 0.41, approximately.

Annual Burden Hours: 496,094 hours (29,134 reporting hours and 466,960 recordkeeping hours).

Reporting Frequency: On occasion.

Needs and Uses: This information collection requires that an offeror or contractor submit information to DoD in response to four contract clauses relating to occupational safety and drug-free work force program. DoD contracting officers use this information to—

○ Verify compliance with requirements for labeling of hazardous materials;

○ Ensure contractor compliance and monitor subcontractor compliance with DoD 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, and minimize risk of mishaps;

○ Identify the place of performance of all ammunition and explosives work; and

○ Ensure contractor compliance and monitor subcontractor compliance with DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

○ Ensure compliance with the clause program requirements with regard to programs for achieving the objective of a drug-free work force; requires contractor recordkeeping.

This information collection addresses the following requirements:

1. *DFARS 252.223–7001, Hazard Warning Labels.* Paragraph (c) requires all offerors to list which hazardous materials will be labeled in accordance with certain statutory requirements instead of the Hazard Communication Standard. Paragraph (d) requires only the apparently successful offeror to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of the clause.

2. *DFARS 252.223–7002, Safety Precautions for Ammunition and Explosives.* Paragraph (c)(2) requires the contractor, within 30 days of notification of noncompliance with DoD 4145.26–M, to notify the contracting officer of actions taken to correct the noncompliance. Paragraph (d)(1) requires the contractor to notify the contracting officer immediately of any mishaps involving ammunition or explosives. Paragraph (d)(3) requires the contractor to submit a written report of the investigation of the mishap to the contracting officer. Paragraph (g)(4) requires the contractor to notify the contracting officer before placing a subcontract for ammunition or explosives.

3. *DFARS 252.223–7003, Changes in Place of Performance—Ammunition and Explosives.* Paragraph (a) requires the offeror to identify, in the Place of Performance provision of the solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of the solicitation. Paragraphs (b) and (c) require the offeror or contractor to obtain written permission from the contracting officer before changing the place of performance after the date set for receipt of offers or after contract award.

4. *DFARS 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.* Paragraph (e) requires the contractor to notify the cognizant Defense Security Service field office within 10 days after award of any subcontract involving sensitive conventional arms, ammunition, and explosives within the scope of DoD 5100.76–M.

5. *DFARS 252.223–7004, Drug-Free Work Force.* The clause requires that

certain contractors maintain records necessary to demonstrate reasonable efforts to eliminate the unlawful use by contractor employees of controlled substances. DoD does not regularly collect any information with regard to this clause.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2023–28166 Filed 12–21–23; 8:45 am]

BILLING CODE 6820–FR–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2023–OPE–0164]

Privacy Act of 1974; System of Records

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S Department of Education (Department) publishes this notice of a modified system of records entitled and numbered ''Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA), Faculty Research Abroad (FRA), and Seminars Abroad (SA)'' (18–12–02), which was formerly entitled and numbered ''Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA) and Seminars Abroad (SA)'' (18–12–02). The information contained in this system is used to determine applicants' qualifications, eligibility, suitability, and feasibility to receive a fellowship under the DDRA, FRA, and SA programs; to award benefits for overseas research; to monitor the progress of the projects funded under these programs, including their accomplishments; and, to demonstrate the programs' effectiveness. This system of records notice is being modified to cover the FRA program records. In fiscal year 2011, funding for the Department's International and Foreign Language Education (IFLE) office, which administers the Fulbright-Hays programs, was cut significantly, and the FRA program was discontinued as a result. The Department therefore removed the FRA program from this system of records notice. Recently, funding for IFLE has increased. As such, IFLE now wishes to reinstate the FRA program, and it is therefore necessary for the Department to modify this system of records notice to again cover FRA program records.

DATES: Submit your comments on this modified system of records notice on or before January 22, 2024.

This modified system of records notice will become applicable upon publication in the **Federal Register** on December 22, 2023, except for new and modified routine uses (3), (11), and (15) that are outlined in the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES,'' which will be applicable on January 22, 2024, unless they need to be changed as a result of public comment. The Department will publish any changes to the modified system of records notice resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *regulations.gov*. However, if you require an accommodation or cannot otherwise submit your comments via *regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under the ''FAQ'' tab.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Amy Marrion, International and Foreign Language Education, Office of Postsecondary Education. Telephone: (202) 987–1083. Email: *Amy.Marrion@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act, the Department is modifying the system of records entitled and numbered ''Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA), Faculty Research Abroad (FRA), and Seminars Abroad (SA)'' (18–12–02), which was formerly entitled and numbered ''Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA) and Seminars Abroad (SA)'' (18–12–02) when the system of records notice was last published in full in the **Federal Register** on August 13, 2019 (84 FR 40033).

The Department is modifying the section entitled ''SYSTEM NAME AND NUMBER'' to include ''Faculty Research Abroad (FRA)'' in the system name.

The Department is modifying the section entitled ''SYSTEM LOCATION'' to remove the name and location of AppNet.

The Department is modifying the section entitled ''SYSTEM MANAGER(S)'' to replace the name of the system manager with the title of the system manager and to make minor updates to the contact information of the system manager within the Office of Postsecondary Education.

The Department is modifying the section entitled ''CATEGORIES OF RECORDS IN THE SYSTEM'' to cover FRA, including information about individual fellowship applications, performance reports, overseas travel requests, and grant activation requests.

The Department is modifying the section entitled ''ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES'' as follows:

(i) Routine use (3) is being modified to clarify that it applies to ''judicial or administrative'' litigation, rather than just ''litigation,'' in order to make the routine use more specific and clearer;

(ii) Routine use (11) is being modified to clarify that the Department may disclose the records of an individual to a Member of Congress or their staff when necessary to respond to an inquiry from the Member and that the Member's

request must be made not only at the written request of, but also on behalf of, the individual whose records are being disclosed; and

(iii) Newly numbered routine use (15) entitled ''Disclosure to the National Archives and Records Administration (NARA)'' is being added to permit disclosures to NARA for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR STORAGE OF RECORDS'' to remove the reference to hard copy records, and to identify the electronic system that houses IFLE fellow award records.

The Department is modifying the section entitled ''POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS'' to delete and replace ''[h]ardcopy and electronic files'' with ''records.''

The Department is modifying the section entitled ''ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS'' to remove all references to AppNet and hard copy files, and replace with language referencing electronic program files in the G5 and the International Resource Information System (IRIS) systems; and include the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, requirements of a signed Authorization to Operate (ATO) and its assessment of security controls.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Nasser Paydar,

Assistant Secretary, Office for Postsecondary Education.

For the reasons discussed in the preamble, the Assistant Secretary for Postsecondary Education of the U.S. Department of Education (Department), publishes a notice of a modified system of records to read as follows:

SYSTEM NAME AND NUMBER:

Fulbright-Hays-Doctoral Dissertation Research Abroad (DDRA), Faculty Research Abroad (FRA), and Seminars Abroad (SA) (18–12–02).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

International and Foreign Language Education (IFLE), Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6110.

SYSTEM MANAGER(S):

Program Officer, Fulbright-Hays Programs, International and Foreign Language Education (IFLE), Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6110.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Mutual Educational and Cultural Exchange Act of 1961, as amended (22 U.S.C. 2451–2458).

PURPOSE(S) OF THE SYSTEM:

The information contained in this system is used for the following purposes: (1) to determine an applicant's qualifications, eligibility, suitability, and feasibility to receive a fellowship under the DDRA, FRA, and SA programs; (2) to award benefits for overseas research; (3) to monitor the progress of the projects funded under these programs, including their accomplishments; and (4) to demonstrate these programs' effectiveness.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on teachers, prospective teachers, or doctoral candidates who apply for or are selected to be recipients for Fulbright-Hays awards to enable them to engage in foreign language and area studies projects overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system of records consists of a variety of records relating to an individual's application for, and participation in, the Fulbright-Hays DDRA, FRA, or SA programs. In addition to the individual's name, the system contains the individual's address, telephone number, email address, educational institution, date and place of birth, citizenship, veteran status, accompanying dependents' names, previous overseas travel, educational and employment background, student loan default status, health statement, transcripts, references, project description and project cost based on either the cost of living in the host country or the annualized salary of a faculty member, field reader and U.S. Embassy comments, award documents, individual fellowship applications, overseas travel requests, grant activation requests and final individual fellowship project reports.

RECORD SOURCE CATEGORIES:

Information is obtained from the individual on approved application forms and from field readers and may be secured from the U.S. Department of State, U.S. embassies, binational commissions, the J. William Fulbright Foreign Scholarship Board, and foreign educators and officials. Information in this system also may be obtained from other persons or entities from which data is obtained under routine uses set forth below.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), under a computer matching agreement (CMA).

(1) *Program Disclosure.* The Department may disclose information to field readers, the U.S. Department of State, U.S. embassies, binational commissions, the J. William Fulbright Foreign Scholarship Board, or to foreign educators or officials so that the information can be used to determine the qualifications, eligibility, suitability, feasibility, and award benefits for overseas research.

(2) *Enforcement Disclosure.* If information in this system of records, either alone or in connection with other information, indicates a violation or potential violation of any applicable statutory, regulatory, or legally binding requirement, the Department may disclose records to an entity charged with investigating or prosecuting those violations or potential violations.

(3) *Litigation and Alternative Dispute Resolution (ADR) Disclosure.*

(a) *Introduction.* In the event that one of the parties listed below is involved in judicial or administrative litigation or ADR, or has an interest in such litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c) and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department, or any of its components;

(ii) Any Department employee in their official capacity;

(iii) Any Department employee in their individual capacity where the Department of Justice (DOJ) agrees to or has been requested to provide or arrange for representation for the employee;

(iv) Any Department employee in their individual capacity where the agency has agreed to represent the employee;

(v) The United States, where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) *Disclosure to the DOJ.* If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) *Adjudicative Disclosure.* If the Department determines that disclosure of certain records to an adjudicative body before which the Department is authorized to appear, or to a person or entity designated by the Department or otherwise empowered to resolve or mediate disputes, is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) *Disclosure to Parties, Counsels, Representatives, and Witnesses.* If the Department determines that disclosure of certain records is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(4) *Employment, Benefit, and Contracting Disclosure.*

(a) *For Decisions by the Department.* The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) *For Decisions by Other Public Agencies and Professional Organizations.* The Department may disclose a record to a Federal, State, local, or foreign agency, or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(5) *Employee Grievance, Complaint or Conduct Disclosure.* If a record is relevant and necessary to an employee grievance, complaint, or disciplinary action involving a present or former employee of the Department, the Department may disclose a record in this system of records in the course of investigation, fact-finding, or adjudication, to any party to the grievance, complaint, or action; to the party's counsel or representative; to a witness; or, to a designated fact-finder, mediator, or other person designated to resolve issues or decide the matter.

(6) *Labor Organization Disclosure.* The Department may disclose a record from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of a labor organization recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(7) *Freedom of Information Act (FOIA) or Privacy Act Advice Disclosure.* The Department may disclose records to the DOJ or to the Office of Management and Budget (OMB) if the Department determines that disclosure is desirable or necessary in determining whether particular records are required to be disclosed under the FOIA or the Privacy Act.

(8) *Disclosure to the DOJ.* The Department may disclose records to the DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(9) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department will require the contractor to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(10) *Research Disclosure.* The Department may disclose records to a researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The Department may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to agree to establish and maintain safeguards to protect the security and confidentiality of the disclosed records.

(11) *Congressional Member Disclosure.* The Department may disclose the records of an individual to a Member of Congress or the Member's staff when necessary to respond to an inquiry from the Member made at the written request of that individual and on behalf of that individual. The Member's right to the information is no greater than the right of the individual who requested it.

(12) *Disclosure to OMB and the Congressional Budget Office (CBO) for Federal Credit Reform Act (CRA) Support.* The Department may disclose records to OMB and CBO as necessary to fulfill CRA requirements in accordance with 2 U.S.C. 661b.

(13) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that there has been a breach of the system of records; (b) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or

confirmed breach or to prevent, minimize, or remedy such harm.

(14) *Disclosure in Assisting another Agency in Responding to a Breach of Data.* The Department may disclose records from this system to another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(15) *Disclosure to the National Archives and Records Administration (NARA).* The Department may disclose records from this system of records to NARA for the purpose of records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The performance reporting records are stored in IRIS, IFLE's online annual performance reporting system, and are accessible to individual participants, participants' institutions, and Department personnel.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by individual names, award number, and name of educational institution.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with General Records Schedule 1.2: Grant and Cooperative Agreement Records (GRS 1.2), Items 020 and 021. Records of successful applications are destroyed, in accordance with GRS 1.2, Item 020, 10 years after final action is taken on the applicant's case file, but longer retention is authorized if required for business use. Records of unsuccessful applications are destroyed, in accordance with GRS 1.2, Item 021, 3 years after final action is taken on the applicant's case file, but longer retention is authorized if required for business use.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL SAFEGUARDS:

Grantee applications and financial records are stored in the Department's G5 system, which is covered by the system of records notice entitled ''Education's Central Automated Processing System (EDCAPS)'' (18–04–04) that was last modified and published in full in the **Federal Register** on December 24, 2015 (80 FR 80331–80339). All individual fellow performance report files are stored in IFLE's IRIS system. In IRIS, fellowship files are accessible to grantee institutions that distribute funds to the fellows, fellows, and IFLE program staff through the use of usernames and passwords. In accordance with the Federal Information Security Management Act of 2002 (FISMA), as amended by the Federal Information Security Modernization Act of 2014, every Department system must receive a signed Authorization to Operate (ATO) from a designated Department official. The ATO process includes a rigorous assessment of security and privacy controls, a plan of actions and milestones to remediate any identified deficiencies, and a continuous monitoring program.

FISMA controls implemented are comprised of a combination of management, operational, and technical controls, and include the following control families: access control, awareness and training, audit and accountability, security assessment and authorization, configuration management, contingency planning, identification and authentication, incident response, maintenance, media protection, physical and environmental protection, planning, personnel security, privacy, risk assessment, system and services acquisition, system and communications protection, system and information integrity, and program management.

RECORD ACCESS PROCEDURES:

If you wish to gain access to records regarding you in this system of records, contact the system manager at the address listed above. Requests must contain the necessary particulars, such as your full name, date of birth, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you in this system of records, contact the system manager at the address listed above. Requests should contain your full name, date of birth, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager at the address listed above. Requests must contain the necessary particulars, such as your full name, date of birth, the year of the award, the name of the grantee institution, major country in which you conducted your educational activity, and any other identifying information requested by the Department while processing the request in order to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.5.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

The system of records entitled ''Fulbright-Hays—Doctoral Dissertation Research Abroad (DDRA), Faculty Research Abroad (FRA), and Seminars Abroad (SA)'' (18–12–02), was last modified and published in full in the **Federal Register** on August 13, 2019 (84 FR 40033–40037).

[FR Doc. 2023–28161 Filed 12–21–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2023–SCC–0181]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Charter Online Management and Performance System (COMPS) Charter School Programs (CSP) Credit Enhancement Annual Performance Report (APR)

AGENCY: Office of the Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before January 22, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link *www.reginfo.gov/public/do/PRAMain* to access the site. Find this information collection request (ICR) by selecting ''Department of Education'' under ''Currently Under Review,'' then check the ''Only Show ICR for Public Comment'' checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the ''View Information Collection (IC) List'' link. Supporting statements and other supporting documentation may be found by clicking on the ''View Supporting Statement and Other Documents'' link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Brake, 202–453–6136.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Charter Online Management and Performance System (COMPS) CSP Credit Enhancement APR.

OMB Control Number: 1810–NEW.

Type of Review: A new ICR.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 82.

Total Estimated Number of Annual Burden Hours: 2,050.

Abstract: This request is for a new OMB approval to collect the Annual Performance Report (APR) data from Charter School Programs (CSP) Credit Enhancement for Charter School Facilities Program (CE) grantees.

The Charter School Programs was originally authorized under title V, part B, subpart 1, sections 5201 through 5211 of the Elementary and Secondary Education Act (ESEA) of 1965, as amended by the No Child Left Behind (NCLB) Act of 2001. For fiscal year 2017 and thereafter, ESEA has been amended by the Every Student Succeeds Act (ESSA), (20USC 7221–7221i), which reserves funds to improve education by supporting innovation in public education and to: (2) provide financial assistance for the planning, program design, and initial implementation of charter schools; (3) increase the number of high-quality charter schools available to students across the United States; (4) evaluate the impact of charter schools on student achievement, families, and communities, and share best practices between charter schools and other public schools; (5) encourage States to provide support to charter schools for facilities financing in an amount more nearly commensurate to the amount States typically provide for traditional public schools; (6) expand opportunities for children with disabilities, English learners, and other traditionally underserved students to attend charter schools and meet the challenging State academic standards; (7) support efforts to strengthen the charter school authorizing process to improve performance management, including transparency, oversight and monitoring (including financial audits), and evaluation of such schools; and (8) support quality, accountability, and transparency in the operational performance of all authorized public chartering agencies, including State educational agencies, local educational agencies, and other authorizing entities.

Specific to the CE program, grant funds are awarded to demonstrate innovative methods of helping charter schools to address the costs of acquiring, constructing, and renovating facilities by enhancing the availability of loans or bond financing and used by grantees to assist one or more charter schools to access private-sector capital to accomplish one or more of the following objectives: (1) The acquisition (by purchase, lease, donation, or otherwise) of an interest (including an interest held by a third party for the benefit of a charter schools) in improved or unimproved real property that is necessary to commence or continue the operation of a charter schools; (2) The construction of new facilities, or the renovation, repair, or alteration of existing facilities, necessary to commence or continue the operation of a charter school; (3) The predevelopment costs required to assess sites for purposes of paragraph (1) or (2) and that are necessary to commence or continue the operation of a charter school.

The U.S. Department of Education (ED) is requesting authorization to collect data from CSP grantees within the CE program with new APR tool. The former APR data collection package for CE grantees was discontinued in March 2023. The CSP made revisions to the questionnaire aimed at reducing grantee burden (*e.g.,* eliminating questions) and collecting more accurate and useful program data (*e.g.,* identifying joint transactions with other CE grantees). To further these aims, CSP is planning to collect the APR data through a web-based system used to collect APR data from other CSP program grantees.

Dated: December 19, 2023.

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. 2023–28259 Filed 12–21–23; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. 23–137–LNG]

Magnolia LNG, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Countries

AGENCY: Office of Fossil Energy and Carbon Management, Department of Energy.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed by Magnolia LNG, LLC (Magnolia) on November 29, 2023. Magnolia requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in a volume equivalent to approximately 449 billion cubic feet (Bcf) of natural gas per year (Bcf/y), or 1.23 Bcf per day (Bcf/d), from the proposed Magnolia terminal facilities to be constructed and operated near Lake Charles, Louisiana (Magnolia LNG Project). Magnolia filed the Application under the Natural Gas Act (NGA).

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, February 20, 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, (202) 586–9793, *cassandra.bernstein@hq.doe.gov*

SUPPLEMENTARY INFORMATION: Magnolia requests authorization to export domestically produced LNG by ocean-going carrier from the proposed Magnolia LNG Project, to be constructed and located on Industrial Canal South Shore PLC Tract 475, an approximately 115-acre parcel of land in Calcasieu Parish, Louisiana, under a long-term lease with the Lake Charles Harbor & Terminal District. Magnolia states that the proposed LNG Project would include four LNG trains, two LNG storage tanks each with capacity of approximately 160,000 cubic meters, and vessel loading facilities, and would be located in an area zoned for heavy industrial use and consistent with other industrial facilities along the shoreline. Magnolia seeks to export this LNG from the liquefaction project in a volume equivalent to approximately 449 Bcf/yr of natural gas (1.23 Bcf/d) to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas and LNG, which has or in the future develops the capacity to import LNG via ocean-going carrier, and with which trade is not prohibited by U.S. law or policy (non-FTA countries), pursuant to section 3(a) of the NGA.[1]

In the Application, Magnolia notes that it had already been authorized in DOE/FE Order No. 3909[2] (later amended by DOE/FECM Order No. 3909–C) to export the same volume of LNG from the proposed Magnolia LNG Project to non-FTA countries. Order No. 3909–C required Magnolia to commence commercial operations at its LNG Project by November 30, 2023. On March 20, 2023,[3] and with a subsequent amendment on May 30, 2023,[4] Magnolia asked DOE to postpone its commencement deadline. On November 29, 2023—the same day it filed the present Application—Magnolia asked to withdraw its request for a later commencement date, effective immediately.[5] Order No. 3909–C then expired on its own terms at the end of November 2023.[6]

Magnolia remains authorized to export the equivalent volume of LNG to countries with which the U.S. has an FTA requiring national treatment for trade in natural gas (FTA countries), for a term extending through December 31, 2050.[7]

Magnolia states that its Application ''requests a new authorization of the same volumes in light of the expiration of the original authorization on November 30, 2023,'' noting that the Federal Energy Regulatory Commission's approval of the siting, construction, ownership, and operation of the Magnolia LNG Project remains in effect.

Magnolia seeks this authorization on its own behalf and as agent for other entities that hold title to the LNG at the point of export. Magnolia requests the authorization for a term commencing on the earlier of the date of first export or seven (7) years from the date of issuance of the requested authorization, and extending through December 31, 2050.

Additional details can be found in the Application, posted on the DOE website at *https://www.energy.gov/sites/default/files/2023-12/Magnolia%20LNG%20DOE%20NFTA%20Export%20Authorization%20Application%20%28Nov.%2029%202023%29.pdf.*

DOE Evaluation

In reviewing Magnolia's Application, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[8] and DOE's response to public comments received on that Study.[9]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[10]
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied*

[1] 15 U.S.C. 717b(a).

[2] *Magnolia LNG, LLC,* DOE/FE Order No. 3909, Docket No. 13–132–LNG, Opinion and Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Magnolia LNG Terminal to be Constructed in Lake Charles, Louisiana, to Non-Free Trade Agreement Nations (Nov. 30, 2016), *reh'g denied,* DOE/FE Order No. 3909–A (Apr. 2, 2018), *amended by* DOE/FE Order No. 3909–B (Dec. 10, 2020), *further amended by* DOE/FECM Order No. 3909–C (Apr. 27, 2022), *reh'g denied,* DOE/FECM Order No. 3909–D (June 24, 2022). Note that on July 4, 2021, the Office of Fossil Energy (FE) changed its name to the Office of Fossil Energy and Carbon Management.

[3] Magnolia LNG, LLC, Docket No. 13–132–LNG, Request of Magnolia LNG, LLC for Limited Extension to Start Date of Term of Authorization (Mar. 20, 2023).

[4] Magnolia LNG, LLC, Docket No. 13–132–LNG, Answer of Magnolia LNG, LLC in Opposition to the Motion to Intervene and Protest of Sierra Club, *et al.* and Supplement to Request to Extend Commencement Deadline (May 30, 2023).

[5] Magnolia LNG, LLC, Docket No. 13–132–LNG, Withdrawal of Request for Extension of Commencement of Service Deadline (Nov. 29, 2023).

[6] *Magnolia LNG, LLC,* Docket No. 13–132–LNG, Administrative Notice of Expiration of Non-FTA Authorization (Dec. 8, 2023); *see* Order No. 3909–C at Ordering Para. D.

[7] *Magnolia LNG, LLC,* Order No. 3245, Docket No. 12–183–LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Magnolia LNG Terminal in Lake Charles, Louisiana, to Free Trade Agreement Nations (Feb. 26, 2013); *Magnolia LNG, LLC,* Order No. 3406, Docket No. 13–131–LNG, Order Granting Long-Term, Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Magnolia LNG Terminal in Lake Charles, Louisiana, to Free Trade Agreement Nations (Mar. 5, 2014). On December 10, 2020, both orders were amended to extend the effective export term through December 31, 2050.

[8] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[9] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[10] The Addendum and related documents are available at *www.energy.gov/fecm/addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

Natural Gas From the United States, 79 FR 32260 (June 4, 2014); [11] and

• *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States: 2019 Update,* 84 FR 49278 (Sept. 19, 2019), and DOE's response to public comments received on that study.[12]

Parties that may oppose this Application should address these issues and documents in their comments and protests, as well as other issues deemed relevant to the Application.

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 NEPA 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. Interested parties will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to this proceeding evaluating Magnolia's Application must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application 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 Application. 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. 23–137–LNG'' or ''Magnolia LNG, LLC Application'' 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 Notice, 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 Application 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 Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

Signed in Washington, DC, on December 18, 2023.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.

[FR Doc. 2023–28236 Filed 12–21–23; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC24–26–000.

Applicants: Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, Louisiana Generating LLC, Pelican Power LLC, Big Pelican LLC, Pelican South Central LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Bayou Cove Peaking Power LLC, et. al.

Filed Date: 12/14/23.

Accession Number: 20231214–5267.

Comment Date: 5 p.m. ET 1/4/24.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–57–000.

Applicants: Ashtrom Renewable Energy LLC.

Description: Ashtrom Renewable Energy LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/15/23.

Accession Number: 20231215–5260.

Comment Date: 5 p.m. ET 1/5/24.

Docket Numbers: EG24–58–000.

Applicants: Castanea Project, LLC.

Description: Castanea Project, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 12/18/23.

Accession Number: 20231218–5020.

Comment Date: 5 p.m. ET 1/8/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1119–008; ER10–1123–010.

Applicants: Union Electric Company, Central Illinois Public Service Company.

Description: Triennial Market Power Analysis for Central Region of Ameren Illinois Company, et. al.

Filed Date: 12/15/23.

Accession Number: 20231215–5317.

Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: ER22–381–009; ER10–1781–005; ER19–2626–007; ER21–714–008; ER22–399–003.

Applicants: Meadow Lake Solar Park LLC, Indiana Crossroads Wind Farm LLC, Rosewater Wind Farm LLC, Northern Indiana Public Service Company, Dunns Bridge Solar Center, LLC.

Description: Triennial Market Power Analysis for Central Region of Dunns Bridge Solar Center, LLC.

Filed Date: 12/15/23.

Accession Number: 20231215–5316.

Comment Date: 5 p.m. ET 2/13/24.

Docket Numbers: ER23–1304–000.

Applicants: MFT Energy US 1 LLC.

Description: Supplemental of Refund Report of MFT Energy US 1 LLC.

Filed Date: 12/18/23.

Accession Number: 20231218–5092.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER23–2355–002.

[11] The 2014 Life Cycle Greenhouse Gas Report is available at *www.energy.gov/fecm/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.*

[12] U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update—Response to Comments, 85 FR 72 (Jan. 2, 2020). The 2019 Update and related documents are available at *https://fossil.energy.gov/app/docketindex/docket/index/21.*

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Amendment: Submission of Response to Deficiency Letter, Amended ISA, SA No. 5833 to be effective 9/6/2023.

Filed Date: 12/18/23.

Accession Number: 20231218–5116.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER23–2882–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): Hancock County Solar Project LGIA Deficiency Response to be effective 9/1/2023.

Filed Date: 12/18/23.

Accession Number: 20231218–5113.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER23–2890–001.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.17(b): CROS bn (Crossroads Solar + BESS) LGIA Deficiency Response to be effective 9/12/2023.

Filed Date: 12/18/23.

Accession Number: 20231218–5111.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER24–24–001.

Applicants: ISO New England Inc., Versant Power.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: Versant Power; Refund Report in Docket No. ER24–24–____ to be effective N/A.

Filed Date: 12/18/23.

Accession Number: 20231218–5093.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER24–691–000.

Applicants: California State University Channel Islands Site Authority.

Description: Petition for Limited Waiver of California State University Channel Islands Site Authority.

Filed Date: 12/13/23.

Accession Number: 20231213–5234.

Comment Date: 5 p.m. ET 1/3/24.

Docket Numbers: ER24–692–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: PacifiCorp OATT Revised Attachment H–1—Attachments 3 and 5 to be effective 2/17/2024.

Filed Date: 12/18/23.

Accession Number: 20231218–5081.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER24–693–000.

Applicants: PacifiCorp.

Description: § 205(d) Rate Filing: Tri-State NITSA Rev 12 to be effective 1/1/2024.

Filed Date: 12/18/23.

Accession Number: 20231218–5082.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER24–694–000.

Applicants: Boston Energy Trading and Marketing LLC.

Description: § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 12/19/2023.

Filed Date: 12/18/23.

Accession Number: 20231218–5105.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER24–695–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Rhineng BESS LGIA Filing to be effective 12/4/2023.

Filed Date: 12/18/23.

Accession Number: 20231218–5115.

Comment Date: 5 p.m. ET 1/8/24.

Docket Numbers: ER24–696–000.

Applicants: ISO New England Inc., Eversource Energy Service Company (as agent).

Description: § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: Eversource; Refund of Difference Between Actual and Fixed Amounts for PBOP to be effective 2/16/2024.

Filed Date: 12/18/23.

Accession Number: 20231218–5198.

Comment Date: 5 p.m. ET 1/8/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28257 Filed 12–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR24–24–000.

Applicants: Permian Highway Pipeline LLC.

Description: § 284.123(g) Rate Filing: Revised Fuel Allocation Provisions to be effective 11/21/2023.

Filed Date: 12/18/23.

Accession Number: 20231218–5103.

Comment Date: 5 p.m. ET 1/8/24.

§ 284.123(g) Protest: 5 p.m. ET 2/16/24.

Docket Numbers: RP24–249–000.

Applicants: OkTex Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: Revision to GT&C Section 13 to be effective 1/15/2024.

Filed Date: 12/15/23.

Accession Number: 20231215–5175.

Comment Date: 5 p.m. ET 12/27/23.

Docket Numbers: RP24–250–000.

Applicants: Carolina Gas Transmission, LLC.

Description: Compliance filing: CGT—2023 Interruptible Revenue Sharing Report to be effective N/A.

Filed Date: 12/18/23.

Accession Number: 20231218–5090.

Comment Date: 5 p.m. ET 1/2/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP24–248–000.

Applicants: Tres Palacios Gas Storage LLC.

Description: Report Filing: TPGS First Revised Volume No. 1 Cancellation to be effective N/A.

Filed Date: 12/15/23.

Accession Number: 20231215–5071.

Comment Date: 5 p.m. ET 12/27/23.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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Dated: December 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28258 Filed 12–21–23; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–24–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on December 12, 2023, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and ANR's blanket certificate issued in Docket No. CP82–480–000, for authorization to replace segments of its Line 0–501 and 1–501 pipelines located in Bartholomew County, Indiana (Dowell Hill Replacement Project). The project will allow ANR to protect its pipeline in an area where increased slope movement poses an integrity risk to the existing pipelines. The estimated cost for the project is $25,000,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

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 (*www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Public access to records formerly available in the Commission's physical Public Reference Room, which was located at the Commission's headquarters, 888 First Street NE, Washington, DC 20426, are now available via the Commission's website. For assistance, contact the Federal Energy Regulatory Commission at *FercOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY (202) 502–8659.

Any questions concerning this request should be directed to David A. Alonzo, Manager, Project Authorizations, ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, at (832) 320–54700, or *David_Alonzo@Tcenergy.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5 p.m. Eastern Time on February 16, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is February 16, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is February 16, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before February 16, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–24–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–24–000.

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, ANR Pipeline Company,700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700, or *David_Alonzo@Tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: December 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28256 Filed 12–21–23; 8:45 am]

BILLING CODE 6717–01–P

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5737–031]

Santa Clara Valley Water District; Notice of Reservoir Drawdown and Operations Plan Amendment Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric plan has been filed with the Commission and is available for public inspection:

a. *Filing Type:* Amendment to Reservoir Drawdown and Operations Plan.

b. *Project No:* 5737–031.

c. *Date Filed:* September 14, 2023; supplemented November 2, 2023.

d. *Applicant:* Santa Clara Valley Water District.

e. *Name of Project:* Anderson Dam Hydroelectric Project.

f. *Location:* The project is located on Coyote Creek in Santa Clara County, CA.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Ryan McCarter, (408) 630–2983, *rmccarter@valleywater.org.*

i. *FERC Contact:* Steven Sachs, (202) 502–8666, *Steven.Sachs@ferc.gov.*

j. *Cooperating agencies:* With this notice, the Commission is inviting Federal, State, local, and Tribal agencies with jurisdiction and/or special expertise with respect to environmental issues affected by the proposal, that wish to cooperate in the preparation of any environmental document, if applicable, to follow the instructions for filing such requests described in item k below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of any environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *Deadline for filing comments, motions to intervene, and protests:* January 17, 2024.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–5737–031. Comments emailed to Commission staff are not part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Request:* Pursuant to a Commission dam safety directive and its approved Reservoir Drawdown and Operations Plan (Plan), the applicant has been operating Anderson Reservoir at its deadpool elevation, historically identified as a water surface elevation of 488 feet North American Vertical Datum of 1988 (NAVD88). In its current filings, the applicant states newer surveys indicate the deadpool water surface elevation is 490 feet NAVD88 and it wishes to revise the Plan to reflect the correct number. The applicant also proposes to operate the reservoir at an elevation 2 feet above deadpool, *i.e.,* 492 feet NAVD88, to have stored water available for prompt releases to protect downstream aquatic habitat in Coyote Creek when other water sources are unavailable. Furthermore, when drawing down the reservoir back to 492 feet NAVD88 after large rainstorms that cause it to rise, the applicant proposes to ramp down releases by approximately 25 to 50 percent every 12 hours as the reservoir surface declines from elevations 493.5 to 492 feet NAVD88 while consulting with the National Marine Fisheries Service to determine the precise downramping schedule.

m. *Locations of the revised Plan:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. *Filing and Service of Documents:* Any filing must: (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: December 18, 2023.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2023–28260 Filed 12–21–23; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2023–0061; FRL–10581–11–OCSPP]

Certain New Chemicals; Receipt and Status Information for November 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 11/01/2023 to 11/30/2023.

DATES: Comments identified by the specific case number provided in this document must be received on or before January 22, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0061, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Jim Rahai, Project Management and Operations Division (MC 7407M), Office

of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 11/01/2023 to 11/30/2023. The Agency is providing notice of receipt of PMNs, SNUNs, and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory please go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN, or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *https://www.epa.gov/chemicals-under-tsca.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending, or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (see the **Federal Register** of May 12, 1995 (60 FR 25798) (FRL–4942–7)). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the

manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 11/01/2023 TO 11/30/2023

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
J–23–0005A	2	09/26/2023	CBI	(G) Production of an enzyme.	(G) Microorganisms transformed to express an enzyme.
J–23–0006A	2	09/26/2023	CBI	(G) Production of an enzyme.	(G) Microorganisms transformed to express an enzyme.
P–22–0113A	5	11/02/2023	SOLUGEN INC	(G) Chemical intermediate, Additive.	(S) D-Glucaric acid.
P–22–0123A	4	11/13/2023	CBI	(G) Mineral processing aid	(G) Propaneamine, 3-(alkyloxy)-, structural variants.
P–22–0140A	4	11/28/2023	Colonial Chemical, Inc.	(G) Corrosion inhibitor	(G) 6-[(alkyl-1-oxohexyl)amino]-hexanoic acid, compd. with cyclohexylamine (1:1).
P–23–0069A	4	11/08/2023	CBI	(S) Encapsulating Shell Polymer for Fragrance; Encapsulates for Industrial or Household Consumer Products such as Detergents and Fabric Softeners.	(G) Pisum sativum oil, glycerol, crosspolymer with linear and cyclic aliphatic isocyanates.
P–24–0001	1	10/03/2023	Cabot Corporation	(G) Additive used in industrial applications.	(G) Carbon Nanostructures, purified.
P–24–0005A	8	11/16/2023	CBI	(G) Plastic article production.	(G) Polycarbomonocyclic diol reaction products with cycloalkylcarbomonocycle and polysubstituted heteromonocycle.
P–24–0007	2	11/08/2023	Kenrich Petrochemicals, Inc.	(S) Use as a dispersant for powders, all forms KR PTOA, CAPOW KR PTOA and CAPS KR PTOA.; Use as an adhesion promoter in adhesives and sealants all forms KR PTOA, CAPOW KR PTOA and CAPS KR PTOA.	(S) Titanium, branched and linear C16–18 and C18-unsatd. fatty acids iso-Pr alc. complexes.
P–24–0024	1	11/08/2023	Enchem America, LLC.	(G) Electrolyte additive	(G) Heteroatom-substituted dihalo acid, methyl substituted-alkyl ester.
P–24–0030	1	11/10/2023	Barentz North America, LLC.	(S) 2-Ethylhexylal currently has widespread use as a functional fluid in lubricants, greases, and other release products; 2-Ethylhexylal currently has widespread use in laboratories as a non-reactive processing aid with no inclusion into or onto the article.; 2-Ethylhexylal is also used in consumer products as a solvent or cosolvent in coating products.	(S) Heptane, 3,3′-[methylenebis(oxymethylene)]bis- (9CI, ACI).
P–24–0032	1	11/15/2023	Equinor Marketing & Trading (US), Inc.	(S) Hydrocarbon value for fuel applications (*e.g.,* use in motor fuel, blending stock for other fuels).	(S) Naphtha (glyceridic), light catalytic cracked.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was

received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 11/01/2023 TO 11/30/2023

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–16–0313	11/15/2023	11/02/2023	N	(S) Tar acids (shale oil), C6–9 fraction, alkylphenols, low-boiling.
P–18–0158	11/28/2023	11/01/2023	N	(G) Sulfonium, triphenyl-, salt with 2,3-bis(substituted) 5-sulfocarbopolycyclic-2,3-carboxylate derivative (1:1).
P–20–0054	11/07/2023	10/07/2020	N	(S) Nitrile Hydratase.
P–20–0178A	11/29/2023	08/02/2023	Amended Generic Chemical Name	(G) Carbopolycyclic alkenyl, 2-carboxylic acid, 2-[[[[[(isocyanatophenyl)alkyl] carbocycle]-amino]carbonyl]oxy]ethyl ester.
P–21–0042	11/28/2023	11/01/2023	N	(G) Sulfonium, tricarbocyclic-, 2-heteroatom-substituted-4-(alkyl)carbomonocyclic carboxylate (1:1).
P–21–0131	11/28/2023	11/01/2023	N	(G) Sulfonium, tricarbocyclic-, 2-(4-alkoxyhalocarbomonocyclic)-alpha, alpha, beta, beta-polyhalopolyhydro-4,7-methano-1,3-heteropolycyclic-5-alkanesulfonate (1:1).
P–22–0018	11/20/2023	11/03/2023	N	(G) Substituted polyalkylenepoly, reaction products with substituted heteromonocycle substituted heteromonocycle polyalkylene derivs.
P–22–0022	11/14/2023	11/04/2023	N	(G) Aryl-substituted-heterocyclic-polyamine, reaction products with polyethylene glycol alkyl-ether, and nitrogen and alkyl-substituted benzene.
P–23–0013	11/17/2023	11/15/2023	N	(S) Phenol, polymer with 4,4′-bis(chloromethyl)-1,1′-biphenyl.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 11/01/2023 TO 11/30/2023

Case No.	Received date	Type of test information	Chemical substance
L–23–0173	11/22/2023	Algal Toxicity (OECD Test Guideline 201)	(G) Cis-Alkenoic Acid.
P–16–0543	11/21/2023	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–23–0017	11/29/2023	Human Repeated Insult Patch Testing	(G) Hydrolyzed collagen, polymer with aromatic isocyanate, n-triethoxysylil-alkanamine, pectic polysaccharide and poly alkyl alcohol.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 18, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–28240 Filed 12–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2023–0476; FRL–11412–01–OCSPP]

Pesticide Registration Notice 2023–2; Establishment of the Vector Expedited Review Voucher (VERV) Program; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of Pesticide Registration Notice (PR Notice) 2023–2, entitled ''Establishment of the Vector Expedited Review Voucher (VERV) Program.'' PR Notices are issued by the Office of Pesticide Programs (OPP) to inform pesticide registrants and other interested persons about important program policies, procedures, and registration related decisions, and serve to provide guidance to pesticide registrants and OPP personnel. This PR Notice establishes and describes the new VERV Program. The implementation of the VERV Program will incentivize the development of new insecticides to control and prevent the spread of vector-borne disease.

DATES: PR Notice 2023–2 is effective upon signature. Since the revised form is already approved and in use, all older versions of the form will not be accepted.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0476, is available online at *https://www.regulations.gov.* Additional instructions for visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Susan Jennings, Office of Pesticide Programs (7501M), Environmental

Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (706) 355–8574; email address: *jennings.susan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

This action is directed to the public in general, although this PR Notice may be of particular interest to those persons who may seek a pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* Since other entities may also be interested or affected based on future activities, the Agency has not attempted to describe all the specific entities that this PR Notice may apply to.

II. What is the Agency's authority for taking this action?

FIFRA section 4(k)(7), 7 U.S.C. 136a–1(k)(7), as established in an amendment to FIFRA contained in the Pesticide Registration Improvement Act of 2022 (PRIA 5).

III. What guidance does this PR Notice provide?

As outlined in FIFRA section 4(k)(7), the Agency must establish the VERV Program by December 29, 2023, to incentivize development of new insecticides to control the spread of vector-borne disease to protect public health from mosquito born illnesses by granting vouchers for successfully registered products. If granted, the voucher may be redeemed to shorten the decision review time for a future pesticide application falling under certain specified PRIA categories. To achieve this, EPA is issuing PR Notice 2023–2 to establish the new VERV Program by providing guidance on applicable requirements and procedures for registrants to apply for, track, and redeem vouchers under the VERV Program.

Specifically, the Agency has amended the current form used for pesticide registration applications by adding optional fields to allow pesticide registrants to apply for the voucher program and to redeem previously granted vouchers for expediated review. An optional check box was added to the registration form for both the initial voucher application and the application for which expedited review is sought. Registration applicants may also attach an explanation for their voucher request, that includes a description of the insecticide and public health impacts with other required information, electronically or by paper with the registration form. The Agency will review the voucher application and award the voucher if the application meets the requirements of FIFRA section 4(k)(7). If a voucher is granted, an applicant may redeem the voucher by choosing the expedited review option on the amended registration form.

In addition, as specified in EPA regulations at 40 CFR 152.119(c), applicant-submitted information, including that provided on EPA Form No. 8570–1, entitled ''Application for Pesticide Registration/Amendment,'' will, on request, be made available to the public for inspection after a pesticide product is registered. EPA has previously determined that none of the information that applicants provide on EPA Form No. 8570–1 is confidential business information (CBI) or otherwise protected under FIFRA. As such, the Agency is able to release the form in response to a request under the Freedom of Information Act (FOIA), 5 U.S.C. 552 and EPA implementing regulations at 40 CFR 2.100.

IV. Do PR Notices impose binding requirements?

The PR Notice discussed in this document is intended to provide guidance to EPA personnel and decisionmakers and to pesticide registrants. While requirements in statutes and Agency regulations are binding on EPA and pesticide registrants, the PR Notice does not impose new binding requirements on either EPA or pesticide registrants, and EPA may depart from the guidance presented in the PR Notice where circumstances warrant and without prior notice. Likewise, pesticide registrants may assert that the guidance is not appropriate generally or not applicable to a specific pesticide or situation.

V. Is the revised form approved under the Paperwork Reduction Act (PRA)?

According to the PRA, 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires approval under the PRA, unless it has been approved by the Office of Management and Budget (OMB) and displays a currently valid OMB control number. This PR Notice does not create any paperwork burdens that require additional approval by OMB under the PRA because the information collection activities associated with EPA Form No. 8570–1 and the activities described in this PR Notice are already approved by OMB under OMB Control No. 2070–0226. The approved activities and related instruments are contained in the Information Collection Requests (ICR), entitled ''Consolidated Pesticide Registration Submission Portal'', identified as EPA ICR No. 2624.02 and approved under OMB Control No. 2070–0226.

Authority: 7 U.S.C. 136 *et seq.*

Dated: December 18, 2023.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2023–28211 Filed 12–21–23; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–102]

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 December 11, 2023 10 a.m. EST Through December 18, 2023 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. 20230179, Third Draft Supplemental, USACE, CA, American River Common Features, 2016 Flood Risk Management Project, Sacramento, California Supplemental Environmental Impact Statement/Subsequent Environmental Impact Report XIV, Comment Period Ends: 02/05/2024, Contact: Guy Romine 916–496–4646.

EIS No. 20230180, Draft, NRCS, WI, Coon Creek Watershed, Comment Period Ends: 02/20/2024, Contact: Joshua Odekirk 262–470–2064.

EIS No. 20230181, Draft, NRCS, WI, West Fork Kickapoo Watershed, Comment Period Ends: 02/20/2024, Contact: Joshua Odekirk 262–470–2064.

Amended Notice: EIS No. 20230175, Draft, Caltrans, CA, Last Chance Grade Permanent Restoration Project Draft Environmental Impact Report/Environmental Impact Statement and Draft Section 4(f) Evaluation, Comment Period Ends: 02/13/2024, Contact: Steve Croteau 707–572–7149.

Revision to FR Notice Published 12/15/2023; Correction to document title at lead agency's request.

Dated: December 18, 2023.

Julie Smith,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2023–28249 Filed 12–21–23; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–11595–01–OCSPP]

Access to Confidential Business Information by CGI Federal Inc (CGI)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor CGI Federal Inc (CGI) of Fairfax, VA to access information which has been submitted to EPA under all Sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than December 29, 2023.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Colby Lintner/Adam Schwoerer, Program Management and Operations Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8182; email address: *lintner.colby@epa.gov* or email address: *schwoerer.adam@epa.gov;* telephone number: (202) 564–4767.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Because other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2003–0004, is available at *https://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

Under GSA FEDSIM Task Order (TO) 47QFCA23F0030, contractor CGI located at 12601 Fairfax Lakes Circle, Fairfax, VA 22033 is assisting the Office of Pollution Prevention and Toxics (OPPT) by providing technical support; development of operations and maintenance of Central Data Exchange (CDX) chemical safety and pollution prevention (CSPP) applications; and Chemical Information Systems (CIS) OPPT Confidential Business Information Local Area Network (CBI LAN) applications.

EPA is issuing this notice to inform all submitters of information under all Sections of TSCA that EPA will provide CGI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and CGI, site located at 12601 Fairfax Lakes Circle, Fairfax, VA 22033 in accordance with EPA's *TSCA CBI Protection Manual* and the Rules of Behavior for Virtual Desktop Access to OPPT Materials, including TSCA CBI.

Access to TSCA data, including CBI, will continue until July 16, 2030. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

CGI personnel will be required to sign nondisclosure agreements and will be briefed on specific security procedures for TSCA CBI.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: December 18, 2023.

Pamela Myrick,

Director, Project Management and Operations Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2023–28172 Filed 12–21–23; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID: 191216]

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Communications Commission (FCC, Commission, or Agency) proposes to add a new system of records, FCC–3, FCC Identity, Credentialing, and Access Management (ICAM), subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency.

DATES: This new system of records will become effective on December 22, 2023. Written comments on the routine uses are due by January 22, 2024. The routine uses will become effective on January 22, 2024, unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Brendan McTaggart, at *privacy@fcc.gov,* or at Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554 at (202) 418–1738.

FOR FURTHER INFORMATION CONTACT: Brendan McTaggart, (202) 418–1738, or *privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The FCC is establishing the Identity, Credentialing, and Access Management (ICAM) system of records. This system of records covers the FCC's, its administrators', its contractors', and its vendors' (collectively FCC's) systems that collect and maintain records about internal and external users of the FCC's, its administrators', its contractors', and its vendors' (collectively FCC's) network and information systems.

SYSTEM NAME AND NUMBER:

FCC–3, FCC Identity, Credentialing, and Access Management (ICAM).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Federal Communications Commission (FCC), 45 L Street NE, Washington, DC 20554; Universal Service Administrative Company, 700 12th Street NW, Suite 900, Washington, DC 20005; and FISMA compliant contractors and vendors.

SYSTEM MANAGER(S):

Federal Communications Commission (FCC); Universal Service Administrative Company (USAC); and FISMA compliant contractors and vendors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

47 U.S.C. 151 *et seq.;* Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.*

PURPOSES OF THE SYSTEM:

The FCC uses the systems that comprise this system of records to maintain an Active Directory of FCC staff and contractors who are authorized to access the FCC network; to monitor, log, and audit usage of the FCC's network and information systems; to support server and desktop hardware and software; to ensure the availability and reliability of the FCC's network and information systems; to help document and/or control access to the FCC's network and information systems; to identify the need for and to conduct training programs, which can include the topics of information security; to monitor the security of the FCC's network and information systems; to add and delete users; to investigate and make referrals for disciplinary or other action if improper or unauthorized use is suspected or detected; and to collect and maintain information necessary for FCC staff to perform key activities, including analyzing effectiveness and efficiency of FCC programs and informing rule-making and policy-making activity.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Commission employees, and employees of FCC contractors and administrators with access to the FCC network; individuals and representatives of entities that register to do business with the Commission; and members of the public who access the FCC's public-facing information systems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contact information, such as name, username, password, phone numbers, email address, street address; network information, such as IP/MAC address, geolocation, web browser, timestamps, and activity logs.

RECORD SOURCE CATEGORIES:

Information in this system is provided by Commission employees and employees of FCC contractors and administrators with access to the FCC network; individuals and representatives of entities that register to do business with the Commission; members of the public who access the FCC's public-facing information systems; vendors that provide DNS, CDN, cloud hosting, firewall, and related services; other FCC information systems that collect network information from users, including the FCC's Financial Operations Information Systems.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows.

1. Litigation—To disclose records to the Department of Justice (DOJ) when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation.

2. Adjudication—To disclose records in a proceeding before a court or adjudicative body, when: (a) the FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation.

3. Law Enforcement and Investigation—When the FCC investigates any violation or potential violation of a civil or criminal law, regulation, policy, executed consent decree, order, or any other type of compulsory obligation and determines that a record in this system, either alone or in conjunction with other information, indicates a violation or potential violation of law, regulation, policy, consent decree, order, or other compulsory obligation, the FCC may disclose pertinent information as it deems necessary to the target of an investigation, as well as with the appropriate Federal, State, local, Tribal, international, or multinational agencies, or a component of such an agency, responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order.

4. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

5. Government-wide Program Management and Oversight—To provide information to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

6. Breach Notification—To appropriate agencies, entities, and persons when: (a) the Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information system, programs, and operations), the Federal Government, or national security; and; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

7. Assistance to Federal Agencies and Entities Related to Breaches—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

8. Non-Federal Personnel—To disclose information to non-Federal personnel, including contractors, other vendors (*e.g.,* identity verification services), grantees, and volunteers who have been engaged to assist the FCC in the performance of a service, grant,

cooperative agreement, or other activity related to this system of records and who need to have access to the records to perform their activity.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

This an electronic system of records that resides on the FCC's network, USAC's network, and FCC contractors' and vendors' networks.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system of records can be retrieved by any category field, *e.g.,* first name or email address.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The information in this system is maintained and disposed of in accordance with the National Archives and Records Administration (NARA) General Records Schedule GRS 3.2, Information Systems Security Records (DAA–GRS–2013–0006).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic records, files, and data are stored within FCC, USAC, other program administrator, contractor, and vendor accreditation boundaries and maintained in databases housed on their network databases. Access to the electronic files is restricted to authorized employees, staff and contractors; and to IT staff, contractors, and vendors who maintain the IT networks and services. Other employees and contractors may be granted access on a need-to-know basis. The electronic files and records are protected by the FCC, USAC, and third-party privacy safeguards, a comprehensive and dynamic set of IT safety and security protocols and features that are designed to meet all Federal privacy standards, including those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST).

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about themselves may do so by writing to *privacy@fcc.gov.* Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity to gain access to records as required under 47 CFR part 0, subpart E.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2023–27896 Filed 12–19–23; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request; OMB No. 3064–0083; –0182; –0198

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0083; –0182; –0198). The notices of the proposed renewal for these information collections were previously published in the **Federal Register** on October 19, 2023, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before January 22, 2024.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

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: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Recordkeeping and Disclosure Requirements in Connection with Regulation M (Consumer Leasing).

OMB Number: 3064–0083.

Affected Public: State nonmember banks and state savings associations engaging in consumer leasing.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0083]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Recordkeeping Requirements in Connection with Regulation M (Consumer Leasing), 12 CFR 1013.8.	Recordkeeping (On occasion)	17	100	00:22.5	638
Third-Party Disclosure Requirements in Connection with Regulation M (Consumer Leasing), 12 CFR 1013.3.	Third-Party Disclosure (On occasion).	17	100	00:22.5	638

SUMMARY OF ESTIMATED ANNUAL BURDEN—Continued
[OMB No. 3064–0083]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
Total Annual Burden (Hours)					1,276

Source: FDIC.

General Description of Collection: Regulation M (12 CFR 1013), issued by the Bureau of Consumer Financial Protection, implements the consumer leasing provisions of the Truth in Lending Act. Regulation M requires lessors of personal property to provide consumers with meaningful disclosures about the costs and terms of the leases for personal property. Lessors are required to retain evidence of compliance with Regulation M for twenty-four months. There is no change in the methodology or substance of this information collection. The change in burden is due solely to the decrease in the estimated number of respondents from 19 in 2021 to 17.

2. *Title:* Retail Foreign Exchange Transactions.

OMB Number: 3064–0182.

Forms: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0182]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Recordkeeping Requirements, 12 CFR 349.19, 12 CFR 349.21(b)(2), 12 CFR 349.25(a) (Mandatory).	Recordkeeping (Annual)	1	1	1,332:00	1,332
2. Reporting Requirements, 12 CFR 349.16 (Mandatory)	Reporting (Annual)	1	1	16:00	16
3. Disclosure Requirements, 12 CFR 349.22(a), 12 CFR 349.17(a)(4)(ii), 12 CFR 349.18, 12 CFR 349.25(c) and (d), 12 CFR 349.27, 12 CFR 349.28(a) and (b) (Mandatory).	Third-Party Disclosure (Annual)	1	1	276:00	276
Total Annual Burden (Hours)					1,624

Source: FDIC.

General Description of Collection: This information collection implements section 742(c)(2) of the Dodd-Frank Act (7 U.S.C. 2(c)(2)(E)) and FDIC regulations governing retail foreign exchange transactions as set forth at 12 CFR part 349, subpart B. The regulation allows banking organizations under FDIC supervision to engage in off-exchange transactions in foreign currency with retail customers provided they comply with various reporting, recordkeeping and third-party disclosure requirements specified in the rule. If an institution elects to conduct such transactions, compliance with the information collection is mandatory. Reporting Requirements—part 349, subpart B requires that, prior to initiating a retail foreign exchange business; a banking institution must provide the FDIC with a notice certifying that the institution has written policies and procedures, and risk measurement and management systems and controls in place to ensure that retail foreign exchange transactions are conducted in a safe and sound manner. The institution must also provide information about how it intends to manage customer due diligence, new product approvals and haircuts applied to noncash margin. Recordkeeping Requirements—part 349 subpart B requires that institutions engaging in retail foreign exchange transactions keep full, complete and systematic records of account, financial ledger, transaction, memorandum orders and post execution allocations of bunched orders. In addition, institutions are required to maintain records regarding their ratio of profitable accounts, possible violations of law, records of noncash margin and monthly statements and confirmations issued. Disclosure Requirements—The regulation requires that, before opening an account that will engage in retail foreign exchange transactions, a banking institution must obtain from each retail foreign exchange customer an acknowledgement of receipt and understanding of a written disclosure specified in the rule and of disclosures about the banking institution's fees and other charges and of its profitable accounts ratio. The institution must also provide monthly statements to each retail foreign exchange customer and must send confirmation statements following every transaction. The customer dispute resolution provisions of the regulation require certain endorsements, acknowledgements and signature language as well as the timely provision of a list of persons qualified to handle a customer's request for arbitration.

After reviewing the requirements in subpart B and the similar ICRs currently approved by OMB for the OCC and the Federal Reserve, the FDIC has determined that subpart B imposes more recordkeeping requirements than those listed in the 2021 ICR. While the 2021 ICR listed 12 CFR 349.19 as the only recordkeeping requirement in subpart B,[1] the FDIC notes that the requirement in 12 CFR 349.21(b)(2)[2] also meets the definition of a recordkeeping requirement, as does the requirement in 12 CFR 349.25(a).[3] The OCC and the

[1] See footnote 7.

[2] 12 CFR 349.21(b)(2) requires FDIC-supervised institutions that are engaged in, or that offer to engage in, retail foreign exchange transactions to establish written policies and procedures that include: Haircuts for noncash margin collected pursuant to 12 CFR 349.21 (12 CFR 349.21(b)(2)(i)), and annual evaluation and, if appropriate, modification of the haircuts (12 CFR 349.21(b)(2)(ii)).

[3] 12 CFR 349.25(a)(1) requires FDIC-supervised institutions that are engaged in retail foreign exchange transactions to establish and implement internal policies, procedures, and controls designed to ensure that orders placed for retail foreign exchange transactions by retail foreign exchange customers are given priority over orders placed for retail foreign exchange transactions for a proprietary account of the FDIC-supervised

Federal Reserve each listed requirements that are analogous to those in 12 CFR 349.21(b)(2) and 12 CFR 349.25(a) as recordkeeping requirements in their similar ICRs,[4] in addition to recordkeeping requirements that are analogous to those in 12 CFR 349.19.[5] The FDIC is revising its information collection to include this burden.

3. *Title:* Generic Information Collection for Qualitative Research.

OMB Number: 3064–0198.

Affected Public: General public including FDIC insured depository institutions.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0198]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Generic Information Collection for Qualitative Research, (Voluntary).	Reporting (Once)	10,000	1	01:00	10,000
Total Annual Burden (Hours)					10,000

Source: FDIC.

General Description of Collection: The FDIC is requesting renewal of this approved collection to use occasional qualitative surveys to gather information from the public to inform qualitative research. While the subject and nature of the surveys to be deployed under this information collection are yet to be determined, based on prior experience it is expected that the number or respondents will range from a few to, at times, several thousands, but, in general, these surveys are expected to involve an average of 500 respondents. Likewise, the time to respond to the surveys can range from a few minutes to several hours, but it is expected that the average time to respond to a survey is approximately one hour. These surveys are completely voluntary in nature. FDIC estimates that approximately 20 such surveys will be conducted in any given year. Currently, the FDIC has a variety of methods to collect quantitative information from consumers and institutions (*e.g.,* Call Reports, FDIC National Survey of Unbanked and Underbanked Households, etc.). Qualitative data would provide complementary information on insights, opinions, and perceptions that will inform how the FDIC approaches its mission to safeguard financial stability of the banking system and promote consumer protection and economic inclusion. This clearance would allow the FDIC to engage with consumers and other relevant stakeholders through qualitative research methods such as focus groups, in-depth interviews, cognitive testing, and/or qualitative virtual methods. The purpose of the surveys is, in general terms, to obtain anecdotal information about regulatory burden, problems or successes in the bank supervisory process (including both safety-and-soundness and consumer related exams), the perceived need for regulatory or statutory change, and similar concerns. The information in these surveys is anecdotal in nature, that is, samples are not necessarily random, the results are not necessarily representative of a larger class of potential respondents, and the goal is not to produce a statistically valid and reliable database. Rather, the surveys are expected to yield anecdotal information about the particular experiences and opinions of members of the public, primarily staff at respondent banks or bank customers. The collection is noncontroversial and does not raise issues of concern to other Federal agencies; with the exception of information needed to provide remuneration for participants of focus groups and cognitive laboratory studies, personally identifiable information (PII) is collected only to the extent necessary and is not retained. Participation in this information collection will be voluntary and conducted in-person, by phone, or using other methods, such as virtual technology. The types of collections that this generic clearance covers include, but are not limited to: Small discussion groups; focus groups of consumers, financial industry professionals, or other stakeholders; cognitive laboratory studies, such as those used to refine questions or assess usability of a website; qualitative customer satisfaction surveys (*e.g.,* post-transaction surveys; opt-out web surveys); and in-person observation testing (*e.g.,* website or software usability tests).

There is no change in the substance or methodology of this information collection.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information 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; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

institution (12 CFR 349.25(a)(1)(i)), or an account in which a related person has an interest (12 CFR 349.25(a)(1)(ii), (iii), and (iv)). 12 CFR 349.14 defines ''related person'' as: (1) Any general partner, officer, director, or owner of ten percent or more of the capital stock of the FDIC-supervised insured depository institution; (2) An associated person or employee of the retail foreign exchange counterparty, if the retail foreign exchange counterparty is not an FDIC-supervised insured depository institution; (3) An institution-affiliated party, as that term is defined in 12 U.S.C. 1813(u)(1), (2), or (3), or employee of the retail foreign exchange counterparty, if the retail foreign exchange counterparty is not an FDIC-supervised insured depository institution, or; (4) And relative or spouse of any of the foregoing persons, or any relative of such spouse, who shares the same home as any of the foregoing persons. 12 CFR 349.25(a)(2) requires FDIC-supervised institutions that are engaged in retail foreign exchange transactions to establish and implement internal policies, procedures, and controls designed to prevent FDIC-supervised insured depository institution related persons from placing orders, directly or indirectly, with another person in a manner designed to circumvent the provisions of 12 CFR 349.25(a)(1). 12 CFR 349.25(a)(3) requires FDIC-supervised institutions that are engaged in retail foreign exchange transactions to establish and implement internal policies, procedures, and controls designed to fairly and objectively establish settlement prices for retail foreign exchange transactions.

[4] For the Federal Reserve, these requirements include those in 12 CFR 240.9(b)(2) and 12 CFR 240.13(a). For the OCC, these requirements include those in 12 CFR 48.13 and 12 CFR 48.9.

[5] These requirements include the Federal Reserve's regulations at 12 CFR 240.7 and the OCC's regulations at 12 CFR 48.7.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on December 18, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–28206 Filed 12–21–23; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Joint Report to Congressional Committees: Differences in Accounting and Capital Standards Among the Federal Banking Agencies as of September 30, 2023

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

ACTION: Report to Congressional Committees.

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) (collectively, the agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the agencies to jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences among the accounting and capital standards used by the agencies for insured depository institutions (institutions). Section 37(c) requires that this report be published in the **Federal Register**. The agencies have not identified any material differences among the agencies' accounting and capital standards applicable to the institutions they regulate and supervise.

FOR FURTHER INFORMATION CONTACT:

OCC: Diana Wei, Risk Expert, Capital Policy, (202) 649–5554, Rima Kundnani, Counsel, Chief Counsel's Office, (202) 649–5490, 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.

Board: Andrew Willis, Manager, (202) 912–4323, Jennifer McClean, Senior Financial Institution Policy Analyst II, (202) 785–6033, Shooka Saket, Senior Financial Institution Policy Analyst II, (202) 475–3869, Division of Supervision and Regulation, Mark Buresh, Senior Counsel (202) 452–5270 and Jasmin Keskinen, Senior Attorney, (202) 475–6650, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) and TTY–TRS, please call 711 from any telephone, anywhere in the United States.

FDIC: Benedetto Bosco, Chief, Capital Policy Section, (703) 245–0778, Christine Bouvier, Assistant Chief Accountant, (202) 898–7289, Richard Smith, Capital Policy Analyst, Capital Policy Section, (703) 254–0782, Division of Risk Management Supervision, Amber Beck, Senior Attorney, (202) 898–3772, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: *The text of the report follows:*

Report to the Committee on Financial Services of the U.S. House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate Regarding Differences in Accounting and Capital Standards among the Federal Banking Agencies

Introduction

In accordance with section 37(c), the agencies are submitting this joint report, which covers differences among their accounting and capital standards existing as of September 30, 2023, applicable to institutions.[1] In recent years, the agencies have acted together to harmonize their accounting and capital standards and eliminate as many differences as possible. As of September 30, 2023, the agencies have not identified any material differences among the agencies' accounting standards applicable to institutions.

In 2013, the agencies revised the risk-based and leverage capital rule for institutions (capital rule),[2] which harmonized the agencies' capital rule in a comprehensive manner.[3] Since 2013, the agencies have revised the capital rule on several occasions, further reducing the number of differences in the agencies' capital rule.[4] Today, only a few differences remain, which are statutorily mandated for certain categories of institutions or which reflect certain technical, generally nonmaterial differences among the agencies' capital rule. No new material differences were identified in the capital standards applicable to institutions in this report compared to the previous report submitted by the agencies pursuant to section 37(c).

Differences in the Standards Among the Federal Banking Agencies

Differences in Accounting Standards

As of September 30, 2023, the agencies have not identified any material differences among themselves in the accounting standards applicable to institutions.

Differences in Capital Standards

The following are the remaining technical differences among the capital standards of the agencies' capital rule.[5]

Definitions

The agencies' capital rule largely contains the same definitions.[6] The differences that exist generally serve to accommodate the different needs of the institutions that each agency charters, regulates, and/or supervises.

The agencies' capital rule has differing definitions of a pre-sold construction loan. The capital rule of all three agencies provides that a pre-sold construction loan means any ''one-to-four family residential construction loan to a builder that meets the requirements of section 618(a)(1) or (2) of the

[1] Although not required under section 37(c), this report includes descriptions of certain of the Board's capital standards applicable to depository institution holding companies where such descriptions are relevant to the discussion of capital standards applicable to institutions.

[2] See 78 FR 62018 (October 11, 2013) (final rule issued by the OCC and the Board); 78 FR 55,340 (September 10, 2013) (interim final rule issued by the FDIC). The FDIC later issued its final rule in 79 FR 20,754 (April 14, 2014). The agencies' respective capital rule is at 12 CFR pt. 3 (OCC), 12 CFR pt. 217 (Board), and 12 CFR pt. 324 (FDIC). The capital rule applies to institutions, as well as to certain bank holding companies (BHCs) and savings and loan holding companies (SLHCs). See also 12 CFR 217.1(c).

[3] The capital rule reflects the scope of each agency's regulatory jurisdiction. For example, the Board's capital rule includes requirements related to BHCs, SLHCs, and state member banks (SMBs), while the FDIC's capital rule includes provisions for state nonmember banks and state savings associations, and the OCC's capital rule includes provisions for national banks and federal savings associations.

[4] See, *e.g.,* 84 FR 35234 (July 22, 2019). The OCC and FDIC revised their capital rule to conform with language in the Board's capital rule related to the qualification criteria for additional tier 1 capital instruments and the definition of corporate exposures. As a result, these differences, which were included in previous reports submitted by the agencies pursuant to section 37(c), have been eliminated.

[5] Certain minor differences, such as terminology specific to each agency for the institutions that it supervises, are not included in this report.

[6] See 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (12 U.S.C. 1831n), and, in addition to other criteria, the purchaser has not terminated the contract.'' [7] The Board's definition provides further clarification that, if a purchaser has terminated the contract, the institution must immediately apply a 100 percent risk weight to the loan and report the revised risk weight in the next quarterly Consolidated Reports of Condition and Income (Call Report).[8] Similarly, if the purchaser has terminated the contract, the OCC and FDIC capital rule would immediately disqualify the loan from receiving a 50 percent risk weight, and would apply a 100 percent risk weight to the loan. The change in risk weight would be reflected in the next quarterly Call Report. Thus, the minor wording difference between the agencies should have no practical consequence.

Capital Components and Eligibility Criteria for Regulatory Capital Instruments

While the capital rule generally provides uniform eligibility criteria for regulatory capital instruments, there are some textual differences among the agencies' capital rule. The capital rule of each of the three agencies requires that, for an instrument to qualify as common equity tier 1 or additional tier 1 capital, cash dividend payments be paid out of net income and retained earnings, but the Board's capital rule also allows cash dividend payments to be paid out of related surplus.[9] The provision in the Board's capital rule that allows dividends to be paid out of related surplus is a difference in substance among the agencies' capital rule. However, due to the restrictions on institutions regulated by the Board in separate regulations, this additional language in the Board's rule has a practical impact only on bank holding companies (BHCs) and savings and loan holding companies (SLHCs) and is not a difference as applied to institutions. The agencies apply the criteria for determining eligibility of regulatory capital instruments in a manner that ensures consistent outcomes for institutions.

Both the Board's capital rule and the FDIC's capital rule also include an additional sentence noting that institutions regulated by each agency are subject to restrictions independent of the capital rule on paying dividends out of surplus and/or that would result in a reduction of capital stock.[10] These additional sentences do not create differences in substance between the agencies' capital standards, but rather note that restrictions apply under separate regulations.

In addition, the Board's capital rule includes a requirement that a Board-regulated institution [11] must obtain prior approval before redeeming regulatory capital instruments.[12] This requirement effectively applies only to a BHC or an SLHC and is, therefore, not included in the OCC's and FDIC's capital rule. All three agencies require institutions to obtain prior approval before redeeming regulatory capital instruments in other regulations.[13] The additional provision in the Board's capital rule, therefore, only has a practical impact on BHCs and SLHCs and is not a difference as applied to institutions.

Capital Deductions

There is a technical difference between the FDIC's capital rule and the OCC's and Board's capital rule with regard to an explicit requirement for deduction of examiner-identified losses. The agencies require their examiners to determine whether their respective supervised institutions have appropriately identified losses. The FDIC's capital rule, however, explicitly requires FDIC-supervised institutions to deduct identified losses from common equity tier 1 capital elements, to the extent that the institutions' common equity tier 1 capital would have been reduced if the appropriate accounting entries had been recorded.[14] Generally, identified losses are those items that an examiner determines to be chargeable against income, capital, or general valuation allowances.

For example, identified losses may include, among other items, assets classified as loss, off-balance-sheet items classified as loss, any expenses that are necessary for the institution to record in order to replenish its general valuation allowances to an adequate level, and estimated losses on contingent liabilities. The Board and the OCC expect their supervised institutions to promptly recognize examiner-identified losses, but the requirement is not explicit under their capital rule. Instead, the Board and the OCC apply their supervisory authorities to ensure that their supervised institutions charge off any identified losses.

Subsidiaries of Savings Associations

There are special statutory requirements for the agencies' capital treatment of a savings association's investment in or credit to its subsidiaries as compared with the capital treatment of such transactions between other types of institutions and their subsidiaries. Specifically, the Home Owners' Loan Act (HOLA) distinguishes between subsidiaries of savings associations engaged in activities that are permissible for national banks and those engaged in activities that are not permissible for national banks.[15]

When subsidiaries of a savings association are engaged in activities that are not permissible for national banks,[16] the parent savings association generally must deduct the parent's investment in and extensions of credit to these subsidiaries from the capital of the parent savings association. If a subsidiary of a savings association engages solely in activities permissible for national banks, no deduction is required, and investments in and loans to that organization may be assigned the risk weight appropriate for the activity.[17] As the appropriate federal banking agencies for federal and state savings associations, respectively, the OCC and the FDIC apply this capital treatment to those types of institutions. The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

Tangible Capital Requirement

Federal law subjects savings associations to a specific tangible capital requirement but does not similarly do so with respect to banks. Under section 5(t)(2)(B) of HOLA, savings associations are required to maintain tangible capital in an amount not less than 1.5 percent

[7] 12 CFR 3.2 (OCC); 12 CFR 217.2 (Board); 12 CFR 324.2 (FDIC).

[8] 12 CFR 217.2.

[9] 12 CFR 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board).

[10] 12 CFR 217.20(b)(1)(v) and 217.20(c)(1)(viii) (Board); 12 CFR 324.20(b)(1)(v) and 324.20(c)(1)(viii) (FDIC). Although not referenced in the capital rule, the OCC has similar restrictions on dividends; 12 CFR 5.55 and 12 CFR 5.63. Certain restrictions on the payment of dividends that apply under separate regulations, and therefore not discussed in this report, are different among the agencies. Compare 12 CFR 208.5 (Board) and 12 CFR 5.64 (OCC) with 12 CFR 303.241 (FDIC).

[11] Board-regulated institution refers to an SMB, a BHC, or an SLHC. See 12. CFR 217.2.

[12] 12 CFR 217.20(f); see also 12 CFR 217.20(b)(1)(iii).

[13] See 12 CFR 5.46, 5.47, 5.55, and 5.56 (OCC); 12 CFR 208.5 (Board); 12 CFR 303.241 (FDIC).

[14] 12 CFR 324.22(a)(9).

[15] 12 U.S.C. 1464(t)(5).

[16] Subsidiaries engaged in activities not permissible for national banks are considered non-includable subsidiaries.

[17] A deduction from capital is only required to the extent that the savings association's investment exceeds the generally applicable thresholds for deduction of investments in the capital of an unconsolidated financial institution.

of total assets.[18] The capital rule of the OCC and the FDIC includes a requirement that savings associations maintain a tangible capital ratio of 1.5 percent.[19] This statutory requirement does not apply to banks and, thus, there is no comparable regulatory provision for banks. The distinction is of little practical consequence, however, because under the Prompt Corrective Action (PCA) framework, all institutions are considered critically undercapitalized if their tangible equity falls below 2 percent of total assets.[20] Generally speaking, the appropriate federal banking agency must appoint a receiver within 90 days after an institution becomes critically undercapitalized.[21]

Enhanced Supplementary Leverage Ratio

The agencies adopted enhanced supplementary leverage ratio standards that took effect beginning on January 1, 2018.[22] These standards require certain BHCs to exceed a 5 percent supplementary leverage ratio to avoid limitations on distributions and certain discretionary bonus payments and also require the subsidiary institutions of these BHCs to meet a 6 percent supplementary leverage ratio to be considered ''well capitalized'' under the PCA framework.[23] The rule text establishing the scope of application for the enhanced supplementary leverage ratio differs among the agencies. The Board and the FDIC apply the enhanced supplementary leverage ratio standards for institutions based on parent BHCs being identified as global systemically important BHCs as defined in 12 CFR 217.2.[24] The OCC applies enhanced supplementary leverage ratio standards to the institution subsidiaries under their supervisory jurisdiction of a top-tier BHC that has more than $700 billion in total assets or more than $10 trillion in assets under custody.[25]

Michael J. Hsu,

Acting Comptroller of the Currency, Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board, Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 10, 2023.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2023–28173 Filed 12–21–23; 8:45 am]

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

[18] 12 U.S.C. 1464(t)(1)(A)(ii) and (t)(2)(B).

[19] 12 CFR 3.10(a)(6) (OCC); 12 CFR 324.10(a)(1)(vi) (FDIC). The Board's regulatory capital framework does not apply to savings associations and, therefore, does not include this requirement.

[20] See 12 U.S.C. 1831o(c)(3); see also 12 CFR 6.4 (OCC); 12 CFR 208.45 (Board); 12 CFR 324.403 (FDIC).

[21] 12 U.S.C. 1831o(h)(3)(A).

[22] See 79 FR 24,528 (May 1, 2014).

[23] 12 CFR 6.4(b)(1)(i)(D)(2) (OCC); 12 CFR 208.43(b)(1)(i)(D)(2) (Board); 12 CFR 324.403(b)(1)(ii) (FDIC).

[24] 12 CFR 208.43(b)(1)(i)(D)(2) (Board); 12 CFR 324.403(b)(1)(ii) (FDIC).

[25] 12 CFR 6.4(b)(1)(i)(D)(2) (OCC).

FINANCIAL STABILITY OVERSIGHT COUNCIL

Agency Information Collection Activities; Continuing Collections; Comment Request; Designation of Financial Market Utilities

AGENCY: Financial Stability Oversight Council.

ACTION: Notice and request for comments.

SUMMARY: The Financial Stability Oversight Council (the ''Council''), as part of its continuing effort to reduce paperwork and respondent burden, invites members of the public and affected agencies to comment on the continuing information collections listed below, as required by the Paperwork Reduction Act of 1995. The Council is soliciting comments concerning its collection of information related to its authority to designate financial market utilities as systemically important. Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') provides the Council the authority to designate a financial market utility (''FMU'') that the Council determines is or is likely to become systemically important because the failure of or a disruption to the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the United States financial system.

DATES: Written comments must be received on or before February 20, 2024.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed collection according to the instructions below. All submissions must refer to the document title and docket number FSOC–2023–0003.

Electronic submission of comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail. Send comments to Financial Stability Oversight Council, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

Public inspection of comments. All properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Samantha MacInnis, Director of Operations, Financial Stability Oversight Council, U.S. Treasury Department, (202) 622–2354, *Samantha.MacInnis@treasury.gov;* Mark Schlegel, Senior Counsel, U.S. Treasury Department, (202) 622–1027, *Mark.Schlegel@treasury.gov.*

SUPPLEMENTARY INFORMATION:

Title: Designation of Financial Market Utilities.

OMB Control Number: 1505–0239.

Type of Review: Extension without change of a currently approved collection.

Description: On July 27, 2011, the Council published in the **Federal Register** a final rule (12 CFR part 1320) that describes the criteria that will inform the Council's designation of FMUs as systemically important under the Dodd-Frank Act and the processes and procedures established under the Dodd-Frank Act for any such designation. On July 18, 2012, the Council designated eight FMUs as systemically important under title VIII of the Dodd-Frank Act.

The collection of information under 12 CFR 1320.11 affords FMUs that are under consideration for designation, or rescission of designation, an

opportunity to submit written materials to the Council in support of, or in opposition to, designation or rescission of designation. The collection of information under 12 CFR 1320.12 affords FMUs an opportunity to contest a proposed determination of the Council by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The collection of information in 12 CFR 1320.14 affords FMUs an opportunity to contest the Council's waiver or modification of the notice, hearing, or other requirements contained in 12 CFR 1320.11 and 1320.12 by requesting a hearing and submitting written materials (or, at the sole discretion of the Council, oral testimony and oral argument). The information collected from FMUs under 12 CFR 1320.20 will be used by the Council to determine whether to designate an additional FMU or to rescind the designation of a designated FMU.

Form: None.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 9.[1]

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 11.[2]

Estimated Time per Response: 50 hours, 20 hours, 10 hours, 10 hours.[3]

Estimated Total Annual Burden Hours: 440.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Dated: December 19, 2023.

Samantha MacInnis,

Director of Operations, Financial Stability Oversight Council.

[FR Doc. 2023–28246 Filed 12–21–23; 8:45 am]

BILLING CODE 4810–AK–P

[1] This estimate refers to the eight FMUs currently designated as systemically important under title VIII, as well as one additional respondent for purposes of illustrating the burden associated with 12 CFR 1320.11, 12 CFR 1320.12, and 12 CFR 1320.14.

[2] This estimate refers to the eight FMUs currently designated as systemically important under title VIII, as well as three additional responses for purposes of illustrating the burden associated with 12 CFR 1320.11, 12 CFR 1320.12, and 12 CFR 1320.14.

[3] The hour estimates refer, respectively, to information collections for respondents associated with 12 CFR 1320.20, 12 CFR 1320.11, 12 CFR 1320.12, and 12 CFR 1320.14.

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin C–2024–01]

Guidelines for Safety Station Programs in Federal Facilities

AGENCY: Department of Health and Human Services and General Services Administration.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) and the U.S. General Services Administration (GSA) jointly issue this Federal Management Regulation (FMR) bulletin titled ''*Guidelines for Safety Station Programs in Federal Facilities*.'' These guidelines were prepared, in part, in response to congressional direction contained in materials that accompanied the Consolidated Appropriations Act, 2023 (Pub. L. 117–328). See the **SUPPLEMENTARY INFORMATION** section for further details.

DATES: December 22, 2023.

FOR FURTHER INFORMATION CONTACT: For further clarification of content, contact Christopher Coneeney, Supervisory Realty Specialist, Office of Government-wide Policy, U.S. General Services Administration, 1800 F Street NW, Washington, DC 20405; at 202–208–2956; or *chris.coneeney@gsa.gov.*

SUPPLEMENTARY INFORMATION: A provision in House of Representatives Report No. 117–393, which accompanied the bill making appropriations for Financial Services and General Government for the fiscal year ending September 30, 2023 (the House Report), directed GSA, in coordination with HHS as the lead agency with health policy expertise, to update the FMR bulletin on *Guidelines for Public Access Defibrillation Programs in Federal Facilities,* which became effective on August 14, 2009 (the 2009 Bulletin), to reflect advances in automated external defibrillator (AED) technologies and to examine whether AEDs should be required in Federally owned buildings under the custody and control of GSA. The report may be found at *https://www.congress.gov/117/crpt/hrpt393/CRPT-117hrpt393.pdf.* The House Report acknowledged that sudden cardiac arrest is a leading cause of death for Americans and that early intervention and timely use of an AED significantly improves the chances of survival. It further noted that, in 2001, Congress required the creation of a public access defibrillator (PAD) program that included voluntary guidelines for deployment of AEDs in Federal buildings and that, in 2009, GSA and HHS issued the above-referenced FMR bulletin.

In addition to the House Report, the joint explanatory statement accompanying division E—Financial Services and General Government Appropriations Act, 2023, of the Consolidated Appropriations Act, 2023 (the Joint Explanatory Statement), directed HHS and GSA to examine whether AEDs should be required in federally owned buildings under the custody and control of GSA and to issue an updated FMR bulletin no later than one year after enactment of the Consolidated Appropriations Act, 2023. The link to the Joint Explanatory Statement can be found at *https://www.appropriations.senate.gov/imo/media/doc/Division%20E%20-%20FSGG%20Statement%20FY23.pdf.*

Accordingly, this bulletin cancels and replaces in its entirety the 2009 Bulletin and provides updated information for establishing an agency safety station program, including public access AEDs, in Federally owned buildings under the jurisdiction, custody and control of GSA.

The revised guidelines provide a general framework and basic information for the essential elements of designing and implementing a safety station program in Federal facilities and includes the latest updates in (a) PAD programs and AED technologies since the 2009 Bulletin issuance, (b) opioid reversal agents and (c) hemorrhagic control. Safety station program configurations are flexible and can be designed to accommodate all types of Federal facilities. The configurations are modular in nature and usually include bystander-empowered components with opioid reversal agents (such as naloxone) or hemorrhagic control (such as Stop the Bleed® kits), or both, in addition to AED technologies. The guidelines do not exhaustively address or cover all aspects of a safety station program. They are aimed at outlining

the key elements of a safety station program so that facility-specific detailed plans and programs can be developed in an informed manner. Safety station programs are voluntary and are not mandatory for Federal facilities. The costs and expenses to establish and operate a safety station program are the responsibility of the occupant agency or agencies sponsoring the program and not GSA or HHS, except to the extent GSA or HHS, or both, are sponsoring a program in a facility where they are occupant agencies.

The importance of keeping opioid reversal agents easily accessible has been highlighted by the U.S. Surgeon General and the Centers for Disease Control and Prevention (CDC). On April 5, 2018, Surgeon General Jerome Adams issued an advisory recommending that more individuals keep naloxone on hand. The link to the advisory can be found at *https://www.hhs.gov/surgeongeneral/reports-and-publications/addiction-and-substance-misuse/advisory-on-naloxone/index.html.* On October 5, 2018, the CDC's National Institute for Occupational Safety and Health (NIOSH) issued the fact sheet ''Using Naloxone to Reverse Opioid Overdose in the Workplace: Information for Employers and Workers'' to assist workplace decision makers in establishing a naloxone availability and use program. The link to the white paper can be found at *https://www.cdc.gov/niosh/docs/2019-101/pdfs/2019-101.pdf.* The Surgeon General advisory and the CDC NIOSH fact sheet highlight the importance of having opioid reversal agents in public spaces for quick access and why they should be included in an agency's safety station program.

Krystal J. Brumfield,

Associate Administrator, Office of Government-wide Policy, U.S. General Services Administration.

Rachel L. Levine,

Assistant Secretary for Health, U.S. Department of Health and Human Services.

[FR Doc. 2023–28207 Filed 12–21–23; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–24–1074; Docket No. CDC–2023–0100]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Colorectal Cancer Control Program (CRCCP) Monitoring Activities. CDC is requesting an Extension to OMB Control No. 0920–1074 to continue information collection via an annual survey, a clinic-level data collection instrument, and a quarterly recipient-level program update survey.

DATES: CDC must receive written comments on or before February 20, 2024.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2023–0100 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Colorectal Cancer Control Program (CRCCP) Monitoring Activities (OMB Control No. 0920–1074, Exp. 03/31/2024)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Colorectal cancer (CRC) is the second leading cause of death from cancer in the United States among cancers that affect both men and women. There is substantial evidence that CRC screening reduces the incidence of, and death from the disease. Screening for CRC can detect disease early when treatment is more effective, and can prevent cancer by finding and removing precancerous

polyps. Of individuals diagnosed with early stage CRC, more than 90% live five or more years. Despite strong evidence supporting screening, only 68.8% of adults currently report being up-to-date with CRC screening as recommended by the U.S. Preventive Services Task Force in 2018, with more than 22 million age-eligible adults estimated to be untested. To reduce CRC morbidity, mortality, and associated costs, use of CRC screening tests must be increased among age-eligible adults with the lowest CRC screening rates.

The purpose of the Colorectal Cancer Control Program (CRCCP) is to partner with health systems and their individual primary care clinics to implement Evidence-based interventions (EBIs) to increase CRC screening among defined populations of adults ages 50–75 that have CRC screening rates lower than the national, regional, or local rate. In 2020, CDC issued the funding opportunity, Public Health and Health System Partnerships to Increase Colorectal Cancer Screening in Clinical Settings (DP20–2002), a 5-year cooperative agreement to increase CRC screening among defined populations of adults ages 50–75 that have CRC screening rates lower than the national, regional, or local rate. DP20–2002 funds recipients to partner with health systems and their primary care clinics to implement multiple EBIs, partner with organizations to support implementation of EBIs in those clinics, and collect high-quality clinic-level data when a clinic is recruited to participate (baseline) and annually thereafter to monitor EBI implementation and assess screening rate changes. DP20–2002 also requires recipients to conduct a formal capacity/readiness assessment of potential clinics to implement EBIs, use assessment findings to select appropriate EBIs for implementation, and provide clinics with limited financial resources to support follow-up colonoscopies for under- and uninsured patients after an abnormal CRC screening test.

CDC proposes three information collections—the Annual Awardee Survey, the Clinic-Level Data Collection Instrument, and the Quarterly Program Update—to reflect the strategies and objectives detailed in DP20–2002. CDC will conduct data collections for each of these three proposed activities among all 35 recipients following the end of each program year which runs from July 1–June 30.

The Annual Awardee Survey assesses: (1) program management; (2) clinic readiness assessment activities; (3) data management; (4) technical assistance (TA) needs; (5) partnerships; and (6) the effect of COVID–19 on CRC implementation at the recipient level.

The Clinic-level Information Collection Instrument assesses: (1) health system and clinic characteristics; (2) program reach; (3) CRC screening practices and outcomes; (4) clinics' quality improvement and monitoring activities; (5) EBI implementation; and (6) additional factors that affect EBI implementation over time.

The Quarterly Program Update will collect standardized recipient-level information on aspects of program management, including: (1) quarterly program expenditures; (2) current staff vacancies; (3) program successes and challenges; (4) current TA needs; and (5) the effect of COVID–19 on CRCCP implementation at the recipient level. These data are collected quarterly to enable rapid reporting of programmatic information to support CDC program consultants in providing tailored and meaningful TA.

This information collection enables CDC to gauge progress in meeting CRCCP program goals and monitor implementation activities, evaluate outcomes, and identify recipients' TA needs. In addition, data collected will inform program improvement and help identify successful activities that need to be maintained, replicated, or expanded. CDC is requesting a 3-year Extension to the Colorectal Cancer Control Program (CRCCP) Monitoring Activities collection (OMB No. 0920–1074). The total estimated annualized burden is 760 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
CRCCP Recipients	CRCCP Annual Awardee Survey	35	1	15/60	9
	CRCCP Clinic-level Information Collection Instrument	35	24	50/60	700
	CRCCP Quarterly Program Update	35	4	22/60	51
Total					760

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. 2023–28174 Filed 12–21–23; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–8003]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of

the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* 1915(c) Home and Community-Based Services (HCBS) Waiver Application; *Use:* Although we published a **Federal Register** notice on September 11, 2023 (88 FR 62377) that set out revisions to what is active and currently approved by OMB, this December 2023 iteration is an extension that does not propose any change. The subsequent 30-day notice for the September 11, 2023, revisions is expected to publish in the **Federal Register** in January/February 2024. We use the application to review and adjudicate individual waiver actions. The application is also used by states to submit and revise their waiver requests. *Form Number:* CMS–8003 (OMB control number 0938–0449); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 47; *Total Annual Responses:* 71; *Total Annual Hours:* 6,005. (For policy questions regarding this collection contact Ryan Shannahan at 410–786–0295.)

Dated: December 19, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–28288 Filed 12–21–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10883, CMS–R–64 and CMS–10396]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by February 20, 2024.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10883 American Dental Association (ADA) Dental Claim Form
CMS–R–64 Indirect Medical Education and Direct Graduate Medical Education
CMS–10396 Medication Therapy Management Program Improvements—Standardized Format

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR

1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* American Dental Association (ADA) Dental Claim Form; *Use:* Medicare has traditionally accepted the Professional (CMS–1500/837P transaction) and Institutional (UB04/837I transaction) claims forms to provide payment for Medicare-covered services. The Centers for Medicare & Medicaid Services (CMS) now plans to allow providers to submit Medicare-covered dental services on the dental claim form, a similar information collection as the already-approved professional and institutional claim forms. The ADA Dental Claim Form will be used to deliver information from dental providers to CMS for CMS to reimburse for provided dental services. Medicare Part B MACs will use the data collected on the ADA dental form to determine the proper amount of reimbursement for Part B dental services provided to Medicare beneficiaries. Submission of information on the ADA Dental Claim Form and associated HIPAA-standard 837D transaction format permits Medicare Part B MACs to receive consistent data for proper benefit payment. *Form Number:* CMS–10883 (OMB control number: 0938-New); *Frequency:* Occasionally; *Affected Public:* Private sector, Businesses and other for-profits; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500. (For policy questions regarding this collection contact Charlene Parks at 410–786–8684.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Indirect Medical Education and Direct Graduate Medical Education; *Use:* Section 1886(d)(5)(B) of the Social Security Act requires additional payments to be made under the Medicare Prospective Payment System (PPS) for the indirect medical educational costs a hospital incurs in connection with interns and residents (IRs) in approved teaching programs. In addition, title 42, part 413, sections 75 through 83 implement section 1886(d) of the Act by establishing the methodology for Medicare payment for the costs of direct graduate medical educational activities.

The information collected on IRs is used by Part-A Medicare Administrative Contractors (MAC) to verify the number of IRs FTE used in the calculation of Medicare payments for IME and GME. The IR data submitted by the hospitals to the MACs is uploaded into CMS' Intern and Resident Information System (IRIS) database to identify duplicate FTEs reported for any IR.

The MACs use the information collected on IRs to ensure that all program payments for IME and GME are accurate and are in accordance with Medicare regulations. The IR data submitted by the hospitals to the MACs are used to audit the Medicare cost reports filed by the hospitals. *Form Number:* CMS–R–64 (OMB control number: 0938–0456); *Frequency:* Monthly; *Affected Public:* Private sector and Federal Government; *Number of Respondents:* 1,245; *Total Annual Responses:* 1,245; *Total Annual Hours:* 2,490. (For policy questions regarding this collection contact Owen Osaghae at 410–786–7550.)

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Medication Therapy Management Program Improvements—Standardized Format; *Use:* Section 1860D–4(c)(2)(C)(i) of the Act requires plan sponsors to offer MTM services that include an annual CMR with a written summary and action plan provided in a standardized format developed in consultation with stakeholders. This requirement is codified at § 423.153(d)(1)(vii)(D), which requires that the standardized action plan and summary comply with requirements specified by CMS for the standardized format. Components of the CMR summary in Standardized Format should include a cover letter, personalized medication list, and action plan if applicable.

Users include members in a Part D sponsors' plan who are eligible are enrolled in the sponsors' MTM program and offered a CMR. The CMR is a consultation between the MTM provider (such as a pharmacist) with the beneficiary to review their medications. The MTM provider is either an employee/contractor of the plan itself or of a downstream entity contracted by the plan to provide MTM services. After a CMR is performed, the sponsor creates and sends a summary of the CMR to the beneficiary that includes a medication action plan and personal medication list using the Standardized Format.

Information collected by Part D MTM programs as required by the Standardized Format for the CMR summary is used by beneficiaries or their authorized representatives, caregivers, and their healthcare providers to improve medication use and achieve better healthcare outcomes. *Form Number:* CMS–10396 (OMB control number: 0938–1154); *Frequency:* Yearly; *Affected Public:* Private Sector and Business or other for-profits; *Number of Respondents:* 842; *Total Annual Responses:* 2,382,774; *Total Annual Hours:* 1,588,595. (For policy questions regarding this collection contact Victoria Dang at 410–786–3991 or *Victoria.dang@cms.hhs.gov.*)

Dated: December 19, 2023.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2023–28292 Filed 12–21–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2023–D–5259]

Master Protocols for Drug and Biological Product Development; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Master Protocols for Drug and Biological Product Development.'' The draft guidance addresses the design and analysis of trials conducted under a master protocol as well as the submission of documentation to support regulatory review. The primary focus is on randomized umbrella and platform trials that are intended to contribute to a demonstration of safety and substantial evidence of effectiveness. The considerations in this guidance apply to a range of therapeutic areas. The draft guidance is intended to clarify the Agency's thinking on the use of master protocols in drug and biological product development, which was previously addressed in FDA's guidance entitled ''COVID–19: Master Protocols Evaluating Drugs and Biological

Products for Treatment or Prevention.'' FDA is also announcing the withdrawal of the guidance entitled ''COVID–19: Master Protocols Evaluating Drugs and Biological Products for Treatment or Prevention.''

DATES: Submit either electronic or written comments on the draft guidance by February 20, 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–2023–D–5259 for ''Master Protocols for Drug and Biological Product Development.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Scott N. Goldie, Center for Drug Evaluation and Research, Office of Biostatistics, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 21, Rm. 3557, Silver Spring, MD 20993–0002, 301–796–2055; or Anne Taylor, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Master Protocols for Drug and Biological Product Development.'' The draft guidance addresses the design and analysis of trials conducted under a master protocol as well as the submission of documentation to support regulatory review. The primary focus of this guidance is on randomized umbrella and platform trials that are intended to contribute to a demonstration of safety and substantial evidence of effectiveness. The concepts discussed may also be useful to consider for early-phase or exploratory umbrella and platform trials as well as those conducted to satisfy post-marketing commitments or requirements. The considerations in this draft guidance apply to a range of therapeutic areas.

Well-designed and -conducted trials using master protocols can accelerate drug development by maximizing the amount of information obtained from the research effort. Compared with stand-alone trials under separate protocols, a master protocol may offer certain advantages by leveraging a shared control arm and other shared protocol elements (*e.g.,* visit schedule, measurement procedures), shared infrastructure (*e.g.,* network of clinical sites, central facilities, central randomization system, data management systems), and shared oversight (*e.g.,* steering committee, data review committee). At the same time, master protocols add elements of complexity, which can increase startup time and can lead to design challenges such as ensuring adequate blinding to treatment assignment. Additionally, master protocols involving multiple stakeholders will require a high degree of coordination.

FDA provided recommendations on master protocols for COVID–19 drug and biological products in the guidance entitled ''COVID–19: Master Protocols Evaluating Drugs and Biological Products for Treatment or Prevention,'' which posted May 2021 and was announced in the **Federal Register** on June 24, 2021 (86 FR 33309) (hereafter ''2021 COVID–19 Master Protocols Guidance''). FDA issued the guidance to communicate its policy for the duration of the COVID–19 public health emergency (PHE) declared by the Secretary of Health and Human Services (HHS) on January 31, 2020, including any renewals made by the HHS Secretary in accordance with section 319(a)(2) of the Public Health Service Act (42 U.S.C. 247d(a)(2)). Furthermore, in the **Federal Register** of March 13, 2023 (88 FR 15417), FDA listed the guidance documents that will no longer be effective with the expiration of the PHE declaration, guidances that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration to provide a period for stakeholder transition and then would no longer be in effect, and guidances that FDA was revising to continue in effect for 180 days after the expiration of the PHE declaration during which time FDA planned to further revise the guidances. The 2021 COVID–19 Master Protocols Guidance is included in the latter category. The 2021 COVID–19 Master Protocols Guidance was revised to remain in effect for 180 days post expiration of the PHE declaration, and then revised again to remain in effect until March 7, 2024, so that FDA could further revise the 2021 guidance.

FDA is issuing this draft guidance because many of the issues addressed in the 2021 guidance arise outside the context of the COVID–19 PHE. The recommendations in this draft guidance apply to a range of therapeutic areas, not just COVID–19. The draft guidance also provides a more comprehensive discussion of many of the design and analysis topics covered in the 2021 COVID–19 Master Protocols Guidance. For example, the draft guidance provides more detailed considerations related to randomization, the choice of control group, informed consent, blinding to treatment assignment, adaptive design, multiplicity, comparisons between drugs, and the evaluation of drug safety. The draft guidance also expands on considerations for trial oversight, data sharing, dissemination of information, and submissions to support regulatory review. The draft guidance, when finalized, will represent the Agency's current thinking on the use of master protocols in drug and biological product development.

FDA is issuing this guidance to satisfy, in part, a mandate under section 3607(b)(2)(C–F) of the Food and Drug Omnibus Reform Act of 2022 (FDORA). Consistent with the FDORA mandate, this guidance discusses recommendations for clinical trials to streamline logistics and facilitate the efficient collection and analysis of data, as well as important principles for the evaluation of effectiveness, recommendations for communication between sponsors and FDA, and considerations related to ensuring participant safety and data integrity in such trials.

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 ''Master Protocols for Drug and Biological Product Development.'' 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.

FDA is also announcing that the 2021 COVID–19 Master Protocols Guidance will be withdrawn upon publication of this draft guidance. FDA has determined that the 2021 COVID–19 Master Protocols Guidance is no longer needed because this new draft is available and its recommendations, when finalized, will be applicable outside the context of the COVID–19 PHE.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 for the submission of investigational new drug applications (INDs), including protocols, protocol amendments, and information amendments, have been approved under OMB control number 0910–0014. The information collections for new drug application (NDA) regulations (including abbreviated new drug applications (ANDAs)) (21 CFR part 314) and related guidances are approved under OMB control number 0910–0001, and our biological licensing applications (BLA) regulations (21 CFR part 601) are approved under OMB control number 0910–0338. The collections of information in 21 CFR parts 50 and 56 for the protection of human subjects and institutional review boards have been approved under OMB control number 0910–0130. The collections of information related to the protection of human subjects under 45 CFR part 46 and to IRB recordkeeping under 45 CFR 46.115 have been approved under OMB control number 0990–0260. The collections of information in 21 CFR part 11, Electronic Records; Electronic Signatures, have been approved under OMB control number 0910–0303. The information collection requirements in FDA's guidance for industry entitled ''Establishment and Operation of Clinical Trial Data Monitoring Committees'' have been approved under OMB control number 0910–0581. The information collection requirements in FDA's guidance for industry entitled ''Oversight of Clinical Investigations—A Risk-Based Approach to Monitoring'' and FDA's final guidance for industry entitled ''A Risk-Based Approach to Monitoring of Clinical Investigations'' have been approved under OMB control number 0910–0733. The information collections in FDA's guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics'' have been approved under OMB control number 0910–0765.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28210 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3017]

Determination of Regulatory Review Period for Purposes of Patent Extension; Emgality

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Emgality and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by February 20, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 20, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 20, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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–2019–E–3017 ''For Determination of Regulatory Review Period for Purposes of Patent Extension; EMGALITY.'' Received comments, those filed in a timely manner (see **ADDRESSES**), 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 § 10.20 (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.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product Emgality (galcanezumab-gnlm). Emgality is

indicated for the preventive treatment of migraine in adults. Subsequent to this approval, the USPTO received a patent term restoration application for Emgality (U.S. Patent No. 9,505,838) from Eli Lilly and Company, and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2020, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of Emgality represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Emgality is 2,738 days. Of this time, 2,372 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* April 1, 2011. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 1, 2011.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* September 27, 2017. FDA has verified the applicant's claim that the biologics license application (BLA) for Emgality (BLA B761063) was initially submitted on September 27, 2017.

3. *The date the application was approved:* September 27, 2018. FDA has verified the applicant's claim that BLA B761063 was approved on September 27, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 403 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28233 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–E–3287]

Determination of Regulatory Review Period for Purposes of Patent Extension; Copiktra

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for Copiktra and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human drug product.

DATES: Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by February 20, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by June 20, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of February 20, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

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–2019–E–3287 for ''Determination of

Regulatory Review Period for Purposes of Patent Extension; COPIKTRA.'' Received comments, those filed in a timely manner (see **ADDRESSES**), 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 § 10.20 (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.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

SUPPLEMENTARY INFORMATION:

I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human drug product, Copiktra (duvelisib), which is indicated for the treatment of adult patients with:

• Relapsed or refractory chronic lymphocytic leukemia or small lymphocytic lymphoma after at least two prior therapies.

• Relapsed or refractory follicular lymphoma after at least two prior systemic therapies.

This indication is approved under accelerated approval based on overall response rate. Continued approval for this indication may be contingent upon verification and description of clinical benefit in confirmatory trials.

Subsequent to this approval, the USPTO received a patent term restoration application for Copiktra (U.S. Patent No. 8,193,182) from Verastem, Inc., and the USPTO requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated November 29, 2019, FDA advised the USPTO that this human drug product had undergone a regulatory review period and that the approval of Copiktra represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for Copiktra is 2,596 days. Of this time, 2,364 days occurred during the testing phase of the regulatory review period, while 232 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(i)) became effective:* August 18, 2011. The applicant claims August 21, 2011, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 18, 2011, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the FD&C Act:* February 5, 2018. FDA has verified the applicant's claim that the new drug application (NDA) for Copiktra (NDA 211155) was initially submitted on February 5, 2018.

3. *The date the application was approved:* September 24, 2018. FDA has verified the applicant's claim that NDA 211155 was approved on September 24, 2018.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 954 days of patent term extension.

III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to:

must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: December 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28244 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1128]

Digital Health Technologies for Remote Data Acquisition in Clinical Investigations; Guidance for Industry, Investigators, and Other Stakeholders; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry, investigators, and other stakeholders entitled ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' This guidance provides recommendations on the use of digital health technologies (DHTs) to acquire data remotely from participants in clinical investigations that evaluate medical products. DHTs for remote data acquisition in clinical investigations can include hardware and/or software to perform one or more functions. Use of DHTs as recommended in this guidance may improve the efficiency of clinical trials for sponsors, investigators, and other stakeholders and may increase the opportunities for individuals to participate in research and make participation more convenient. This guidance finalizes the draft guidance of the same title issued on December 23, 2021.

DATES: The announcement of the guidance is published in the **Federal Register** on December 22, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1128 for ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002; or 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 requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Kunkoski, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3332, Silver Spring, MD 20993–0002, 301–796–6439, *Elizabeth.Kunkoski@fda.hhs.gov;* James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911, *James.Myers@fda.hhs.gov;* Matthew Diamond, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5540, Silver Spring, MD 20993–0002, 301–796–5386, *Matthew.Diamond@fda.hhs.gov;* or Paul Kluetz, Oncology Center of Excellence, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 2223, Silver Spring, MD 20993, 301–796–9567, *Paul.Kluetz@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' This guidance addresses requirements set forth in section 3607(a) of the Food and Drug Omnibus Reform Act of 2022 (FDORA) and meets a Prescription Drug User Fee Act (PDUFA) Reauthorization Performance Goal to finalize guidance on DHTs (section IV.C.5.b of the PDUFA VII commitment letter).[1] This guidance provides recommendations for ensuring that a DHT is fit-for-purpose (*i.e.,* that the level of validation associated with the DHT is sufficient to support its use, including the interpretability of its data in the clinical investigation), which involves considerations of both the DHT's form (*i.e.,* design) and function(s) (*i.e.,* distinct purpose within an investigation). DHTs may rely on or work with other technologies, such as general-purpose computing platforms (*e.g.,* smartphones) and communication networks, for remote data acquisition in a clinical investigation. Compared to intermittent trial visits, the use of DHTs to remotely collect data from trial participants may allow for continuous or more-frequent data collection. This may provide a broader picture of how participants feel or function in their daily lives. DHTs provide opportunities to record data directly from trial participants (*e.g.,* biomarkers, performance of activities of daily living, sleep, vital signs) wherever the participants may be (*e.g.,* home, school, work, outdoors). The data collection may involve passive monitoring by the DHT or the acquisition of data while participants are actively interacting with the DHT.

This guidance outlines recommendations intended to facilitate the use of DHTs in a clinical investigation as appropriate for the evaluation of medical products. The guidance provides recommendations on, among other things: (1) selection of DHTs that are suitable for use in clinical investigations; (2) the description of DHTs in regulatory submissions; (3) verification and validation of DHTs for use in clinical investigations; (4) use of DHTs to collect data for trial endpoints; (5) identification and management of risks associated with the use of DHTs during clinical investigations; (6) retention and protection of data collected by DHTs; and (7) the roles of sponsors and investigators related to the use of DHTs in clinical investigations.

This guidance finalizes the draft guidance of the same title issued on December 23, 2021 (86 FR 72981). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include clarification regarding the meaning of DHT function(s) for the purposes of the guidance; further explanation of regulatory considerations for DHTs that meet the definition of a device under section 201(h) of the Federal Food, Drug, and Cosmetic Act; clarification regarding the use of participants' own DHTs or other technologies in clinical investigations; inclusion of references to Form FDA 1571 and Form FDA 356h for tracking submissions that include DHT data; revisions to the verification, validation and usability evaluations section; clarification on DHT record protection and retention; clarification on the sponsor and investigator's roles; and further recommendations on handling DHT updates and other changes during clinical investigations. In addition, editorial changes were made to improve clarity.

Section 3607(a) of FDORA requires FDA to, within 1 year of enactment, issue or revise draft guidance regarding the appropriate use of DHTs in clinical trials. This provision of FDORA further requires that, not later than 18 months after the end of the public comment period on the draft guidance, FDA must issue a revised draft guidance or final guidance. This guidance revises and finalizes a draft guidance on use of DHTs in clinical trials issued December 23, 2021. Most of the content required to be included in guidance under FDORA section 3607(a) was included in the draft version of this guidance that was open to public comment and such comments were considered in finalizing this guidance. The few additions to address the remaining FDORA section 3607(a) content requirements are minor. As noted above, you may submit comments on a guidance at any time. As with any guidance, FDA will consider comments received and issue any further revisions that we determine to be appropriate, consistent with 21 CFR 10.115. To ensure that the Agency considers your comments in determining if any further revisions to this guidance are appropriate, submit your comments by February 20, 2024.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Digital Health Technologies for Remote Data Acquisition in Clinical Investigations.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303; the collections of information in 21 CFR part 312, including submissions under subpart E, and 21 CFR 312.41, 312.57, 312.58, 312.62, and 312.120 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485; the collections of information under 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information under 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231; the collections of information under 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; the

[1] PDUFA VII: Fiscal Years 2023–2027 | FDA available at *https://www.fda.gov/media/151712/download?attachment.*

collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information for the De Novo Classification Process (Evaluation of Automatic Class III Designation) have been approved under OMB control number 0910–0844; and the collections of information in the guidance document entitled ''Requests for Feedback and Meetings for Medical Device Submissions: The Q-Submission Program'' have been approved under OMB control number 0910–0756. The collections of information in 21 CFR part 314 (Applications for FDA Approval to Market a New Drug) and 21 CFR part 601 (General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension) have been approved under OMB control numbers 0910–0001 and 0910–0338, respectively. The collections of information in 21 CFR parts 50 and 56 (Protection of Human Subjects: Informed Consent; Institutional Review Boards) have been approved under OMB control number 0910–0130.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 18, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28262 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1146]

Real-World Data: Assessing Registries To Support Regulatory Decision-Making for Drug and Biological Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Real-World Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' This guidance provides considerations for sponsors proposing to design a registry or to use an existing registry to support regulatory decision-making about a drug's effectiveness or safety. FDA is issuing this guidance as part of its Real-World Evidence (RWE) Program and to satisfy, in part, the mandate under the Federal Food, Drug, and Cosmetic Act (FD&C Act) to issue guidance on the use of RWE in regulatory decision-making. This guidance finalizes the draft guidance of the same title issued on November 30, 2021.

DATES: The announcement of the guidance is published in the **Federal Register** on December 22, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1146 for ''Real-World Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access

the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3226, Silver Spring, MD 20993–0002, 301–796–3161, or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Real-World Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' FDA is issuing this guidance as part of its RWE Program and to satisfy, in part, the mandate under section 505F of the FD&C Act (21 U.S.C. 355g) to issue final guidance about the use of RWE in regulatory decision-making. Topics covered in this guidance include:

- Considerations regarding a registry's fitness-for-use in regulatory decision-making, focusing on attributes of a registry that support the collection of relevant and reliable data;
- Considerations when linking a registry to another data source for supplemental information, such as data from medical claims, electronic health records, digital health technologies, or other registries; and
- Considerations for supporting FDA review of submissions that include registry data.

Section 3022 of the 21st Century Cures Act (Cures Act) (Pub. L. 114–255) amended the FD&C Act to add section 505F, Utilizing Real World Evidence. In addition, the Prescription Drug User Fee Amendments of 2017 (PDUFA VI) committed FDA to publish draft guidance on how RWE can contribute to the assessment of safety and effectiveness in regulatory submissions. In 2018, FDA created an RWE Framework and Program to evaluate the potential use of RWE to help support the approval of a new indication for a drug already approved under the FD&C Act or to help support or satisfy postapproval study requirements. In late 2021, FDA utilized the RWE Program to issue draft guidances outlining considerations for the use of real-world data and RWE in regulatory decision-making to satisfy the Cures Act mandate and the PDUFA VI commitment.

This guidance finalizes the draft guidance of the same title issued on November 30, 2021 (86 FR 67956). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include noting that sponsors proposing to use registry data to support regulatory decision-making by FDA are responsible for ensuring that attributes of the registry support the collection of relevant and reliable data, including in situations where the data are from a registry not managed or designed by the sponsor, and sponsors should have access to the metadata associated with the registry data. In addition, statements were added to note that registry data are sometimes used to evaluate a drug received during routine medical practice, such as to evaluate clinical outcomes in populations underrepresented in clinical trials, to note that registries should have a plan to reduce missing assessments and minimize loss to followup of participants, and to provide additional considerations related to linkage to other data sources. Examples of pregnancy-related information that may be collected by a registry were removed because this information is addressed in a separate guidance. Terms that may be defined differently by different stakeholders were removed from the guidance if they were not necessary to understand the content of the guidance. Other relevant definitions were transferred from the glossary to the text. In addition, editorial changes were made to improve clarity.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Real-World Data: Assessing Registries to Support Regulatory Decision-Making for Drug and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 11 have been approved under OMB control number 0910–0303. The collections of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130. The collections of information in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572. The collections of information in 21 CFR parts 310 and 314 have been approved under OMB control number 0910–0230. The collections of information in 21 CFR parts 310, 314, and 600 have been approved under OMB control number 0910–0291. The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information in 21 CFR part 600 have been approved under OMB control number 0910–0308. The collections of information resulting from formal meetings between sponsors or applicants and FDA have been approved under OMB control number 0910–0001.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances, https://www.fda.gov/regulatory-information/*

search-fda-guidance-documents, or *https://www.regulations.gov.*

Dated: December 19, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28289 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0548]

Data Standards for Drug and Biological Product Submissions Containing Real-World Data; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data.'' This guidance provides recommendations to sponsors to help support compliance with the Federal Food, Drug, and Cosmetic Act (FD&C Act) when submitting study data derived from real-world data (RWD) sources in applicable regulatory submissions using standards specified in the Data Standards Catalog. FDA is publishing this guidance as part of a series of guidance documents under its program to evaluate the use of real-world evidence (RWE) in regulatory decision making. This guidance finalizes the draft guidance of the same title issued on October 22, 2021.

DATES: The announcement of the guidance is published in the **Federal Register** on December 22, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0548 for ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dianne Paraoan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 3326, Silver Spring, MD 20993–0002, 301–796–3161; or James Myers, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data.'' Section 3022 of the 21st Century Cures Act (Cures Act) amended the FD&C Act to add section 505F, Utilizing Real World Evidence (21 U.S.C. 355g). In addition, under the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), FDA committed to publishing draft guidance on how RWE can contribute to the assessment of safety and effectiveness in

regulatory submissions. In 2018, FDA created an RWE Framework and Program (Program) to evaluate the potential use of RWE to help support the approval of a new indication for a drug already approved under the FD&C Act or to help to support or satisfy postapproval study requirements. In late 2021, FDA utilized the Program to issue draft guidances outlining considerations for the use of RWD and RWE in regulatory decision-making to help satisfy the Cures Act mandate and the PDUFA VI commitment.

This guidance finalizes the draft guidance entitled ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data'' issued on October 22, 2021 (86 FR 58672). FDA considered comments received on the draft guidance as the guidance was finalized. Changes from the draft to the final guidance include clarification of FDA's understanding of challenges when using currently supported data standards for RWD sources and elaboration of available FDA resources for consultation about the use of data standards for study data submitted to FDA. In addition, editorial changes were made to improve clarity, including the movement of concepts from glossary entries to footnotes to the main document text.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Data Standards for Drug and Biological Product Submissions Containing Real-World Data.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 314 (Applications for FDA Approval to Market a New Drug) have been approved under OMB control number 0910–0001; the collections of information in 21 CFR part 312 (Investigational New Drug Regulations) have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 58 (Good Laboratory Practice Regulations for Nonclinical Laboratory Studies) have been approved under OMB control number 0910–0119; and the collections of information in 21 CFR part 601 (General Licensing Provisions: Biologics License Application, Changes to an Approved Application, Labeling, Revocation and Suspension) have been approved under OMB control number 0910–0338.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 19, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28291 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–1997–D–0444]

Special Considerations, Incentives, and Programs To Support the Approval of New Animal Drugs for Minor Uses and for Minor Species; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a final guidance for industry (GFI) #61 entitled ''Special Considerations, Incentives, and Programs to Support the Approval of New Animal Drugs for Minor Uses and for Minor Species.'' This guidance is intended to assist those interested in pursuing FDA approval of new animal drugs intended for minor uses in major species or for use in minor species (MUMS drugs). It outlines the basic statutory and regulatory requirements and special considerations for these approvals and describes the incentives available to encourage the development of MUMS drugs.

DATES: The announcement of the guidance is published in the **Federal Register** on December 22, 2023.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–1997–D–0444 for ''Special Considerations, Incentives, and Programs to Support the Approval of New Animal Drugs for Minor Uses and for Minor Species.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the

information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)). Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dorothy Bailey, Center for Veterinary Medicine (HFV–50), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0565, *dorothy.bailey@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 15, 2020 (85 FR 42876), FDA published the notice of availability for draft GFI #61 entitled ''Special Considerations, Incentives, and Programs to Support the Approval of New Animal Drugs for Minor Uses and for Minor Species'' giving interested persons until November 12, 2020, to comment on the draft guidance. In response to a request for an extension, the comment period was extended to January 11, 2021 (85 FR 71659). FDA received 14 comments on the draft guidance and those comments were considered as the guidance was finalized. Changes to the final guidance include the following:

- In our draft guidance we referred to Minor Use Determinations. Our experience has shown that our stakeholders frequently confuse ''MUMS Determination'' with ''MUMS Designation.'' Therefore, the final guidance substitutes the word ''Assessment'' for the word ''Determination.''
- Section XII.C.3.a.i. ''Anthelmintics and Ectoparasiticides for Terrestrial Minor Species'' has been added to the final guidance in response to comments received requesting additional detail on this subject. This section also references the relevant ''International Cooperation on Harmonisation of Technical Requirements for Registration of Veterinary Medicinal Products (VICH)'' guidance.
- CVM received many comments pertaining to aquaculture species grouping. Due to the complexity of this topic, CVM has removed examples of aquaculture species groupings in the final guidance. We continue to consider this topic and intend to work with individual drug sponsors wishing to use species groupings for new animal drug approvals to identify an appropriate species grouping strategy and subsequent data needs for specific projects.

In addition, editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated July 2020.

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Special Considerations, Incentives, and Programs to Support the Approval of New Animal Drugs for Minor Uses and for Minor Species.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. The previously approved collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 511 have been approved under OMB control number 0910–0117; the collections of information in 21 CFR part 514 have been approved under OMB control numbers 0910–0032 and 0910–0284; and the collections of information in 21 CFR part 516 have been approved under OMB control numbers 0910–0605.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: December 19, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28287 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2023–N–1157; FDA–2022–D–0109; FDA–2020–N–0908; FDA–2022–D–0814; FDA–2022–D–0745; FDA–2023–N–1006; FDA–2023–N–1053; FDA–2023–N–2286; FDA–2023–N–1661; FDA–2013–N–1119; FDA–2023–N–2986; FDA–2009–N–0582; FDA–2023–N–1272; FDA–2023–N–2030; FDA–2023–N–1189]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1.—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Generic Clearance for Qualitative Data to Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed	0910–0891	9/30/2026
Medical Devices—Voluntary Improvement Program	0910–0922	9/30/2026
Submission of Petitions: Food Additive, Color Additive (Including Labeling), Submission of Information to a Master File in Support of Petitions, and Electronic Submission Using FDA Form 3503	0910–0016	10/31/2026
Infant Formula Requirements	0910–0256	10/31/2026
Biologics License Applications; Procedures & Requirements	0910–0338	10/31/2026
Medical Devices; Reports of Corrections and Removals	0910–0359	10/31/2026
Customer/Partner Satisfaction Service Surveys	0910–0360	10/31/2026
Voluntary National Retail Food Regulatory Program Standards	0910–0621	10/31/2026
Expanded Access to Investigational Drugs for Treatment Use	0910–0814	10/31/2026
Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified and Thermally Processed Low-Acid Foods	0910–0037	11/30/2026
Color Additive Certification	0910–0216	11/30/2026
Reporting and Recordkeeping Requirements for Reportable Food	0910–0643	11/30/2026
Prescription Drug Advertisements; Presentation of Advertisements in Television and Radio	0910–0686	11/30/2026
Submission to CDRH Allegations of Regulatory Misconduct Associated with Medical Devices	0910–0769	11/30/2026
Importation of Prescription Drugs	0910–0888	11/30/2026

Dated: December 19, 2023.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2023–28290 Filed 12–21–23; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Father Generic Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment, Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

DATES: Comments on the ICR must be received on or before February 20, 2024.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 264–0041 and *PRA@HHS.GOV.*

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990-New-60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov, PRA@HHS.GOV* or call (202) 264–0041 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Improving Customer Experience (OMB Circular A–11, Section 280.

Type of Collection: Father Generic ICR.

OMB No.: 0990–XXXX, Office within Office of the Secretary, Assistant Secretary Administration.

Abstract: The Department of Health and Human Services, Office of the Secretary, Assistant Secretary Administration is requesting approval by OMB on a new Father Generic Information Collection Request. OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. HHS will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Implementation).

ANNUALIZED BURDEN HOUR TABLE

Respondents (if necessary)	Number of respondents	Number of responses per respondents	Average burden hours per response	Total burden hours
Participants in customer interviews	500	1	1	500
Participants in focus groups	450	1	90/60	675
Participants of feedback surveys	2,000,000	1	3/60	100,000
Participants in user testing (rapid)	400	1	15/60	100
Participants in user testing (deep dive)	200	1	30/60	100
Total	2,001,550			101,375

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2023–28283 Filed 12–21–23; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice and Request for Comments on the Implications of Access and Benefit Sharing (ABS) Commitments/Regimes and Other Proposed Commitments Being Considered Under a WHO Convention, Agreement or Other International Instrument on Pandemic Prevention, Preparedness and Response

AGENCY: Office for Global Affairs, Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: This Request for Comment seeks information from stakeholders, broadly defined, on concepts currently under consideration by parties negotiating a World Health Organization (WHO) Pandemic Preparedness Agreement. It seeks information on how stakeholders' efforts to facilitate response efforts, including the rapid creation and equitable deployment of safe and effective vaccines, diagnostic tests, and treatments, can be advanced or hindered by concepts and commitments under consideration by the negotiating parties as reflected in current negotiating text.

DATES: To be assured consideration, written comments must be received by 5 p.m. Eastern time on January 22, 2024. Written comments should be emailed to *OGA.RSVP@hhs.gov* with the subject line ''Written Comment Re: Implications of Access and Benefit Sharing (ABS) Commitments/Regimes and Other Proposed Commitments in the WHO Pandemic Agreement'' by January 22, 2024. Comments received after that date will be considered to the extent practicable.

The Department's policy is to make all comments received from members of the public available for public viewing on the Federal eRulemaking Portal at *www.regulations.gov.* In this instance, business confidential submissions will also be accepted. Note that relevant comments submitted to *regulations.gov* will be posted without editing and will be available to the public; therefore, business-confidential information should be clearly identified as such and an accompanying redacted version should be submitted for posting on *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Kim, Office for Global Affairs, Office of the Secretary, HHS, Room (639H) Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, (202) 235–3537.

SUPPLEMENTARY INFORMATION:

Background: In December 2021, WHO's Member States decided at a Special Session of the World Health Assembly to establish an intergovernmental negotiating body (INB), representing all regions of the world, to draft and negotiate a WHO convention, agreement, or other international instrument on pandemic prevention, preparedness, and response. More information about the INB process can be found here: *https://inb.who.int/home/inb-process.* The INB currently intends to submit its outcome to the Seventy-seventh World Health Assembly in May 2024.

The United States has expressed support for the development of an international instrument to protect the world from pandemic health threats now and in the future, and in a more rapid and equitable manner.

The United States is seeking the following key outcomes in the negotiations:

- Enhance the capacity of countries around the world to prevent, prepare for, and respond to pandemic emergencies and provide clear, credible, consistent information to their citizens.
- Ensure that all countries share data and laboratory samples from emerging outbreaks quickly, safely, and transparently to facilitate response efforts and inform public health decision making regarding effective disease control measures, including the rapid creation of safe and effective vaccines, diagnostic tests, and treatments.
- Support more equitable and timely access to, and delivery of, vaccines, diagnostic tests, treatments, and other mitigation measures to quickly contain outbreaks, reduce illness and death, and minimize impacts on the economic and national security of people around the world.

Purpose: The U.S. Department of Health and Human Services (HHS) and the Department of State are charged with co-leading the U.S. delegation to the Intergovernmental Negotiating Body (INB) to draft and negotiate a WHO convention, agreement or other international instrument on pandemic prevention, preparedness, and response.

This Request for Comments procedure is designed to seek input from stakeholders and subject matter experts to help inform the U.S. government negotiating position, including new approaches, proposals, or concerns with the current version of the negotiating text.

The most recent Negotiating Text of the WHO Pandemic Agreement (Negotiating Text) can be found here: *https://apps.who.int/gb/inb/pdf_files/inb7/A_INB7_3-en.pdf.*

Representatives from HHS, State and the Department of Commerce will review written submissions and share them, as appropriate, with staff from other Federal Agencies to inform U.S. Government policy and our international engagements on these issues. U.S. officials may contact individuals making submissions for further information or explanation.

Respondent information. Please note the following information is not required but will assist us in contextualizing responses. If possible, in your submission, please include institution or organization name and type; for foreign-based entities, please

specify country/ies in which the institution or organization is headquartered; if your institution or organization is a potential provider of pandemic-related products or services, please specify the types of products or services with which you are commonly associated or seeking to develop. All personal identifying information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible.

Specific topics and questions: Stakeholders are invited to provide comments on any and all issues raised by the negotiating text, including potential vehicles and means for implementation of commitments to which the U.S. may subscribe. To the extent commenters choose to comment on specific provisions of the negotiating text, it is helpful to reference any articles or sub-articles being addressed.

In addition, stakeholders are invited to respond to any or all of the following questions.[1] Unless otherwise indicated, quotations are from the relevant article of the Proposal for negotiating text.

Article 9, Research and Development

- What approaches or incentives might be provided to governments, research institutions, or the private sector to encourage participation of relevant stakeholders to, as proposed in the Negotiating Text, ''accelerate innovative research and development, including community-led and cross-sector collaboration, for addressing emerging and re-emerging pathogens with pandemic potential''?
- What voluntary steps could Research & Development (R&D) stakeholders take that would build capacities and promote more inclusive research collaborations and participation from basic science through advanced development and clinical research, addressing the global calls for equity and inclusion?
- What national policies might be developed that (as proposed in the Negotiating Text), ''support the transparent, public sharing of clinical trial protocols and results conducted either within their territories or through partnerships with other Parties, such as through open access publications''?
- What are respective pros and cons of, the following proposed language in the Negotiating Text: ''in accordance with national laws and considering the extent of public funding provided, publish[ing] the terms of government-funded research and development agreements for pandemic-related products, including information on: (a) research inputs, processes and outputs, including scientific publications and data repositories, with data shared and stored securely in alignment with findability, accessibility, interoperability and reusability principles; (b) the pricing of end-products, or pricing policies for end-products; (c) licensing to enable the development, manufacturing and distribution of pandemic-related products, especially in developing countries; and (d) terms regarding affordable, equitable and timely access to pandemic-related products during a pandemic''? In your view, are there alternative recommended actions or commitments that could be considered?
- What is the appropriate role for WHO in facilitating the R&D process in areas focusing on infectious diseases?
- Are there provisions that could reasonably be included in government-funded research or advanced development agreements, or policies related to licensing of government-owned and/or government-funded technology that would promote global access to pandemic-related products, without disincentivizing innovation or partnering with the U.S. government around research and development?

Article 10, Sustainable Production

- What approaches or incentives might be used to encourage manufacturers and others ''to grant, subject to any existing licensing restrictions, on mutually agreed terms, non-exclusive, royalty-free licenses to any manufacturers, particularly from developing countries, to use their intellectual property and other protected substances, products, technology, know-how, information and knowledge used in the process of pandemic-related product development and production, in particular for pre-pandemic and pandemic diagnostics, vaccines and therapeutics for use in agreed developing countries''?
- How helpful or harmful would the following proposed obligations for governments be for public health, business, and innovation interests generally:
  - ''(a) encourage research and development institutes and manufacturers, in particular those receiving significant public financing, to waive or manage, for a limited duration, royalties on the use of their technology for the production of pandemic-related products;
  - (b) promote the publication, by private rights holders, of the terms of licensing agreements or technology transfer agreements for pandemic-related products; and
  - (c) promote the voluntary licensing and transfer of technology and related know-how for pandemic-related products by private rights holders with established regional or global technology transfer hubs or other multilateral mechanisms or networks.''
- How can we work to promote a globally sustainable medical countermeasures (MCM) manufacturing system, including leveraging regional approaches to production and maintaining readiness of facilities between pandemic emergencies?

Article 11, Transfer of Technology and Know-How

- What measures could be taken, or incentives provided, to ''strengthen existing, and develop innovative, multilateral mechanisms [under WHO], including through the pooling of knowledge, intellectual property and data, that promote the transfer of technology and know-how for the production of pandemic-related products, on mutually agreed terms as appropriate, to manufacturers, particularly in developing countries''?
- What measures could be taken, or incentives provided, to ''make available non-exclusive licensing of government-owned technologies, on mutually agreed terms as appropriate, for the development and manufacturing of pandemic-related products, and publish the terms of these licenses''?
- In your view, is there a lack of transparency concerning information regarding pandemic-related products, their technological specifications, and manufacturing details? If so, could the establishment of a new mechanism at the WHO effectively address this lack of transparency?
- What net impacts, positive or negative, would you envision arising from commitments presently outlined in Article 11.3, including:
  - ''(a) commit to agree upon, within the framework of relevant institutions, time-bound waivers of intellectual property rights to accelerate or scale up the manufacturing of pandemic-related products to the extent necessary to increase the availability and adequacy of affordable pandemic-related products;
  - (b) encourage all holders of patents related to the production of pandemic-related products to waive or manage, as appropriate, for a limited duration, the

[1] The content or phrasing of questions in this Request for Comment should not be taken to indicate that the U.S. is favoring or preparing to accept commitments and/or not engage in further negotiation over them. Rather, we are seeking to learn more about stakeholder positions on these pivotal questions to further refine the U.S. delegation's negotiating stance.

payment of royalties by developing country manufacturers on the use, during the pandemic, of their technology for the production of pandemic-related products, and shall require, as appropriate, those that have received public financing for the development of pandemic-related products to do so; and

○ (c) encourage manufacturers within its jurisdiction to share undisclosed information, in accordance with paragraph 2 of Article 39 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement, with qualified third-party manufacturers when the withholding of such information prevents or hinders urgent manufacture by qualified third parties of a pharmaceutical product that is necessary to respond to the pandemic''?

Article 12, Access and Benefit Sharing

• A key negotiating objective of the United States has been to ensure that all countries share pathogen samples and associated data, including genetic sequence data, from emerging outbreaks quickly and transparently to facilitate response efforts, including the rapid creation of safe and effective vaccines, diagnostic tests, and treatments.

○ What sample and data access impediments have you encountered in the past or what impediments would you envision based on the proposed Pathogen Access and Benefit Sharing (PABS) System in the Negotiating Text that might thwart or delay research efforts?

▪ Does implementation of Nagoya Protocol requirements impede the rapid development or deployment of vaccines, diagnostic test, and treatments? Explain.

○ How important is a commitment by negotiating parties to provide parties with the access to pathogen samples and data that are needed to contribute to rapid creation of safe and effective vaccines, diagnostic tests, and treatments?

○ Are alternative strategies for ''access'' to samples and data available and how do they compare in terms of effectiveness and efficiency?

○ How might such commitments impact researchers and institutions?

• The Article 12 negotiating text proposes that sanctioned use of the WHO PABS System would be recognized as a specialized international access and benefit-sharing instrument within the meaning of paragraph 4 of Article 4 of the Nagoya Protocol; such recognition would provide for the exemption of the pathogens covered under the PABS System from additional access and benefit sharing requirements.

○ How valuable would such an ''exemption'' be to U.S. stakeholders? What pathogens would benefit from exemption status?

○ What additional incentives might be needed to encourage participation in an ABS system exempt from Nagoya Protocol requirements?

• The Article 12 negotiating text envisions parties agreeing to set aside certain percentages of pandemic-related products (proposed in the current negotiating text as a minimum of 20%) and facilitating their exportability.

○ What, from your perspective, are the pros and cons of such a requirement?

○ Would such a requirement advance or hinder rapid research and development efforts?

• The Article 12 negotiating text further envisions required monetary contributions from recipients of shared samples or data, including researchers and manufacturers, for privileges of access. What in your view is the monetary value of access that would be provided in terms of an annual or percentage-based contribution from your organization? How would requiring monetary contributions from academic, government, or other non-profit research institutions impact, positive or negative, research?

• The Article 12 negotiating text specifies other benefits that should be considered for provision to developing countries, including ''(i) encouraging manufacturers from developed countries to collaborate with manufacturers from developing countries . . . to transfer technology and know-how and strengthen capacities for the timely scale-up of production of pandemic-related products; (ii) tiered-pricing or other cost-related arrangements, such as no loss/no profit loss arrangements, for purchase of pandemic-related products . . .; and (iii) encouraging of laboratories . . . to actively seek the participation of scientists from developing countries in scientific projects associated with research on WHO PABS Materials.''

○ How helpful would these additional measures be in advancing the rapid creation and/or production scale-up of safe and effective vaccines, diagnostic tests, and treatments? What are the risks or potential negative impacts could come from including such provisions?

○ What incentives might be provided to stakeholders to encourage/assure participation in such voluntary measures?

• What provisions might companies, academic research institutions, and other industry stakeholders look for when assessing voluntary participation in such a proposed Access and Benefit Sharing system? What samples/data are needed the most and how could such a system improve access to needed resources? What provisions are missing that would incentivize broad participation in the system that Member States should consider?

Article 13, Global Supply Chain and Logistics (SCL) Network

• The WHO SCL Network proposed in Article 13 envisions performing a range of functions ordinarily left to individual governments, institutions, or organizations.

○ What functions of Access to COVID–19 Tools-Accelerator (ACT–A) should or should not be institutionalized?

○ Should the U.S. consider incentives to encourage U.S. stakeholders' participation in such an effort and what would compelling incentives be?

Susan Kim,

Principal Deputy Assistant Secretary, Office for Global Affairs.

[FR Doc. 2023–28341 Filed 12–20–23; 4:15 pm]

BILLING CODE 4150–38–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Approval of Tribal-State Class III Gaming Compact Amendment Between Minnesota Chippewa Tribe, Minnesota—Leech Lake Band and the State of Minnesota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the approval of the Addendum to the Tribal-State Compact for Control of Class III Blackjack between the Minnesota Chippewa Tribe, Minnesota—Leech Lake Band and the State of Minnesota.

DATES: The Amendment takes effect on December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov;* (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in

the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The Amendment updates the Compact to allow for certain wagers and regulatory standards for Class III Card Games. The Amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–28230 Filed 12–21–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Extension of Tribal-State Class III Gaming Compacts in California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the extension of the Class III gaming compacts between several Tribes in California and the State of California.

DATES: The extension takes effect December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, *IndianGaming@bia.gov;* (202) 219–4066.

SUPPLEMENTARY INFORMATION: An extension to an existing Tribal-State Class III gaming compact does not require approval by the Secretary if the extension does not modify any other terms of the compact. 25 CFR 293.5. The following Tribes and the State of California have reached an agreement to extend the expiration date of their existing Tribal-State Class III gaming compacts to December 31, 2024: the Augustine Band of Cahuilla Indians, California; the Big Sandy Rancheria of Western Mono Indians of California; the Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California; the Cahto Tribe of the Laytonville Rancheria; the Cahuilla Band of Indians; the Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; the Cher-Ae Heights Indian Community of the Trinidad Rancheria, California; and the Pauma Band of Luiseño Mission Indians of the Pauma & Yuima Reservation, California. This publication provides notice of the new expiration date of the compacts.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–28198 Filed 12–21–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[245A2100DD/AAKC001030/A0A501010.999900]

Indian Gaming; Amendment to the Tribal-State Class III Gaming Compact for Seneca Nation of Indians

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces the approval of an amendment to the existing Class III gaming compact between the Seneca Nation of Indians and the State of New York.

DATES: The amendment takes effect on December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Office of the Assistant Secretary—Indian Affairs, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands. As required by 25 CFR 293.4, all compacts and amendments are subject to review and approval by the Secretary. The amendment extends the existing Class III gaming compact between the Seneca Nation of Indians (Seneca Nation) and the State of New York through March 31, 2024, with automatic 90-day extensions thereafter. The Amendment also provides that the present revenue sharing contribution from the Seneca Nation of Indians to the State of New York will continue for the term of the extension and be set aside in an escrow account. The escrowed funds will either be distributed consistent with the terms of a new or amended compact submitted to the Secretary of the Interior and approved by the Secretary or considered approved by operation of law, or through mutual agreement, or pursuant to the Dispute Resolution process in Paragraph 14 of the current compact. The amendment is approved.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2023–28295 Filed 12–21–23; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ES_FRN_MO4500176943]

Notice of Filing of Plat of Survey; Wisconsin

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plat of survey of the following described lands is scheduled to be officially filed in the Bureau of land Management (BLM), Eastern States Office, Falls Church, Virginia, 30 days from the date of this publication. The survey, executed at the request of the Northeastern States District Office, BLM—Eastern States, is required for the management of these lands.

DATES: Unless there are protests of this action, the filing of the plat described in this notice will happen 30 days after publication of this notice in the **Federal Register**.

ADDRESSES: Written notices protesting the survey must be sent to the State Director, BLM Eastern States, 5275 Leesburg Pike, Falls Church, Virginia, 22041.

FOR FURTHER INFORMATION CONTACT: Frank D. Radford, Chief Cadastral Surveyor for Eastern States; (703) 558–7759; email: *fradford@blm.gov;* or U.S. Postal Service: BLM–ES, 5275 Leesburg Pike, Suite 102A, Falls Church, Virginia, 22041. Attn: Cadastral Survey. Persons who use a telecommunications device for the deaf may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Fourth Principal Meridian, Wisconsin

The survey of an island in the Wisconsin River, designated as Tract 37, in Township 11 North, Range 8 East.

A person or party who wishes to protest a survey must file a written notice of protest within 30 calendar days from the date of this publication at

the address listed in the **ADDRESSES** section of this notice. A notice of protest is considered filed on the date it is received by the State Director for Eastern States during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A statement of reasons for the protest may be filed with the notice of protest and must be filed within 30 calendar days after the protest is filed. If a notice of protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the next business day after all protests have been dismissed or otherwise resolved.

Before including your address, phone number, email address, or other personal identifying information in your notice of protest or statement of reasons, please be aware that your entire protest, including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A copy of the described plat will be placed in the open files, and available to the public, as a matter of information.

Authority: 43 U.S.C. chap. 3.

Frank D. Radford,

Chief Cadastral Surveyor for Eastern States.

[FR Doc. 2023–28250 Filed 12–21–23; 8:45 am]

BILLING CODE 4331–18–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037126; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Haffenreffer Museum of Anthropology, Brown University, Bristol, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Haffenreffer Museum of Anthropology, Brown University, (Haffenreffer Museum) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Brevard, Hillsborough, and Palm Beach Counties, FL.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 22, 2024.

ADDRESSES: Thierry Gentis, Brown University, Haffenreffer Museum of Anthropology, 300 Tower Street, Bristol, RI 02889, telephone (401) 863–5702, email *thierry_gentis@brown.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Haffenreffer Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Haffenreffer Museum.

Description

On an unknown date, human remains representing, at minimum, two individuals were removed from a mound near Oak Lodge, Brevard County, FL. On an unknown date, the individuals were gifted to Brown University and later transferred to the Haffenreffer Museum in the 1950s. No associated funerary objects are present.

On an unknown date, human remains representing, at minimum, two individuals were removed from Lake Thonotosassa, Hillsborough County, FL. On an unknown date, the individuals were acquired by the Haffenreffer Museum. The two associated funerary objects are one lot of flint flakes and one shell.

On an unknown date, human remains representing, at minimum, one individual were removed from Lake Worth, Palm Beach County, FL. In 1930, the individual was gifted by D. Stewart, Jr. to Brown University's Department of Geology and later transferred to the Haffenreffer Museum in 1957. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographic information.

Determinations

Pursuant to NAGPRA and it's implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Haffenreffer Museum has determined that:

- The human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Miccosukee Tribe of Indians; Seminole Tribe of Florida; and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the Haffenreffer Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Haffenreffer Museum is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28181 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037137; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion Amendment: Western Washington University, Department of Anthropology, Bellingham, WA

AGENCY: National Park Service, Interior.

ACTION: Notice; amendment.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Western Washington University (WWU) has amended a Notice of Inventory Completion published in the **Federal Register** on April 22, 2022. This notice amends the minimum number of individuals in a collection removed from Skagit County, WA.

DATES: Repatriation of the human remains in this notice may occur on or after January 22, 2024.

ADDRESSES: Dr. Judith Pine, Western Washington University, Department of Anthropology, Arntzen Hall 340, 516 High Street, Bellingham, WA 98225, telephone (360) 650–4783, email *pinej@wwu.edu*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of WWU. The National Park Service is not responsible for the determinations in this notice. Additional information on the amendments and determinations in this notice, including the results of consultation, can be found in the inventory or related records held by WWU.

Amendment

This notice amends the determinations published in a Notice of Inventory Completion in the **Federal Register** (87 FR 24196, April 22, 2022). Repatriation of the items in the original Notice of Inventory Completion has not occurred. In 2023, elements that were originally described as ''unidentified'' were reviewed by an osteologist. As a result of this review, the minimum number of individuals has increased from three to four individuals.

From Site 45–SK–37 in Skagit County, WA, four individuals were removed (previously identified as three individuals).

Determinations (as Amended)

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, WWU has determined that:

- The human remains described in this amended notice represent the physical remains of four individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Swinomish Indian Tribal Community.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, WWU must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. WWU is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, 10.13, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28190 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037131; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Alabama Department of Archives and History, Montgomery, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Alabama Department of Archives and History (ADAH) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Winston or Blount County, AL.

DATES: Repatriation of the human remains in this notice may occur on or after January 22, 2024.

ADDRESSES: Kellie Bowers, NAGPRA Coordinator, the Alabama Department of Archives and History, P.O. Box 300100, 624 Washington Avenue, Montgomery, AL 36130, telephone (334) 353–4731, email *nagpra.adah@archives.alabama.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Alabama Department of Archives and History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Alabama Department of Archives and History.

Description

Winston or Blount County, AL

At an unknown date, human remains representing, at minimum, one individual were removed from the site of Winston or Blount County Cave by members of the Alabama Anthropological Society. On October 8, 1913, the human remains were donated to the ADAH (Human Remains Identification Number 4106). No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or

cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, kinship, and linguistics.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Alabama Department of Archives and History has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Cherokee Nation; Coushatta Tribe of Louisiana; Eastern Band of Cherokee Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Chickasaw Nation; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the Alabama Department of Archives and History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Alabama Department of Archives and History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28184 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037122; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Peabody Museum of Archaeology and Ethnology (PMAE), Harvard University, Cambridge, MA, has completed an inventory of associated funerary objects and has determined that there is no cultural affiliation between the associated funerary objects and any Indian Tribe. The associated funerary objects were removed from Sumner and Williamson counties, TN.

DATES: Disposition of the associated funerary objects in this notice may occur on or after January 22, 2024.

ADDRESSES: Patricia Capone, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, email *pcapone@fas.harvard.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the PMAE. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the PMAE.

Description

The human remains associated with the associated funerary objects were previously published in the **Federal Register** on December 21, 2018 (83 FR 65741–65743), September 15, 2022 (87 FR 56695–56696), and April 26, 2023 (88 FR 25426–25427) and transfer of control has been completed. The present notice reflects the identification of additional associated funerary objects.

In 1878, associated funerary objects were removed from the site of Gray's Farm (40Wm11) in Williamson County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F.W. Putnam. The one associated funerary object is a shell spoon.

In 1878, associated funerary objects were removed from the site of Noel Cemetery, also known as Oscar Noel's Farm (40Dv3), in Davidson County, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology expedition led by F.W. Putnam. The one associated funerary object is a stone bead.

In 1882, associated funerary objects were removed from the Brentwood Library Site (40Wm210) also known as Dr. Jarman's Site, in Williamson County, TN, by F.W. Putnam as part of a Peabody Museum of Archaeology and Ethnology expedition. The one associated funerary object is a pearl bead.

In 1879, associated funerary objects were removed from the Rutherford-Kizer site (40Su15) in Sumner, TN, by Edwin Curtiss as part of a Peabody Museum of Archaeology and Ethnology Expedition led by F.W. Putnam. The two associated funerary objects are one shell fragment and one shell bead.

Aboriginal Land

The associated funerary objects in this notice were removed from known geographic locations. These locations are the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission or the United States Court of Claims and treaties.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the PMAE has determined that:

- The five objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or

later as part of the death rite or ceremony.

- No relationship of shared group identity can be reasonably traced between the human remains and associated funerary objects and any Indian Tribe.
- The human remains and associated funerary objects described in this notice were removed from the aboriginal land of the Cherokee Nation; Eastern Band of Cherokee Indians; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

Requests for Disposition

Written requests for disposition of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains and associated funerary objects described in this notice to a requestor may occur on or after January 22, 2024. If competing requests for disposition are received, the PMAE must determine the most appropriate requestor prior to disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The PMAE is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and 10.11.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28177 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037133; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Shelburne Museum, Shelburne, VT

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Shelburne Museum intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from an unknown location.

DATES: Repatriation of the cultural item in this notice may occur on or after January 22, 2024.

ADDRESSES: Alexander Kikutis, Shelburne Museum, P.O. Box 10, Shelburne, VT 05482, telephone (802) 985–0871, email *AKikutis@ShelburneMuseum.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Shelburne Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by Shelburne Museum.

Description

The one cultural item was removed from an unknown location. This item of cultural patrimony is a Santa Ana Pueblo polychrome bowl (2023–5.13) made circa 1820. In April 2023, Shelburne Museum received a donation of Pueblo pottery. Teressa Perry, widow of Anthony Perry, donated this item. Ms. Perry inherited this item from her husband, Anthony Perry, in 2017. Mr. Perry purchased this from Sotheby's in 2007. It was previously sold at auction by Sotheby's again in 1989. It is unknown who possessed it between the auctions. There is no record prior to the 1989 Sotheby's auction.

Cultural Affiliation

The cultural item in this notice is connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, geographical information, and historical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Shelburne Museum has determined that:

- The one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural item and the Pueblo of Santa Ana, New Mexico.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, Shelburne Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. Shelburne Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28186 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037125; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Haffenreffer Museum of Anthropology, Brown University, Bristol, RI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Haffenreffer Museum of Anthropology, Brown University (Haffenreffer Museum) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from an area near Phoenix, AZ, and an unknown geographic location, AZ.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 22, 2024.

ADDRESSES: Thierry Gentis, Brown University, Haffenreffer Museum of Anthropology, 300 Tower Street, Bristol, RI 02889, telephone (401) 863–5702, email *thierry_gentis@brown.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Haffenreffer Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Haffenreffer Museum.

Description

Between 1917 and 1935, human remains representing, at minimum, one individual were removed from an area near Phoenix, AZ, during archeological excavations. On an unknown date, the individual became part of Rudolph Haffenreffer's collection. At the time of removal, it was uncertain if this collection included human remains. In 2012, Haffenreffer Museum of Anthropology staff determined that one of the bones is human. The five associated funerary objects are one lot of faunal bone fragments; one Glycymeris shell bracelet; one lot of shell fragments; one lot of Puebloan pottery sherds; and one lot of lithics.

Human remains representing, at minimum, one individual were removed from an unknown geographic location, AZ. On an unknown date, Rudolf Haffenreffer acquired the individual. The two associated funerary objects are one buffware cremation urn and one lot of charcoal.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographic information, archaeological information, and oral tradition.

Determinations

Pursuant to NAGPRA and it's implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Haffenreffer Museum has determined that:

- The human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- The seven objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Ak-Chin Indian Community; Gila River Indian Community of Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Tohono O'Odham Nation of Arizona; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the Haffenreffer Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Haffenreffer Museum is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Prog.

[FR Doc. 2023–28180 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037132; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Alabama Department of Archives and History, Montgomery, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Alabama Department of Archives and History (ADAH) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Elmore County, AL.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 22, 2024.

ADDRESSES: Kellie Bowers, NAGPRA Coordinator, the Alabama Department of Archives and History, P.O. Box 300100,

624 Washington Avenue, Montgomery, AL 36130, telephone (334) 353–4731, email *nagpra.adah@archives.alabama.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Alabama Department of Archives and History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Alabama Department of Archives and History.

Description

Elmore County, AL

On February 19, 1929, human remains representing, at minimum, one individual were removed from the Tuckabatchee site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4119). The 524 associated funerary objects are three shell beads, two brass trade bells, 485 glass beads, one awl, three wire bracelets, one fragment of worked stone (undetermined), five brass tubes, one kettle fragment, six buttons, four ''tinklers,'' one cone earring (brass and lead), and 12 shell pendants.

On April 18, 1913, human remains representing, at minimum, one individual were removed from the Jackson Lake site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4134). No associated funerary objects are present.

On April 18, 1913, human remains representing, at minimum, one individual were removed from the Jackson Lake site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4135). No associated funerary objects are present.

On April 18, 1913, human remains representing, at minimum, two individuals were removed from the Jackson Lake site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4136). No associated funerary objects are present.

On April 18, 1913, human remains representing, at minimum, one individual were removed from the Jackson Lake site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4137). No associated funerary objects are present.

On April 18, 1913, human remains representing, at minimum, one individual were removed from the Jackson Lake site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4184). The 115 associated funerary objects are 112 ceramic sherds, one shell pendant, one bone pin, and one piece of daub.

On April 18, 1913, human remains representing, at minimum, one individual were removed from the Jackson Lake site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4193). No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, kinship, and linguistics.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Alabama Department of Archives and History has determined that:

- The human remains described in this notice represent the physical remains of eight individuals of Native American ancestry.
- The 639 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Absentee-Shawnee Tribe of Indians of Oklahoma; Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Eastern Shawnee Tribe of Oklahoma; Kialegee Tribal Town; Miccosukee Tribe of Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; Shawnee Tribe; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in ADDRESSES. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the Alabama Department of Archives and History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Alabama Department of Archives and History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28185 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037119; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Fort Matanzas National Monument, Saint Augustine, FL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Fort Matanzas National Monument (FOMA) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from St. Johns County, FL.

DATES: Repatriation of the human remains in this notice may occur on or after January 22, 2024.

ADDRESSES: Gordon Wilson, Superintendent, Fort Matanzas National Monument, 8635 A1A South, Saint Augustine, FL 32080, telephone (904) 829–6506, email *Gordon_Wilson@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the superintendent, FOMA. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by FOMA.

Description

Human remains representing, at minimum, one individual were removed from St. Johns County, FL, in 1947, when Superintendent C.R. Vinten and two employees of the park visited historically significant sites near Fort Matanzas. The human remains were removed from a disturbed burial mound. No associated funerary objects are present.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: oral tradition and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, FOMA has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains described in this notice and the Seminole Tribe of Florida and The Seminole Nation of Oklahoma.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, FOMA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. FOMA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28175 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037135; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: University of Georgia, Laboratory of Archaeology, Athens, GA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Georgia, Laboratory of Archaeology intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Dade County, GA.

DATES: Repatriation of the cultural items in this notice may occur on or after January 22, 2024.

ADDRESSES: Amanda Thompson, University of Georgia, Laboratory of Archaeology, 1125 Whitehall Road, Athens, GA 30605, telephone (706) 542–8737, email *arobthom@uga.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Georgia, Laboratory of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the University of Georgia, Laboratory of Archaeology.

Description

The 2,991 unassociated funerary objects cultural items were removed from sites 9DD25 and 9DD57 in Dade County, GA.

The first site is 9DD25 in Dade County, GA, located near Trenton, GA, a few hundred yards east of Lookout Creek and several miles south of the junction of Lookout Creek and the Tennessee River was excavated during a University of Georgia (UGA) field school in 1973, by Joseph R. Caldwell and Richard W. Jefferies. All eight of the mounds at the Tunacunnhee site were tested during the 1973 field season, with a total area of 8,000 ft. uncovered during excavation. The collection was then

housed at the University of Georgia, Laboratory of Archaeology. The 2,502 unassociated funerary objects include: Possibly associated with Burial 7—lithics, ceramics, celt, lithic flakes, faunal, fossil bead, and faunal; Possibly associated with Burial 8—lithics, lithic worked, lithic PPK, ceramics, and faunal; Burial 9A, Mound A—copper band fragment; Burial 10—alligator tooth, stones, and UID ''gallstones''; Possibly associated with Burial 12—copper fragments; Mound C, Feature 30—copper flakes, bone beads, shark vertebrae beads, animal teeth, drilled shark vertebrae, drilled shark teeth, faunal, pebbles from near bone rattle, backed chert knife, copper pin w/ wooden head, copper flake, cast of fiber plate with impression, copper plate with fiber impressions, copper plate fragments and microslide, copper earspools, and woven material and fiber; Burial 15A, Mound C, Feature 31—PPKs, fragmented material associated with pan pipe, copper pan pipe, shell fragments, copper fragments, and soil from inside pipe; Burial 16 Mound A—copper earspool (w/microslide); Unknown burials from Mound context—lithics, lithic PPK, lithics worked, ceramic, faunal, UID metal, burned clay and bone mix, soil, charcoal, plain vessel, material under pan pipe, copper earspool fragments, Flint Ridge Ohio blade, shell, shell bead necklace, mica, and lithic spade/hoe.

The site 9DD57 was identified during a survey conducted by Bruce Smith in 1975. At the time the site was surveyed, a collection was made from the surface of the cave as well as test pits and areas just outside the cave. The collection was then housed at the University of Georgia, Laboratory of Archaeology. The 489 unassociated funerary objects include: lithics, hammerstone, faunal bone, shell, burned nut shell, peach pits, burned wood/charcoal, bone pin fragment, and eagle raptor talon.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, University of Georgia, Laboratory of Archaeology has determined that:

- The 2,991 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and The Muscogee (Creek) Nation.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, University of Georgia, Laboratory of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The University of Georgia, Laboratory of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28188 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037127; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: The Filson Historical Society, Louisville, KY

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Filson Historical Society intends to repatriate certain cultural items that meet the definition of unassociated funerary objects and that have a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural items were removed from Essex County, VA.

DATES: Repatriation of the cultural items in this notice may occur on or after January 22, 2024.

ADDRESSES: Kelly Hyberger, Filson Historical Society, 1310 South Third Street, Louisville, KY 40208, telephone (502) 635–5083, email *khyberger@filsonhistorical.org.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Filson Historical Society. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the Filson Historical Society.

Description

The one unassociated funerary object was removed from Essex County, VA. On July 21, 1936, construction workers uncovered a Native American grave on the grounds of the county courthouse in Rappahannock, Essex County, VA. Rogers Clark Ballard Thruston collected a stone grooved ax from the burial; he did not take possession of the ancestral remains. Thruston donated the ax to the Filson Historical Society on July 26, 1936. The one unassociated funerary object is a grooved stone ax.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the

identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical information, historical information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Filson Historical Society has determined that:

- The one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Rappahannock Tribe, Inc.

Requests for Repatriation

Additional, written requests for repatriation of the cultural items in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural items in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the Filson Historical Society must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural items are considered a single request and not competing requests. The Filson Historical Society is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28182 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037124; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Antelope Valley College, Lancaster, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Antelope Valley College (AVC) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Yuba, CA.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 22, 2024.

ADDRESSES: Dr. Darcy L. Wiewall, Antelope Valley College (AVC) 3041 W Ave. K, Lancaster, CA 93536, telephone (661) 722–6300 Ext. 6902, email *darcy.wiewall@avc.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of AVC. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by AVC.

Description

Human remains representing, at minimum, 13 individuals were removed from Yuba, CA. These human remains and associated funerary objects came into AVC's possession in 2019. The human remains were excavated in 1966 by Ernest D. Wetstein (Yuba College Science Division) and directed by Roger Robinson (Sacramento State) with volunteer crews from Yuba College and local high schools at CA–YUB–164 (aka Yuba 58–1). Roger Robinson brought the collection to Antelope Valley College in 1968 and subsequently transferred it to his personal residence in 2007. In 2019, Antelope Valley College took possession of the collection. In July 2021, California State University, Sacramento Archaeological Curation Facility, transferred four Lindhurst Site (CA–YUB–164) items to be reunited with the rest of the collection in AVC's possession. The five lots of associated funerary objects consist of faunal, lithics, shell, ground stone, clay objects, sediment samples, and rocks.

Cultural affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, geographical information, folkloric, historical, kinship, linguistic, oral traditional, and expert opinion, including Tribal Traditional Knowledge.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, AVC has determined that:

- The human remains described in this notice represent the physical remains of 13 individuals of Native American ancestry.
- The five lots of objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the United Auburn Indian Community of the Auburn Rancheria of California.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, AVC must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The AVC is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28179 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037134; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Robert S. Peabody Institute of Archaeology, Andover, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Robert S. Peabody Institute of Archaeology has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Monroe County, NY.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 22, 2024.

ADDRESSES: Ryan Wheeler, Robert S. Peabody Institute of Archaeology, 180 Main Street, Andover, MA 01810, telephone (978) 749–4490, email *rwheeler@andover.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Robert S. Peabody Institute of Archaeology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Robert S. Peabody Institute of Archaeology.

Description

Human remains representing, at minimum, one individual were removed from Monroe County, NY. In 1902, Alva S. Reed disturbed a grave near West Bloomfield and removed the individual, who was sent to the Robert S. Peabody Institute of Archaeology at some time after that. The two associated funerary objects include one lot of brass fragments and one lot of cloth fragments.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Robert S. Peabody Institute of Archaeology has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The two objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Seneca Nation of Indians and the Tonawanda Band of Seneca.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the Robert S. Peabody Institute of Archaeology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The Robert S. Peabody Institute of Archaeology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28187 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037130; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Alabama Department of Archives and History, Montgomery, AL

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Alabama Department of Archives and History (ADAH) has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains

and Indian Tribes or Native Hawaiian organizations in this notice. The human remains were removed from Baldwin and Wilcox Counties, AL.

DATES: Repatriation of the human remains in this notice may occur on or after January 22, 2024.

ADDRESSES: Kellie Bowers, NAGPRA Coordinator, the Alabama Department of Archives and History, P.O. Box 300100, 624 Washington Avenue, Montgomery, AL 36130, telephone (334) 353–4731, email *nagpra.adah@archives.alabama.gov*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Alabama Department of Archives and History. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Alabama Department of Archives and History.

Description

Baldwin County, AL

On November 18, 1909, human remains representing, at minimum, one individual were removed from the Shell Banks site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4103). No associated funerary objects are present.

On June 29, 1910, human remains representing, at minimum, one individual were removed from the Shell Banks site by members of the Alabama Anthropological Society. Between 1916 and 1951, the human remains were donated to the ADAH (Human Remains Identification Number 4110). No associated funerary objects are present.

Wilcox County, AL

At an unknown date, human remains representing, at minimum, one individual was removed from the Liddell site (1WX1, Wilcox Co., AL). A descendant of the private excavator donated the material to the ADAH in 2022 (Human Remains Identification Number 1WX1–1). The ADAH accepted these materials for the sole purpose of repatriation under NAGPRA. No associated funerary objects are in the possession of the Alabama Department of Archives and History.

Cultural Affiliation

The human remains in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, geographical information, historical information, kinship, and linguistics.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the Alabama Department of Archives and History has determined that:

- The human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Alabama-Coushatta Tribe of Texas; Alabama-Quassarte Tribal Town; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Kialegee Tribal Town; Miccosukee Tribe of Indians; Mississippi Band of Choctaw Indians; Poarch Band of Creek Indians; Seminole Tribe of Florida; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Seminole Nation of Oklahoma; and the Thlopthlocco Tribal Town.

Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the Alabama Department of Archives and History must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Alabama Department of Archives and History is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28183 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037136; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Boston Children's Museum, Boston, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), Boston Children's Museum intends to repatriate a certain cultural item that meets the definition of an unassociated funerary object and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from the Southeastern United States.

DATES: Repatriation of the cultural item in this notice may occur on or after January 22, 2024.

ADDRESSES: Melissa Higgins, Boston Children's Museum, 308 Congress Street, Boston, MA 02210, telephone (617) 986–3692, email *Higgins@BostonChildrensMuseum.org*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of Boston Children's Museum. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by Boston Children's Museum.

Description

The one cultural item was removed from the Southeastern United States. The one unassociated funerary object is a clay bowl, unglazed, with handles measuring height 5″, width 7.75″, length 9″. The bowl has a round base; widest at middle, then narrows slightly towards rim; which is flared with two flat handles on opposite sides of the rim. Currently there is a large chip at the edge of one handle, a crack radiating from the base, a small hole just below the widest part of the bowl at the midpoint between two handles, and an adhesive label with the number ''54'' on the neck.

Cultural Affiliation

The cultural items in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: geographical information and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, Boston Children's Museum has determined that:

- The one cultural item described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural item and The Choctaw Nation of Oklahoma.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, Boston Children's Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. Boston Children's Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28189 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037120; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Department of the Interior, National Park Service, Navajo National Monument, Shonto, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the U.S. Department of the Interior, National Park Service, Navajo National Monument (NAVA) has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Coconino and Navajo Counties, AZ.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after January 22, 2024.

ADDRESSES: Lyn Carranza, Superintendent, Navajo National Monument, End of AZ Hwy 564 North, P.O. Box 7717, Shonto, AZ 86054–7717, telephone (928) 624–5500 Ext. 244, email *lyn_carranza@nps.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the superintendent, NAVA. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by NAVA.

Description

Human remains representing, at minimum, one individual were removed from Coconino County, AZ, in 1939, during excavations conducted by Charlie Steen of the NPS to stabilize Inscription House. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Coconino County, AZ, in 1964, by NPS personnel after being exposed on the surface of Inscription House by erosion. The three associated funerary objects are one bowl, one jar, and one ladle.

Human remains representing, at minimum, 43 individuals were removed from Coconino County, AZ, in 1966, when a midden below Inscription House was excavated by the Museum of Northern Arizona (MNA) under the direction of Dr. George Gumerman. The 473 associated funerary objects are one projectile point, 15 awls, three worked bones, one flesher, one biface fragment, 20 flakes, two pendants, one bead, two earrings, 13 stone tile fragments, nine pieces of limonite, one piece of hematite, one maul, one mano, 68 faunal bones, one abrader, 41 bowls, seven ladles, 38 jars, two colanders, three bags of plant materials, one eggshell, one metate, 235 sherds, one worked sherd, one hammerstone, one concretion, one bag of unfired clay, and one bag of wood.

Human remains representing, at minimum, one individual were removed from Coconino County, AZ, in 1977, by the University of Colorado through a contract with the NPS for salvage excavations on the midden at Inscription House that was excavated in 1966. The 49 associated funerary objects are 48 sherds and one soil sample.

Human remains representing, at minimum, 13 individuals were removed from Navajo County, AZ, in 1934, by the Civil Works Administration (CWA) through the MNA during stabilization activities at Keet Seel. The 69 associated funerary objects are one axe, one bead, one bowl, 55 faunal bones, seven jars, two kaolin samples, one pendant, and one sherd.

Human remains representing, at minimum, one individual were removed from Navajo County, AZ. In 1935, human remains were donated to the

MNA and were identified as being from Keet Seel. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Navajo County, AZ. In 1964, human remains were turned over to the NPS and were identified as being from Keet Seel. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Navajo County, AZ, in 1938, during excavations at Kiva Cave by Milton Wetherill. The 35 associated funerary objects are one piece of cotton cloth and 34 sherds.

Human remains representing, at minimum, three individuals were removed from Navajo County, AZ, in 1963, by Carl Jennings of the University of Colorado during excavations at Turkey Cave. The human remains were deposited at the MNA. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Navajo County, AZ, in 1985, during stabilization work at Turkey Cave by Peter McKenna and John Stein of the NPS Chaco Center. No associated funerary objects are present.

Human remains representing, at minimum, two individuals were removed from Navajo County, AZ. In 1938 human remains removed from Betatakin by Milton Wetherill were donated to the MNA. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Navajo County, AZ in 1964 by NPS archeologist Keith Anderson during an authorized excavation of the midden below Betatakin. No associated funerary objects are present.

Human remains representing, at minimum, one individual were removed from Navajo County, AZ, in 1967, during an unauthorized exploration of Betatakin. No associated funerary objects are present.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, archeological information, biological information, folklore, geographical information, historical information, kinship, linguistics, oral tradition, other relevant information and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, NAVA has determined that:

- The human remains described in this notice represent the physical remains of 71 individuals of Native American ancestry.
- The 629 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and the Hopi Tribe of Arizona; Navajo Nation, Arizona, New Mexico, & Utah; and the Zuni Tribe of the Zuni Reservation, New Mexico.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, NAVA must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. NAVA is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28176 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0037123; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the State Historical Society of Wisconsin intends to repatriate a certain cultural item that meets the definition of an object of cultural patrimony and that has a cultural affiliation with the Indian Tribes or Native Hawaiian organizations in this notice. The cultural item was removed from Black River Falls, Jackson County, WI.

DATES: Repatriation of the cultural items in this notice may occur on or after January 22, 2024.

ADDRESSES: Curator of American Indian Collections Jacqueline Pozza Reisner, State Historical Society of Wisconsin, 204 S Thornton Avenue, Madison, WI 53703, telephone (608) 263–3537, email *jacqueline.pozza@wisconsinhistory.org* and *nagpra@wisconsinhistory.org*.

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the State Historical Society of Wisconsin. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the summary or related records held by the State Historical Society of Wisconsin.

Description

The one cultural item has the catalog number 1950.6447 and is described in Society documentation as both a War Club and a Prophet Stick belonging to Chief Spoon Decorah and was removed from Black River Falls, Jackson County, WI. The State Historical Society of Wisconsin purchased this item on December 3, 1913 for $20.00 from Dr.

Paul Radin, who reported collecting the item in Black River Falls, Wisconsin and indicated that it was formerly the property of Ho-Chunk/Winnebago Chief Spoon Decorah. The Decorah War Club/Prophet Stick was purchased from Dr. Paul Radin at the same time as the Decorah War Bundle, which was repatriated by the State Historical Society of Wisconsin to the Ho-Chunk Nation of Wisconsin in 2012. The Decorah name has been spelled various ways throughout history, including DeCarrie, Dekorah, Decorah, Decora, DeKaury.

The Decorah War Club/Prophet Stick is a curved wooden item with one ''leg'' longer than the other and a raised circular knob at the junction of these legs. The War Club/Prophet Stick has numerous carvings including a column of pictographs. There is a metal blade attached to the top of the Prophet Stick, which was added by former State Historical Society of Wisconsin Curator David Wooley.

According to Christian Feest's research of prophet sticks in ''The Prophet Stick: Detective Stories from the Museum World'' article in *Journal Fünf Kontinente,* vol. 3, pp. 96–151, these prophet sticks were often physically part of bundles or cared for by war bundle caretakers and were clan-owned and inalienable to an individual. Cultural knowledge shared through consultation confirmed that these items were often part of bundles, which were clan-owned, and should be cared for by the current bundle keeper. The Decorah War Club/Prophet Stick is affiliated with the Ho-Chunk/Winnebago people, who are now the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

Through consultation with the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska, it was confirmed that the Decorah War Club/Prophet Stick is an object of cultural patrimony inalienable from the Ho-Chunk and Winnebago peoples and needs to be reunited with the Decorah War Bundle. Those involved in consultation determined that the Decorah War Club/Prophet Stick should be returned to the Ho-Chunk Nation of Wisconsin.

Cultural Affiliation

The cultural item in this notice is connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: anthropological information, folklore, geographical information, historical information, kinship, oral tradition, and expert opinion.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the State Historical Society of Wisconsin has determined that:

- The one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual.
- There is a relationship of shared group identity that can be reasonably traced between the cultural items and the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

Requests for Repatriation

Additional, written requests for repatriation of the cultural item in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the cultural item in this notice to a requestor may occur on or after January 22, 2024. If competing requests for repatriation are received, the State Historical Society of Wisconsin must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the cultural item are considered a single request and not competing requests. The State Historical Society of Wisconsin is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.8, 10.10, and 10.14.

Dated: December 13, 2023.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2023–28178 Filed 12–21–23; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1304]

Certain Wet Dry Surface Cleaning Devices; Notice of Final Determination Finding a Violation of Section 337; Issuance of Limited Exclusion Order, Cease and Desist Order, and Bond; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined that the respondents have violated section 337 of the Tariff Act of 1930, as amended, by importing, selling for importation, or selling in the United States after importation certain wet dry surface cleaning devices that infringe one or more asserted claims of U.S. Patent Nos. 11,076,735 (''the '735 patent'') and 11,071,428 (''the '428 patent''). The Commission has determined there is no violation of section 337 with respect to U.S. Patent Nos. 11,122,949 (''the '949 patent''), 10,820,769 (''the '769 patent''), and 11,096,541 (''the '541 patent''). Upon consideration of the statutory public interest factors, the Commission has determined that the appropriate remedies are a limited exclusion order and cease and desist orders against the named respondents. The Commission has also determined to set a bond in the amount of $99.01 per covered iFloor 3 product, $99.01 per covered Floor One S3 product, and $0 per any other covered product imported during the 60-day period of Presidential review. This investigation is hereby terminated.

FOR FURTHER INFORMATION CONTACT: Carl P. Bretscher, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2382. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On March 9, 2022, the Commission instituted this

investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Bissell Inc. and Bissell Homecare, Inc., both of Grand Rapids, Michigan (collectively, ''Complainants'' or ''Bissell''). *See* 87 FR 13311–12 (March 9, 2022). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wet dry surface cleaning devices by reason of infringement of certain claims of the '735 patent, the '428 patent, the '949 patent, the '541 patent, and the '769 patent. *Id.* The complaint further alleges that a domestic industry (''DI'') exists. *Id.* The notice of investigation names as respondents Tineco Intelligent Technology Co., Ltd. of Suzhou City, China; TEK (Hong Kong) Science & Technology Ltd. of Hong Kong, China; and Tineco Intelligent, Inc. of Seattle, Washington (collectively, ''Respondents''). *Id.* The Office of Unfair Import Investigations is not participating in this investigation.

On March 24, 2023, the Chief Administrative Law Judge (''CALJ'') issued a final initial determination (''FID''), finding that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain wet dry surface cleaning devices that infringe one or more of claims 1, 13, and 15 of the '735 patent or claim 1 of the '428 patent. The FID further finds no violation of section 337 with respect to the asserted claims of the '949 patent, the '769 patent, and the '541 patent. On April 7, 2023, the CALJ issued a recommended determination (''RD'') on remedy and bond recommending that the Commission issue a limited exclusion order and cease and desist orders if a violation is found. The RD further recommends setting a bond of $49.01 per covered iFloor 3 product, $99.01 per covered Floor One S3 product, and $0 per any other infringing accused product imported during the period of Presidential review.

On April 7, 2023, Complainants filed a combined petition and contingent petition requesting review of the FID's findings of non-infringement as to the '949, '541, and '769 patents, that Complainants failed to satisfy the technical prong for the '541 patent, that certain redesigned accused products do not infringe the '735 and '428 patents, and waiver of Complainants' infringement argument as to the '428 patent. Complainants also sought contingent review of certain economic prong findings. That same day, Respondents filed a combined petition and contingent petition requesting review of the FID's findings that the original accused products infringe the '735 and '428 patents, that the asserted claims of the '735 and '428 patents are not invalid, that Complainants satisfied the technical prong of the domestic industry requirement as to the '735 and '428 patents, and that Complainants satisfied the economic prong of the DI requirement for all of the asserted patents. Respondents also sought contingent review of the FID's findings that the asserted claims of the '949, '541, and '769 patents are not invalid for obviousness. On April 17, 2023, Complainants and Respondents filed their respective responses to the petitions for review.

On April 10, 2023, the Commission issued a notice requesting submissions from non-parties on the public interest. *See* 88 FR 22479–80 (April 13, 2023). On May 8, 2023, Representative Hillary J. Scholten submitted a response to the Commission's notice seeking public interest submissions. EDIS Doc. ID 795898 (May 8, 2023). On May 9, 2023, Bissell filed a submission on the public interest, pursuant to Commission Rule 210.50(a)(4). *See* 19 CFR 210.50(a)(4).

On August 1, 2023, the Commission determined to review the FID in part. *See* 88 FR 52208–09 (Aug. 7, 2023). Specifically, the Commission reviewed the FID's findings that: (1) Respondents do not infringe the '949, '541, and '769 patents; (2) Complainants did not satisfy the technical prong of the domestic industry requirement for the '541 patent; (3) the asserted claims of the '735 and '428 patents are not invalid; and (4) Complainants satisfied the economic prong of the domestic industry requirement under subsections 337(a)(3)(B) and (C). *Id.* at 52208. The Commission determined not to review, and thus adopted, the FID's other findings. *Id.* The Commission requested briefing on remedy, the public interest, and bonding, but it did not request additional briefing on the violation issues listed above. *Id.* at 52208–09.

On August 15, 2023, Complainants and Respondents filed their respective responses to the Commission's request for briefing on remedy, bond, and the public interest. On August 22, 2023, Complainants and Respondents filed their replies to each other's responses.

Having reviewed the record in this investigation, including the final ID and the parties' petitions and responses thereto, the Commission has determined that Respondents have violated section 337 by importing into the United States, selling for importation, or selling in the United States after importation certain wet dry surface cleaning devices that infringe one or more of claims 1, 13, and 15 of the '735 patent or claim 1 of the '428 patent. The Commission finds no violation with respect to the '949 patent, the '541 patent, or the '769 patent.

Upon consideration of the RD, and the parties' and third party's submissions on remedy, bonding and the public interest, the Commission has determined that the appropriate remedy is: (i) a limited exclusion order prohibiting Respondents from importing wet dry surface cleaning devices that infringe one or more of claims 1, 13, and 15 of the '735 patent or claim 1 of the '428 patent; and (ii) a cease and desist order against each Respondent. The Commission has determined to set a bond in the amount of $99.01 per covered iFloor 3 product, $99.01 per covered Floor One S3 product, and $0 per any other covered product imported during the 60-day period of Presidential review (*see* 19 U.S.C. 1337(j)(3)). The Commission has determined that the public interest factors do not preclude issuance of a remedy.

The Commission issues its opinion herewith setting forth its determinations on certain issues. This investigation is hereby terminated.

The Commission's orders and opinion were delivered to the President and United States Trade Representative on the day of their issuance.

The Commission voted to approve these determinations on December 18, 2023.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 18, 2023.

Sharon Bellamy,

Supervisory Hearings and Information Officer.

[FR Doc. 2023–28229 Filed 12–21–23; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[Docket No. 2023N–01]

Commerce in Explosives; 2023 Annual List of Explosive Materials

AGENCY: Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); Department of Justice.

ACTION: Notice of list of explosive materials.

SUMMARY: This notice publishes the 2023 List of Explosive Materials, as required by law. The 2023 list is the same as the 2022 list published by ATF, except the 2023 list adds ''pyrotechnic stars.'' These materials are ''pyrotechnic compositions'' and have long been covered under that term. ATF is adding ''pyrotechnic stars'' for clarity.

DATES: The list becomes effective December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Marianna Mitchem, Chief; Firearms and Explosives Industry Division; Bureau of Alcohol, Tobacco, Firearms, and Explosives; United States Department of Justice; 99 New York Avenue NE, Washington, DC 20226; (202) 648–7120.

SUPPLEMENTARY INFORMATION: Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, the Department of Justice must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. 841 *et seq.* The list covers not only explosives, but also blasting agents and detonators, all of which are defined as ''explosive materials'' in 18 U.S.C. 841(c).

Each material listed, as well as all mixtures containing any of these materials, constitute ''explosive materials'' under 18 U.S.C. 841(c). Materials constituting blasting agents are marked by an asterisk. Explosive materials are listed alphabetically, and, where applicable, followed by their common names, chemical names, and/or synonyms in brackets. This list supersedes the List of Explosive Materials published in the **Federal Register** on December 20, 2022 (Docket No. 2022N–11, 87 FR 77888).

The Department is adding ''pyrotechnic stars'' to the 2023 List of Explosive Materials. Pyrotechnic stars are pellets, cubes, balls, or similar configurations of explosive materials that are typically used in aerial fireworks to create color effects. Pyrotechnic stars have long been on the List under the current term ''pyrotechnic compositions.'' To eliminate any confusion as to whether the term ''pyrotechnic compositions'' covers pyrotechnic stars, and to clarify that pyrotechnic stars are covered under the Federal explosives regulations at 27 CFR part 555, ATF is adding the term ''pyrotechnic stars'' to the List.

The 2023 List of Explosive Materials is a comprehensive list but is not all-inclusive. The definition of ''explosive materials'' includes ''[e]xplosives, blasting agents, water gels and detonators. Explosive materials, include, but are not limited to, all items in the 'List of Explosive Materials' provided for in § 555.23.'' 27 CFR 555.11. Accordingly, the fact that an explosive material is not on the annual list does not mean that it is not within coverage of the law if it otherwise meets the statutory definition of ''explosives'' in 18 U.S.C. 841(d) and (j). Subject to limited exceptions in 18 U.S.C. 845 and 27 CFR 555.141, only Federal explosives licensees and permittees may possess and use explosive materials, including those on the Annual List.

Notice of the 2023 Annual List of Explosive Materials

Pursuant to 18 U.S.C. 841(d) and 27 CFR 555.23, I hereby designate the following as ''explosive materials'' covered under 18 U.S.C. 841(c):

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non-cap sensitive).
Ammonium perchlorate having particle size less than 15 microns.
Ammonium perchlorate explosive mixtures (excluding ammonium perchlorate composite propellant (APCP)).
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].
Aromatic nitro-compound explosive mixtures.
Azide explosives.

B

Baranol.
Baratol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
Black powder substitutes.
*Blasting agents, nitro-carbo-nitrates, including non-cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Bulk salutes.
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclonite [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclotol.
Cyclotrimethylenetrinitramine [RDX].

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM [dipicramide; diaminohexanitrobiphenyl].
Dipicryl sulfide [hexanitrodiphenyl sulfide].
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPA [2,2-dinitropropyl acrylate].
DNPD [dinitropentano nitrile].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA [ethylenedinitramine].
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
EGDN [ethylene glycol dinitrate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive liquids.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.

Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen [RDX].
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMTD [hexamethylenetriperoxidediamine].
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate explosive mixtures.
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol [ethylene glycol dinitrate, EGDN].
Nitroguanidine explosives.
Nitronium perchlorate propellant mixtures.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrotriazolone [3-nitro-1,2,4-triazol-5-one].
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [plastic bonded explosives].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate explosives.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
Pyrotechnic fuses.
Pyrotechnic stars.
PYX [2,6-bis(picrylamino)] 3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salts of organic amino sulfonic acid explosive mixture.
Salutes (bulk).
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate explosive mixtures.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TATP [triacetonetriperoxide].
TEGDN [triethylene glycol dinitrate].
Tetranitrocarbazole.
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetrazole explosives.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.

TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzenesulfonic acid [picryl sulfonic acid].
Trinitrobenzoic acid.
Trinitrocresol.
Trinitrofluorenone.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthomonas hydrophilic colloid explosive mixture.

Date approved: December 18, 2023.

Steven M. Dettelbach,

Director.

[FR Doc. 2023–28253 Filed 12–21–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0053]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement of a Previously Approved Collection; Leadership Engagement Survey

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration, Department of Justice (DOJ), 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.

DATES: Comments are encouraged and will be accepted for 60 days until February 20, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tammie S. Pugh, Office of Research and Analysis, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, Telephone 571–776–2496, *Tammie.S.Pugh@dea.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: The DEA Leadership Engagement Survey (LES) is an initiative mandated by the Administrator of the Drug Enforcement Administration to improve the competencies and proficiency of leadership across the DEA,

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement of a previously approved collection.

2. *The Title of the Form/Collection:* DEA Annual Leadership Engagement Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is not a form number for this collection. It is an online survey. The applicable within the Department of Justice is the Drug Enforcement Administration, Human Resources Division.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Federal Government (Contractors, and Task Force Officers (TFOs)). The obligation to respond is mandatory per 5 U.S.C. part II.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,600 Federal employees and 2,400 Contractors will take 20 minutes to complete the survey.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 1,667 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
Task Force Officers	2,600	1/annually	2,600	20	867
Contractors	2,400	1/annually	2,400	20	800
Unduplicated Totals	5,000		5,000		1,667

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution

Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: December 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–28286 Filed 12–21–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Customer Service Survey; Training Survey; Senior Leadership Survey

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Drug Enforcement Administration, Department of Justice (DOJ), 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.

DATES: Comments are encouraged and will be accepted for 60 days until February 20, 2024.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Elizabeth Pascual, Office of Forensic Sciences, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152, telephone 571–776–2441, *Elizabeth.R.Pascual@dea.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Abstract: Raw survey data is collected, monitored, and analyzed by one primary and one ancillary program manager within the Office of Forensic Sciences, the headquarter component of the DEA laboratory system. Information generated from the three surveys is used by DEA supervisors, managers, senior executives, and scientists to improve the laboratory system work product.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Customer Service Survey; Training Survey; Senior Leadership Survey.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is not a form number for these collections. They are online surveys. The applicable within the Department of Justice is the Drug Enforcement Administration, Office of Forensic Sciences.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Laboratories (Private Sector—businesses or not for or not for profit institutions). The obligation to respond is voluntary.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The total or estimated number of respondents for this collection is 627 and it is estimated that it will take nine minutes to complete the survey.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 94 burden hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
Customer Service Survey	300	1/annually	300	9	45
Training Survey	258	1/annually	258	9	39
Senior Level Leadership Survey	69	1/annually	69	9	10
Unduplicated Totals	627		627		94

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: December 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–28284 Filed 12–21–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0080]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Application for an Amended Federal Explosives License or Permit

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice (DOJ), 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. The proposed information collection was previously published in the **Federal Register**, on October 17, 2023, allowing a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until January 22, 2024.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Shawn Stevens by email at *Shawnstevens@atf.gov,* or telephone at 304–616–4421.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—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.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1140–0080. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ 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 DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

Overview of This Information Collection

1. *Type of Information Collection:* Revision of a previously approved collection.

2. *Title of the Form/Collection:* Notification of Change of Mailing or Premise Address.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* ATF F 5400.33.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Affected Public: Private Sector—Business or other for-profit institutions, individuals or households.

Abstract: During the term of a license or permit, a licensee or permittee may move his business or operations to a new address where he intends to regularly carry on his business or operations, without procuring a new license or permit. However, in every case, the licensee or permittee shall notify the Chief, Federal Explosives Licensing Center of the business or operations address change. The Information Collection (IC) OMB 1140–0080 is being revised to incorporate a new form (Application for an Amended Federal Explosives License or Permit (ATF Form 5400.33)). ATF Form 5400.33 will be the application used by the licensee or permittee to change the business address of a license or permit and certify compliance with the provisions of the law for the new address. Previously this information did not use a form to be collected.

5. *Obligation to Respond:* Mandatory under the provisions of title 18 U.S.C. 842(f) and 27 CFR 555.54.

6. *Total Estimated Number of Respondents:* 1,000 respondents.

7. *Estimated Time per Respondent:* 10 minutes.

8. *Frequency:* Once annually.

9. *Total Estimated Annual Time Burden:* 170 hours.

10. *Total Estimated Annual Other Costs Burden:* There is no annualized capital/startup cost associated with this collection. It is estimated that half of the respondents submit the form to the Federal Explosives Licensing Center by mail. Therefore, the annual cost is $330.00 (500 × .66) 2023 postage rate.

If additional information is required, contact: Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: December 19, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–28285 Filed 12–21–23; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice To Ensure State Workforce Agencies Are Aware of the Revised Schedule of Remuneration for the Unemployment Compensation for Ex-Servicemembers (UCX) Program That Reflects the Military Pay Increase Effective January 1, 2024

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Each year, the Department of Defense issues a Schedule of Remuneration used by states for UCX purposes. States must use the schedule to determine Federal military wages for UCX ''first claims'' only when the Federal Claims Control Center (FCCC) responds to a request for information indicating that there is no Copy 5 of the Certificate of Release or Discharge from Active Duty (DD Form 214) for an individual under the social security number provided. A response from the FCCC that indicates ''no DD214 on file'' will prompt the state to start the affidavit process and to use the attached schedule to calculate the Federal military wages for an unemployment insurance or UCX monetary determination.

The schedule applies to UCX ''first claims'' filed beginning with the first day of the first week that begins on or after January 1, 2024, pursuant to the UCX program regulations (see 20 CFR 614.12(c)). States must continue to use the 2023 schedule (or other appropriate

schedule) for UCX ''first claims'' filed before the effective date of the revised schedule.

2024 FEDERAL SCHEDULE OF REMUNERATION

[20 CFR 614.12(d)]

Pay grade	Monthly rate	Weekly (7/30th)	Daily (1/30th)
1. *Commissioned Officers:*			
O–10	23,751.68	5,542.06	791.72
O–9	23,751.68	5,542.06	791.72
O–8	23,346.57	5,447.53	778.22
O–7	20,921.17	4,881.61	697.37
O–6	18,373.89	4,287.24	612.46
O–5	15,541.97	3,626.46	518.07
O–4	13,351.93	3,115.45	445.06
O–3	10,551.34	2,461.98	351.71
O–2	8,533.63	1,991.18	284.45
O–1	6,684.30	1,559.67	222.81
2. *Commissioned Officers With Over 4 Years Active Duty as an Enlisted Member or Warrant Officer:*			
O–3 E	12,234.94	2,854.82	407.83
O–2 E	10,138.27	2,365.60	337.94
O–1 E	8,961.76	2,091.08	298.73
3. *Warrant Officer:*			
W–5	14,126.34	3,296.15	470.88
W–4	12,907.53	3,011.76	430.25
W–3	11,129.77	2,596.95	370.99
W–2	9,528.81	2,223.39	317.63
W–1	8,153.58	1,902.50	271.79
4. *Enlisted Personnel:*			
E–9	12,056.76	2,813.24	401.89
E–8	9,978.11	2,328.23	332.60
E–7	8,924.32	2,082.34	297.48
E–6	7,885.32	1,839.91	262.84
E–5	6,760.65	1,577.48	225.35
E–4	5,832.61	1,360.94	194.42
E–3	5,496.65	1,282.55	183.22
E–2	5,256.34	1,226.48	175.21
E–1	5,193.76	1,211.88	173.13

The Federal Schedule includes columns reflecting derived weekly and daily rates. This revised Federal Schedule of Remuneration is effective for UCX ''first claims'' filed beginning with the first day of the first week which begins on or after January 1, 2024, pursuant to 20 CFR 614.12*(c).*

Brent Parton,

Principal Deputy Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2023–28217 Filed 12–21–23; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of Recurrence; Correction

ACTION: Notice of availability; correction.

SUMMARY: The Department of Labor (DOL) is correcting a notice that appeared in the **Federal Register** on December 6, 2023. After publication of the notice, the DOL discovered that the synopsis of the Information Collection Request (ICR) provided in the **SUPPLEMENTARY INFORMATION** section incorrectly summarized the subject matter of the collection. DOL is issuing this correction to provide the correct synopsis.

FOR FURTHER INFORMATION CONTACT: Michelle Neary by telephone at 202–693–6312, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION:

Correction

In FR. Doc. 2023–26748 appearing at 88 FR 84834 in the **Federal Register** of Wednesday, December 6, 2023, on page 84834, in the second column, the following correction is made:

1. In the **SUPPLEMENTARY INFORMATION** section, correct the first paragraph to read as follows: This form is used by current, or occasionally former, Federal employees to claim wage loss or medical treatment resulting from a recurrence of a work-related injury while Federally employed. The information is necessary to ensure the accurate payment of benefits. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August, 7, 2023 (88 FR 52214).

Michelle Neary,

Senior PRA Analyst.

[FR Doc. 2023–28219 Filed 12–21–23; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-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 January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The reporting and recordkeeping provisions in 30 CFR 50, Notification, Investigation, Reports and Records of Accidents, Injuries and Illnesses, Employment and Coal Production in Mines, are essential elements in MSHA's statutory mandate to reduce work-related injuries and illnesses among the nation's miners (30 U.S.C. 801). Part 50 applies to operators of coal, metal, and nonmetal mines. It requires operators to immediately notify MSHA of accidents, investigate accidents and restrict disturbance of accident-related areas. This part also requires operators to file reports with MSHA pertaining to accidents, occupational injuries, and occupational illnesses, as well as employment and coal production data, and requires operators to maintain copies of reports at mine offices. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on September 21, 2023 (88 FRN 65196).

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.

Agency: DOL–MSHA.

Title of Collection: Mine Accident, Injury, and Illness Report and Quarterly Mine Employment and Coal Production Report.

OMB Control Number: 1219–0007.

Affected Public: Businesses or other for-profits.

Number of Respondents: 20,953.

Frequency: On occasion.

Number of Responses: 98,389.

Annual Burden Hours: 117,903 hours.

Total Estimated Annual Other Costs Burden: $3,009.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–28222 Filed 12–21–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-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 January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: Section 103(h) of the Mine Act, 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. It has long been known that inadequate maintenance of electric equipment is a major cause of serious electrical accidents in the coal mining industry. MSHA regulations require the mine operator to establish an electrical maintenance program by specifying minimum requirements for the examination, testing, and maintenance of electric equipment. The regulations also contain recordkeeping requirements that help operators in implementing an effective maintenance program. This ICR requires coal mine operators to frequently exam, test, and properly maintain all electrical equipment and high voltage longwall mining systems and to keep records of the examinations and tests. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on July 24, 2023 (88 FRN 47520).

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.

Agency: DOL–MSHA.

Title of Collection: Examinations and Testing of Electrical Equipment, Including Examination, Testing, and Maintenance of High Voltage Longwalls.

OMB Control Number: 1219–0116.

Affected Public: Businesses or other for-profits.

Number of Respondents: 755.

Frequency: On occasion.

Number of Responses: 359,146.

Annual Burden Hours: 67,313 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–28220 Filed 12–21–23; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Hoist Operators' Physical Fitness

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting this Mine Safety and Health Administration (MSHA)-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 January 22, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Michael Howell by telephone at 202–693–6782, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: 30 CFR 56.19057 and 57.19057 require the annual examination and certification of hoist operators' fitness by a qualified, licensed physician. The information is used by mine operators and MSHA enforcement personnel to verify that persons operating hoisting equipment are physically able to safely perform their functions. If MSHA cannot verify that hoist operators are capable of performing their assigned tasks, the individuals themselves, and those requiring hoisting into or out of a mine, may be at risk. Hoist operators provide a critical service to all personnel and equipment going into and out of some surface and underground mines, as well as emergency responders on an as-needed basis. Improper hoisting, caused by the inability of a hoist operator to function effectively due to a medical problem, can cause serious injury or death. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 1, 2023 (88 FRN 50180).

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.

Agency: DOL–MSHA.

Title of Collection: Hoist Operators' Physical Fitness.

OMB Control Number: 1219–0049.

Affected Public: Businesses or other for-profits.

Number of Respondents: 803.

Frequency: On occasion.

Number of Responses: 803.

Annual Burden Hours: 27 hours.

Total Estimated Annual Other Costs Burden: $ 325,157.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Michael Howell,

Senior Paperwork Reduction Act Analyst.

[FR Doc. 2023–28224 Filed 12–21–23; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (23–125)]

Nationwide Programmatic Agreement Regarding the Management of NASA Assets

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability (NOA) for a proposed nationwide programmatic agreement; request for comments.

SUMMARY: NASA is proposing a nationwide programmatic agreement (NPA), among NASA, the Advisory Council on Historic Preservation (ACHP) and the National Conference of State Historic Preservation Officers (NCSHPO) for management of NASA assets. The purpose of the NPA is to create a process by which NASA can meet its responsibilities to manage its U.S. real property assets under sections 106 and 110 of the National Historic Preservation Act (NHPA) in a manner that accommodates NASA's mission and addresses the unique challenges of historic highly technical and scientific facilities (HTSF). The need for a tailored process became more essential in 2015, when the Office of Management and Budget released the ''National Strategy for the Efficient Use of Real Property'' and the companion policy, ''Reduce the Footprint'', which requires Federal agencies to dispose of surplus properties, make more efficient use of the Government's real property assets, and reduce the total square footage of their domestic office and warehouse inventory relative to an established baseline. NASA requests comments on the proposed agreement.

DATES: Comments should be received by January 24, 2024.

ADDRESSES: The Draft NPA is available for review at *https://www.nasa.gov/emd/npa-drafts/.* We encourage you to submit comments on the NPA via electronic mail to *hq-crm@mail.nasa.gov.* Comments may also be sent by mail Attention: Office of the General Counsel, (General Law—Curtis Borland), Mary W. Jackson NASA Headquarters, 300 E St. SW, Washington, DC 20546. Please note that correspondence sent by mail may encounter delays in receipt by the agency.

FOR FURTHER INFORMATION CONTACT: Dr. Rebecca Klein, Federal Preservation Officer, by electronic mail at *hq-crm@mail.nasa.gov* or 202.816.0020.

SUPPLEMENTARY INFORMATION: The NPA has been developed as a management approach that addresses the full range of

built, archaeological, and tribal cultural resources under NASA's stewardship. Supporting information on the NPA can be found on the NASA NPA website at *https://www.nasa.gov/emd/nasa-npa/.* This web page contains links to the Draft NPA, ''NPA Drafts for Review,'' as well as supplemental resource information on three other pages: ''About the NPA'', ''NPA Frequently Asked Questions (FAQs)'', and ''Resource Significance Framework (RSF).''

Joel R. Carney,

Assistant Administrator, Office of Strategic Infrastructure.

[FR Doc. 2023–28248 Filed 12–21–23; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255; NRC–2023–0200]

Environmental Assessment and Finding of No Significant Impact; Holtec Decommissioning International, LLC, and Holtec Palisades, LLC, Palisades Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions that would permit the licensee to reduce its emergency planning (EP) activities at the Palisades Nuclear Plant (Palisades). Specifically, Holtec Decommissioning International, LLC (HDI), one of the licensees of Palisades and an indirect wholly owned subsidiary of Holtec International (Holtec), requested an exemption on behalf of Holtec Palisades, LLC, the other Palisades licensee (hereinafter collectively referred to as the licensee) that would eliminate the requirements to maintain formal offsite radiological emergency plans, as well as reduce the scope of some of the onsite EP activities based on the reduced risks at Palisades, based on the submission of certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel at Palisades. However, requirements for an onsite radiological emergency plan and for certain onsite capabilities to communicate and coordinate with offsite response authorities would be retained. In addition, offsite EP provisions would still exist through State and local government use of a comprehensive emergency management plan process, in accordance with the Federal Emergency Management Agency's (FEMA's) Comprehensive Preparedness Guide (CPG) 101, ''Developing and Maintaining Emergency Operations Plans.'' The NRC staff is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) associated with the proposed exemptions.

DATES: The EA and FONSI referenced in this document are available on December 22, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0200 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website: Go to https://www.regulations.gov* and search for Docket ID NRC–2023–0200. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section of this document.
- *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.

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. Introduction

By letters dated September 28, 2017, and October 19, 2017, in accordance with sections 50.4(b)(8) and 50.82(a)(1)(i) of title 10 of the *Code of Federal Regulations* (10 CFR) part 50, ''Domestic Licensing of Production and Utilization Facilities,'' Entergy Nuclear Operations, Inc. (ENOI), which was the licensee at that time, notified the NRC that it had decided to permanently cease power operations at Palisades by May 31, 2022.

Pursuant to 10 CFR 50.82(a)(1)(ii), by letter dated June 13, 2022, ENOI certified to the NRC that the fuel had been permanently removed from the Palisades reactor vessel and placed in the spent fuel pool (SFP). Upon the docketing of these certifications, in accordance with 10 CFR 50.82(a)(2), the Palisades license no longer authorizes operation of the reactor or emplacement or retention of fuel into the reactor vessel. The spent fuel from Palisades is stored in the SFP and in dry cask storage at the onsite independent spent fuel storage installation, where it will remain until it is shipped offsite.

By Order dated December 13, 2021, the NRC approved a transfer of the Palisades license from ENOI and Entergy Nuclear Palisades, LLC, to Holtec and HDI. This transfer was executed on June 28, 2022, such that HDI and Holtec Palisades, LLC became the licensees for Palisades. To address the upcoming transition from an operating plant to a permanently defueled facility, by letter dated September 24, 2018, the NRC issued an amendment authorizing ENOI to adopt a post-shutdown emergency plan (PSEP) and approving changes to the Palisades emergency plan to support the planned permanent cessation of operations and permanent removal of fuel from the reactor vessel. Upon implementation of the PSEP on June 15, 2022, the Palisades emergency response organization on-shift and augmented staffing requirements were revised commensurate with the reduced spectrum of credible accidents for a permanently shut down and defueled nuclear power reactor facility.

By letter dated July 11, 2022, the licensee requested exemptions from specific portions of 10 CFR 50.47, ''Emergency plans,'' and appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' to 10 CFR part 50 for the Palisades license. More specifically, HDI requested exemptions from certain planning standards in 10 CFR 50.47(b) regarding onsite and offsite radiological emergency preparedness (REP) plans for

nuclear power reactors; from certain requirements in 10 CFR 50.47(c)(2) for establishment of plume exposure pathway and ingestion pathway emergency planning zones (EPZs) for nuclear power reactors; and from certain requirements in 10 CFR part 50, appendix E, section IV, ''Content of Emergency Plans.''

HDI's requested exemptions would eliminate the NRC requirements to maintain formal offsite REP plans in accordance with 44 CFR, ''Emergency Management and Assistance,'' part 350, ''Review and Approval of State and Local Radiological Emergency Plans and Preparedness,'' and would reduce the scope of the onsite EP activities at Palisades. The request by HDI is based on the reduced risks of an offsite radiological release at Palisades after permanent cessation of power operations and when all spent fuel has decayed for at least 12 months. The exemptions would maintain the requirements for an onsite radiological emergency plan and would continue to ensure the capability to communicate and coordinate with offsite response authorities. These exemptions will terminate if the status of the Palisades reactor changes such that the certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel are no longer applicable and the facility would be required to come into compliance with all applicable NRC regulations.

The EP requirements of 10 CFR 50.47 and appendix E to 10 CFR part 50 do not distinguish between operating reactors and those that have ceased operations and defueled. As such, a permanently shut down and defueled reactor must continue to maintain the same EP requirements as an operating power reactor under the existing regulatory requirements. To establish a level of EP commensurate with the reduced risks of a permanently shut down and defueled reactor, the licensee must seek exemptions from certain EP regulatory requirements before it can change its emergency plans.

The NRC is therefore considering issuing to the licensee the proposed exemptions from portions of 10 CFR 50.47 and appendix E to 10 CFR part 50, which would eliminate the requirements for the licensee to maintain offsite radiological emergency plans and reduce some of the onsite EP activities based on the reduced radiological risks as Palisades has permanently ceased power operations and all spent fuel has decayed for more than 12 months.

Consistent with 10 CFR 51.21, ''Criteria for and identification of licensing and regulatory actions requiring environmental assessments,'' the NRC has determined that an EA is the appropriate form of environmental review for the requested action. Based on the results of the EA, which is provided in Section II of this document, the NRC has determined not to prepare an environmental impact statement for the proposed action and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would exempt the licensee from: (1) certain standards as set forth in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; (2) requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway EPZs for nuclear power reactors; and (3) certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of emergency plans. The proposed action of granting these exemptions would eliminate the NRC requirements for the licensee to maintain offsite radiological emergency plans in accordance with 44 CFR part 50 and reduce some of the onsite EP activities at Palisades. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities would be retained.

Additionally, if necessary, offsite protective actions could still be implemented using a comprehensive emergency management plan (CEMP) process. A CEMP in this context, also referred to as an emergency operations plan, is addressed in FEMA's CPG 101. The CPG 101 is the foundation for State, territorial, Tribal, and local EP in the United States under the National Preparedness System. It promotes a common understanding of the fundamentals of risk-informed planning and decision making and assists planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. A CEMP is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies, and other resources available; and outlines how all actions will be coordinated. A CEMP is often referred to as a synonym for ''all-hazards'' planning. The proposed action is in accordance with the previously noted discussion in this notice and the licensee's exemption request dated July 11, 2022.

Need for the Proposed Action

The proposed action is needed for the licensee to revise the Palisades PSEP. Since the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel have been docketed, pursuant to 10 CFR 50.82(a)(2), the Palisades license no longer authorizes use of the facility for power operation or emplacement or retention of fuel into the reactor vessel and, therefore, the occurrence of postulated accidents associated with Palisades reactor operation is no longer credible. As the EP requirements do not distinguish between operating reactors and a power reactor that has been permanently shut down and defueled, the licensee requests an exemption from certain EP requirements commensurate with the radiological risks at the site.

In its exemption request, the licensee identified four possible design-basis accidents (DBAs) at Palisades in its permanently shut down and defueled condition. These are: (1) a fuel handling accident in the reactor cavity; (2) an accidental release of waste gas; (3) an accidental release of waste liquid; and (4) a postulated cask drop accident. The licensee also considered the consequences of a beyond DBA involving a complete loss of SFP water inventory and no accompanying heat loss (*i.e.,* adiabatic heat up). The NRC staff evaluated these possible radiological accidents, as well as the associated analyses provided by the licensee, in the Commission Paper (SECY)-23–0043, ''Request by Holtec Decommissioning International, LLC for Exemptions from Certain EP Requirements for Palisades Nuclear Plant,'' dated May 15, 2023.

In SECY–23–0043, the NRC staff verified that the licensee's analyses and calculations provided reasonable assurance that if the requested exemptions were granted, then: (1) for a DBA, an offsite radiological release will not exceed the U.S. Environmental Protection Agency's (EPA) early phase Protective Action Guides (PAGs) at the exclusion area boundary (EAB), as detailed in Table 1–1, ''Summary Table for PAGs, Guidelines, and Planning Guidance for Radiological Incidents,'' to the EPA's ''PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents,'' EPA–400/R–17/001, dated January 2017; (2) in the highly unlikely event of a beyond DBA resulting in a loss of all SFP cooling, there is sufficient time to initiate appropriate mitigating actions; and (3) in the event a radiological release has or

is projected to occur, there would be sufficient time for offsite agencies to take protective actions using a CEMP to protect the health and safety of the public if offsite governmental officials determine that such action is warranted. The Commission approved the NRC staff's recommendation to grant the exemptions based on this evaluation in its Staff Requirements Memorandum to SECY–23–0043, dated December 7, 2023.

Based on the licensee's analyses related to the reduced radiological risks, the licensee states that complete application of the EP regulations to Palisades 12 months after permanent cessation of power operations would not serve the underlying purpose of the regulations and is not necessary to achieve the underlying purpose of the regulations. The licensee also states that it would incur undue costs in the application of operating plant EP requirements for the maintenance of an emergency response organization in excess of that actually needed to respond to the diminished scope of credible accidents for Palisades 12 months after its permanent cessation of power operations.

Environmental Impacts of the Proposed Action

The NRC staff has completed its evaluation of the environmental impacts of the proposed action.

The proposed action consists mainly of changes related to the elimination of NRC requirements for the licensee to maintain offsite radiological emergency plans in accordance with 44 CFR part 350 and reduce some of the onsite EP activities at Palisades, based on the reduced risks once the reactor has been permanently shut down for a period of 12 months. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities will be retained and offsite EP provisions to protect public health and safety will still exist through State and local government use of a CEMP.

With regard to potential nonradiological environmental impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction, land disturbance, or modification of plant operational systems. There would be no changes to the quality or quantity of nonradiological effluents and no changes to the plants' National Pollutant Discharge Elimination System permits would be needed. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environmental justice impacts, no air quality impacts, and no impacts to historic and cultural resources from the proposed action. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

With regard to potential radiological environmental impacts, the proposed action would not significantly increase the probability or consequences of radiological accidents. Additionally, the NRC staff has concluded that the proposed action would have no direct radiological environmental impacts. There would be no change to the types or amounts of radioactive effluents that may be released and, therefore, no change in occupational or public radiation exposure from the proposed action. Moreover, no changes would be made to plant buildings or the site property from the proposed action. For these reasons, there are no significant radiological environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the denial of the proposed action (*i.e.,* the ''no-action'' alternative). The denial of the application would result in no change in current environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The proposed action does not involve the use of any different resources than those previously considered in the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Palisades Nuclear Plant—Final Report,'' NUREG–1437, Supplement 27, dated October 2006.

Agencies or Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On September 21, 2023, the State of Michigan representative was notified of this EA and FONSI.

III. Finding of No Significant Impact

The licensee has proposed exemptions from: (1) certain standards in 10 CFR 50.47(b) regarding onsite and offsite emergency response plans for nuclear power reactors; (2) the requirements in 10 CFR 50.47(c)(2) to establish plume exposure and ingestion pathway EPZs for nuclear power reactors; and (3) certain requirements in 10 CFR part 50, appendix E, section IV, which establishes the elements that make up the content of emergency plans. The proposed action of granting these exemptions would eliminate the NRC requirements for the licensee to maintain offsite radiological emergency plans in accordance with 44 CFR part 350 and reduce some of the onsite EP activities at Palisades, based on the reduced risks once the reactor has been permanently shut down for a period of 12 months. However, requirements for certain onsite capabilities to communicate and coordinate with offsite response authorities will be retained and offsite EP provisions to protect public health and safety will still exist through State and local government use of a CEMP.

The NRC is considering issuing the exemptions. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or nonradiological impacts. This FONSI is a final finding and incorporates by reference the EA in Section II of this document. Therefore, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document description	ADAMS accession No./weblink
Federal Emergency Management Agency, ''Developing and Maintaining Emergency Operations Plans,'' Comprehensive Preparedness Guide (CPG) 101, Version 2.0, November 2010.	*https://www.fema.gov/media-library-data/20130726-1828-25045-0014/cpg_101_comprehensive_preparedness_guide_developing_and_maintaining_emergency_operations_plans_2010.pdf.*

Document description	ADAMS accession No./weblink
Letter from Entergy Nuclear Operations, Inc. to U.S. Nuclear Regulatory Commission, ''Certification of Permanent Cessation of Power Operations, Palisades Nuclear Plant, Docket No. 50–255,'' dated September 28, 2017.	ML17271A233.
Letter from Entergy Nuclear Operations, Inc. to U.S. Nuclear Regulatory Commission, ''Supplement to Certification of Permanent Cessation of Power Operations, Palisades Nuclear Plant, Docket No. 50–255,'' dated October 19, 2017.	ML17292A032.
Letter from Entergy Nuclear Operations, Inc. to U.S. Nuclear Regulatory Commission, ''Certifications of Permanent Cessation of Power Operations and Permanent Removal of Fuel from the Reactor Vessel,'' dated June 13, 2022.	ML22164A067.
Letter from U.S. Nuclear Regulatory Commission to Entergy Nuclear Operations, Inc., ''Palisades Nuclear Plant and Big Rock Point Plant—Order Approving Transfer of Licenses and Draft Conforming Administrative License Amendments (EPID L–2020–LLM–0003),'' dated December 13, 2021.	ML21292A155 (Package).
Email from Entergy Nuclear Operations, Inc. to U.S. Nuclear Regulatory Commission, ''Notification of Palisades and Big Rock Point License Transfer (EPIDs L–2022–LLM–0002 and L–2020–LLM–0003),'' dated June 28, 2022.	ML22179A075.
Letter from U.S. Nuclear Regulatory Commission to Entergy Nuclear Operations, Inc., ''Palisades Nuclear Plant—Issuance of Amendment Re: Changes to the Emergency Plan for Permanently Defueled Condition (CAC No. MG0198; EPID L–2017–LLA–0305),'' dated September 24, 2018.	ML18170A219.
Letter from Holtec Decommissioning International, LLC, to U.S. Nuclear Regulatory Commission, ''Request for Exemptions from Certain Emergency Planning Requirements of 10 CFR 50.47; 10 CFR 50.47(c)(2); and 10 CFR part 50, appendix E,'' dated July 11, 2022.	ML22192A134.
SECY–23–0043, ''Request by Holtec Decommissioning International, LLC for Exemptions from Certain EP Requirements for Palisades Nuclear Plant,'' dated May 15, 2023.	ML23054A179 (Package).
U.S. Environmental Protection Agency (EPA), EPA–400/R–17/001, ''PAG Manual: Protective Action Guides and Planning Guidance for Radiological Incidents,'' January 2017.	ML17044A073.
Staff Requirements Memorandum to SECY–23–0043, ''Request by Holtec Decommissioning International, LLC for Exemptions from Certain EP Requirements for Palisades Nuclear Plant,'' dated December 7, 2023.	ML23341A181.
NUREG–1437, Supplement 27, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Regarding Palisades Nuclear Plant—Final Report,'' dated October 2006.	ML062710300.

Dated: December 19, 2023.

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. 2023–28293 Filed 12–21–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 25, 2023, and January 1, 8, 15, 22, 29, 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 December 25, 2023

There are no meetings scheduled for the week of December 25, 2023.

Week of January 1, 2024—Tentative

There are no meetings scheduled for the week of January 1, 2024.

Week of January 8, 2024—Tentative

There are no meetings scheduled for the week of January 8, 2024.

Week of January 15, 2024—Tentative

Thursday, January 18, 2024

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting) (Contact: Candace Spore: 301–415–8537)

Additional Information: The meeting will be held in the Commissioners' Conference 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 January 22, 2024—Tentative

Tuesday, January 23, 2024

10:00 a.m. Briefing on International Activities (Public Meeting) (Contacts: Jennifer Holzman: 301–415–8537, Doris Lewis 301–287–3794)

Additional Information: The meeting will be held in the Commissioners' Conference 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 January 29, 2024—Tentative

There are no meetings scheduled for the week of January 29, 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: December 20, 2023.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2023–28451 Filed 12–20–23; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–127 and CP2024–133]

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:* December 27, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–127 and CP2024–133; *Filing Title:* USPS Request to Add USPS Ground Advantage Contract 10 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 18, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Alireza Motameni; *Comments Due:* December 27, 2023.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2023–28272 Filed 12–21–23; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99197; File No. SR–CboeBZX–2023–101]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To List and Trade Shares of the Pando Asset Spot Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

December 18, 2023.

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 December 5, 2023, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change to list and trade shares of the Pando Asset Spot Bitcoin Trust (the ''Trust''),[3] under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Trust was formed as a Delaware statutory trust on November 16, 2023, and is operated as a grantor trust for U.S. federal tax purposes. The Trust has no fixed termination date.

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 list and trade the Shares under BZX Rule 14.11(e)(4),[4] which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.[5] Pando Asset AG (''Sponsor''). The Shares will be registered with the Commission by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[6] Coinbase Custody Trust Company, LLC (the ''Bitcoin Custodian''), which is a third-party U.S.-based trust company and qualified custodian, will be responsible for custody of the Trust's bitcoin holdings.

As further discussed below, the Commission has historically approved or disapproved exchange filings to list and trade series of Trust Issued Receipts,[7] including spot-based Commodity-Based Trust Shares, on the basis of whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size related to the underlying commodity to be held.[8] Prior orders from the Commission have pointed out that in every prior approval order for Commodity-Based Trust Shares, there has been a derivatives market that represents the regulated market of significant size, generally a Commodity Futures Trading Commission (the ''CFTC'') regulated futures market.[9]

[4] The Commission approved BZX Rule 14.11(e)(4) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[5] Any of the statements or representations regarding the index composition, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, intraday indicative values, and Verified Intraday Indicative Values (as applicable), or the applicability of Exchange listing rules specified in any filing to list a series of Other Securities (collectively, ''Continued Listing Representations'') shall constitute continued listing requirements for the securities listed on the Exchange.

[6] *See* Form S–1 Registration Statement filed on November 29, 2023 (Registration No. 333–275781). The Registration Statement is not yet effective, and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[7] *See* Exchange Rule 14.11(f)(1).

[8] *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018). This proposal was subsequently disapproved by the Commission. *See* Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (August 1, 2018) (the ''Winklevoss Order'').

[9] *See* streetTRACKS Gold Shares, Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22) (the ''First Gold Approval Order''); iShares COMEX Gold Trust, Exchange Act Release No. 51058 (Jan. 19, 2005), 70 FR 3749, 3751, 3754–55 (Jan. 26, 2005) (SR–Amex–2004–38); iShares Silver Trust, Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Mar. 24, 2006) (SR–Amex–2005–072); ETFS Gold Trust, Exchange Act Release No. 59895 (May 8, 2009), 74 FR 22993, 22994–95, 22998, 23000 (May 15, 2009) (SR–NYSEArca–2009–40); ETFS Silver Trust, Exchange Act Release No. 59781 (Apr. 17, 2009), 74 FR 18771, 18772, 18775–77 (Apr. 24, 2009) (SR–NYSEArca–2009–28); ETFS Palladium Trust, Exchange Act Release No. 61220 (Dec. 22, 2009), 74 FR 68895, 68896 (Dec. 29, 2009) (SR–NYSEArca–2009–94) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant palladium futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60971 (Nov. 9, 2009), 74 FR 59283, 59285–86, 59291 (Nov. 17, 2009)); ETFS Platinum Trust, Exchange Act Release No. 61219 (Dec. 22, 2009), 74 FR 68886, 68887–88 (Dec. 29, 2009) (SR–NYSEArca–2009–95) (notice of proposed rule change included NYSE Arca's representation that ''[t]he most significant platinum futures exchanges are the NYMEX and the Tokyo Commodity Exchange,'' that ''NYMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which NYMEX is a member, Exchange Act Release No. 60970 (Nov. 9, 2009), 74 FR 59319, 59321, 59327 (Nov. 17, 2009)); Sprott Physical Gold Trust, Exchange Act Release No. 61496 (Feb. 4, 2010), 75 FR 6758, 6760 (Feb. 10, 2010) (SR–NYSEArca–2009–113) (notice of proposed rule change included NYSE Arca's representation that the COMEX is one of the ''major world gold markets,'' that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' and that NYMEX, of which COMEX is a division, is a member of the Intermarket Surveillance Group, Exchange Act Release No. 61236 (Dec. 23, 2009), 75 FR 170, 171, 174 (Jan. 4, 2010)); Sprott Physical Silver Trust, Exchange Act Release No. 63043 (Oct. 5, 2010), 75 FR 62615, 62616, 62619, 62621 (Oct. 12, 2010) (SR–NYSEArca–2010–84); ETFS Precious Metals Basket Trust, Exchange Act Release No. 62692 (Aug. 11, 2010), 75 FR 50789, 50790 (Aug. 17, 2010) (SR–NYSEArca–2010–56) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold, silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62402 (Jun. 29, 2010), 75 FR 39292, 39295, 39298 (July 8, 2010)); ETFS White Metals Basket Trust, Exchange Act Release No. 62875 (Sept. 9, 2010), 75 FR 56156, 56158 (Sept. 15, 2010) (SR–NYSEArca–2010–71) (notice of proposed rule change included NYSE Arca's representation that ''the most significant silver, platinum and palladium futures exchanges are the COMEX and the TOCOM'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 62620 (July 30, 2010), 75 FR 47655, 47657, 47660 (Aug. 6, 2010)); ETFS Asian Gold Trust, Exchange Act Release No. 63464 (Dec. 8, 2010), 75 FR 77926, 77928 (Dec. 14, 2010) (SR–NYSEArca–2010–95) (notice of proposed rule change included NYSE Arca's representation that ''the most significant gold futures exchanges are the COMEX and the Tokyo Commodity Exchange,'' that ''COMEX is the largest exchange in the world for trading precious metals futures and options,'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 63267 (Nov. 8, 2010), 75 FR 69494, 69496, 69500–01 (Nov. 12, 2010)); Sprott Physical Platinum and Palladium Trust, Exchange Act Release No. 68430 (Dec. 13, 2012), 77 FR 75239, 75240–41 (Dec. 19, 2012) (SR–NYSEArca–2012–111) (notice of proposed rule change included NYSE Arca's representation that ''[f]utures on platinum and palladium are traded on two major exchanges: The New York Mercantile Exchange . . . and Tokyo Commodities Exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, Exchange Act Release No. 68101 (Oct. 24, 2012), 77 FR 65732, 65733, 65739 (Oct. 30, 2012)); APMEX Physical—1 oz. Gold Redeemable Trust, Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817, 27818 (May 11, 2012) (SR–NYSEArca–2012–18) (notice of proposed rule change included NYSE Arca's representation that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' of which COMEX is a member, and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 66627 (Mar. 20, 2012), 77 FR 17539, 17542–43, 17547 (Mar. 26, 2012)); JPM XF Physical Copper Trust, Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75472, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28); iShares Copper Trust, Exchange Act Release No. 68973 (Feb. 22, 2013), 78 FR 13726, 13727, 13729–30, 13739–40 (Feb. 28, 2013) (SR–NYSEArca–2012–66); First Trust Gold Trust, Exchange Act Release No. 70195 (Aug. 14, 2013), 78 FR 51239, 51240 (Aug. 20, 2013) (SR–NYSEArca–2013–61) (notice of proposed rule change included NYSE Arca's representation that FINRA, on behalf of the exchange, may obtain trading information regarding gold futures and options on gold futures from members of the Intermarket Surveillance Group, including COMEX, or from markets ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' and that gold futures are traded on COMEX and the Tokyo Commodity Exchange, with a cross-reference to the proposed rule change to list and trade shares of the ETFS Gold Trust, in which NYSE Arca represented that COMEX is one of the ''major world gold markets,'' Exchange Act Release No. 69847 (June 25, 2013), 78 FR 39399, 39400, 39405 (July 1, 2013)); Merk Gold Trust, Exchange Act Release No. 71378 (Jan. 23, 2014), 79 FR 4786, 4786–87 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (notice of proposed rule change included NYSE

Continued

Further to this point, the Commission's prior orders have noted that the spot commodities and currency markets for which it has previously approved spot exchange-traded products (''ETPs'') are generally unregulated and that the Commission relied on the underlying futures market as the regulated market of significant size that formed the basis for approving the series of Currency [10] and Commodity-Based Trust Shares, including gold, silver, platinum, palladium, copper, and other commodities and currencies. The Commission specifically noted in the Winklevoss Order that the First Gold Approval Order ''was based on an assumption that the currency market and the spot gold market were largely unregulated.'' [11]

As such, the regulated market of significant size test does not require that the spot bitcoin market be regulated in order for the Commission to approve this proposal, and precedent makes clear that an underlying market for a spot commodity or currency being a regulated market would actually be an exception to the norm. These largely unregulated currency and commodity markets do not provide the same protections as the markets that are subject to the Commission's oversight, but the Commission has consistently looked to surveillance sharing agreements with the underlying futures market in order to determine whether such products were consistent with the Act. With this in mind, the Chicago Mercantile Exchange (''CME'') bitcoin futures (''Bitcoin Futures'') market is the proper market to consider in determining whether there is a related regulated market of significant size.

Further to this point, the Exchange notes that the Commission has approved proposals related to the listing and trading of funds that would primarily hold CME Bitcoin Futures that are registered under the Securities Act of 1933.[12] In the Teucrium Approval, the Commission found the CME Bitcoin Futures market to be a regulated market of significant size as it relates to CME Bitcoin Futures; a position that represents a departure from prior disapproval orders for ETPs that would hold actual bitcoin instead of derivatives contracts (''Spot Bitcoin ETPs'') that use the exact same pricing methodology as the CME Bitcoin Futures. In the recently decided Grayscale Investments, LLC v Securities and Exchange Commission,[13] however, the court addressed this conflict by finding that the SEC had failed to provide a coherent explanation as to why it had approved the Bitcoin Futures ETPs while disapproving the proposal to list and trade shares of the Grayscale Bitcoin Trust and vacating the disapproval order.[14] As further discussed below, both the Exchange and the Sponsor believe that this proposal and the included analysis are sufficient to establish that the CME Bitcoin Futures market represents a regulated market of significant size as it relates both to the CME Bitcoin Futures market and to the spot bitcoin market and that this proposal should be approved, consistent with the Teucrium precedent and in view of the court's findings relating to the Grayscale Order.

Finally, as discussed in greater detail below, by using professional custodians and other service providers, the Trust provides investors interested in exposure to bitcoin via the securities markets with important protections that are not always available to investors that invest directly in bitcoin, including protection against counterparty insolvency, cyber attacks, and other risks. For example, an exchange-traded vehicle such as the Trust, which will be subject to the registration and periodic reporting requirements of the 1933 Act and the Exchange Act, would offer U.S. investors an alternative to directing their bitcoin investments into loosely regulated offshore vehicles (including loosely regulated centralized exchanges that have since faced bankruptcy proceedings or other insolvencies).

Background

Bitcoin is a digital asset based on the decentralized, open source protocol of the peer-to-peer computer network launched in 2009 that governs the creation, movement, and ownership of bitcoin and hosts the public ledger, or ''blockchain,'' on which all bitcoin transactions are recorded (the ''Bitcoin Network'' or ''Bitcoin''). The decentralized nature of the Bitcoin Network allows parties to transact directly with one another based on cryptographic proof instead of relying on a trusted third party. The protocol also lays out the rate of issuance of new bitcoin within the Bitcoin Network, a rate that is reduced by half approximately every four years with an eventual hard cap of 21 million. It's generally understood that the combination of these two features—a systemic hard cap of 21 million bitcoin and the ability to transact trustlessly with anyone connected to the Bitcoin Network—gives bitcoin its value. The first rule filing proposing to list an ETP to provide exposure to bitcoin in the U.S. was submitted by the Exchange on June 30, 2016.[15] At that time, blockchain technology, and digital assets that utilized it, were relatively new to the broader public. The market capitalization of all bitcoin in existence at that time was approximately $10 billion. No registered offering of digital asset securities or shares in an investment vehicle with exposure to bitcoin or any other cryptocurrency had yet been conducted, and the regulated infrastructure for conducting a digital asset securities offering had not begun to develop.[16] Similarly, regulated U.S. Bitcoin Futures contracts did not exist. The CFTC had determined that bitcoin is a commodity,[17] but had not engaged in significant enforcement actions in the space. The New York Department of Financial Services (''NYDFS'') adopted its final BitLicense regulatory framework in 2015, but had only approved four entities to engage in activities relating to virtual currencies (whether through granting a BitLicense or a limited-purpose trust charter) as of June 30, 2016.[18] While the first over-the-

Arca's representation that ''COMEX is the largest gold futures and options exchange'' and that NYSE Arca ''may obtain trading information via the Intermarket Surveillance Group,'' including with respect to transactions occurring on COMEX pursuant to CME and NYMEX's membership, or from exchanges ''with which [NYSE Arca] has in place a comprehensive surveillance sharing agreement,'' Exchange Act Release No. 71038 (Dec. 11, 2013), 78 FR 76367, 76369, 76374 (Dec. 17, 2013)); Long Dollar Gold Trust, Exchange Act Release No. 79518 (Dec. 9, 2016), 81 FR 90876, 90881, 90886, 90888 (Dec. 15, 2016) (SR–NYSEArca–2016–84).

[10] *See* Exchange Rule 14.11(e)(5).

[11] *See* Winklevoss Order at 37592.

[12] *See* Exchange Act Release No. 94620 (April 6, 2022), 87 FR 21676 (April 12, 2022) (the ''Teucrium Approval'') and 94853 (May 5, 2022) (collectively, with the Teucrium Approval, the ''Bitcoin Futures Approvals'').

[13] *Grayscale Investments, LLC* v. *Securities and Exchange Commission,* et al., Case No. 22–1142 (the ''Grayscale Order'').

[14] *Id.*

[15] *See* Winklevoss Order.

[16] Digital assets that are securities under U.S. law are referred to throughout this proposal as ''digital asset securities.'' All other digital assets, including bitcoin, are referred to interchangeably as ''cryptocurrencies'' or ''virtual currencies.'' The term ''digital assets'' refers to all digital assets, including both digital asset securities and cryptocurrencies, together.

[17] *See* ''In the Matter of Coinflip, Inc.'' (''Coinflip'') (CFTC Docket 15–29 (September 17, 2015)) (order instituting proceedings pursuant to Sections 6(c) and 6(d) of the CEA, making findings and imposing remedial sanctions), in which the CFTC stated: ''Section 1a(9) of the CEA defines 'commodity' to include, among other things, 'all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.' 7 U.S.C. 1a(9). The definition of a 'commodity' is broad. *See, e.g., Board of Trade of City of Chicago* v. *SEC,* 677 F. 2d 1137, 1142 (7th Cir. 1982). Bitcoin and other virtual currencies are encompassed in the definition and properly defined as commodities.''

[18] A list of virtual currency businesses that are entities regulated by the NYDFS is available on the

counter bitcoin fund launched in 2013, public trading was limited and the fund had only $60 million in assets.[19] There were very few, if any, traditional financial institutions engaged in the space, whether through investment or providing services to digital asset companies. In January 2018, the staff of the Commission noted in a letter to the Investment Company Institute (''ICI'') and Securities Industry and Financial Markets Association (''SIFMA'') that it was not aware, at that time, of a single custodian providing fund custodial services for digital assets.[20] The digital assets financial ecosystem, including bitcoin, has progressed significantly in the intervening years. The development of a regulated market for digital asset securities has significantly evolved, with market participants having conducted registered public offerings of both digital asset securities [21] and shares in investment vehicles holding Bitcoin Futures.[22] Additionally, licensed and regulated service providers have emerged to provide fund custodial services for digital assets, among other services, including the bitcoin Custodian. For example, in February 2023, the Commission proposed to amend Rule 206(4)–2 under the Advisers Act of 1940 (the ''custody rule'') to expand the scope beyond client funds and securities to include all crypto assets, among other assets; [23] in May 2021, the staff of the Commission released a statement permitting open-end mutual funds to invest in cash-settled Bitcoin Futures; in December 2020, the Commission adopted a conditional no-action position permitting certain special purpose broker-dealers to custody digital asset securities under Rule 15c3–3 under the Exchange Act (the ''Custody Statement''); [24] in September 2020, the staff of the Commission released a no-action letter permitting certain broker-dealers to operate a non-custodial Alternative Trading System (''ATS'') for digital asset securities, subject to specified conditions; [25] in October 2019, the staff of the Commission granted temporary relief from the clearing agency registration requirement to an entity seeking to establish a securities clearance and settlement system based on distributed ledger technology,[26] and multiple transfer agents who provide services for digital asset securities registered with the Commission.[27]

Outside the Commission's purview, the regulatory landscape has also changed significantly since 2016, and cryptocurrency markets have grown and evolved as well. The market for bitcoin is approximately 100 times larger, having at one point reached a market capitalization of over $1 trillion.[28] According to the CME Bitcoin Futures Report, from February 13, 2023 through March 27, 2023, CFTC regulated Bitcoin Futures represented between $750 million and $3.2 billion in notional trading volume on CME Bitcoin Futures on a daily basis.[29] Open interest was over $1.4 billion for the entirety of the period and at one point was over $2 billion.[30] ETPs that primarily hold CME Bitcoin Futures have raised over $1 billion dollars in assets. The CFTC has exercised its regulatory jurisdiction in bringing a number of enforcement actions related to bitcoin and against trading platforms that offer cryptocurrency trading.[31] As of February 14, 2023, the NYDFS has granted no fewer than thirty-four BitLicenses,[32] including to established public payment companies like PayPal Holdings, Inc. and Square, Inc., and limited purpose trust charters to entities providing cryptocurrency custody services. In addition, the Treasury's Office of Foreign Assets Control (''OFAC'') has brought enforcement actions over apparent violations of applicable sanctions laws in connection with the provision of wallet management services for digital assets.[33]

In addition to the regulatory developments laid out above, more traditional financial market participants have become more active in cryptocurrency trading and investment activity: large insurance companies, asset managers, university endowments, pension funds, and even historically bitcoin skeptical fund managers have allocated to bitcoin investments. As noted in the Financial Stability Oversight Council (''FSOC'') report on Digital Asset Financial Stability Risks and Regulation, ''[i]ndustry surveys suggest that the scale of these investments grew quickly during the

NYDFS website. *See https://www.dfs.ny.gov/apps_and_licensing/virtual_currency_businesses/regulated_entities.*

[19] Data as of March 31, 2016 according to publicly available filings. *See* Bitcoin Investment Trust Form S–1, dated May 27, 2016, available: *https://www.sec.gov/Archives/edgar/data/1588489/000095012316017801/filename1.htm.*

[20] *See* letter from Dalia Blass, Director, Division of Investment Management, U.S. Securities and Exchange Commission to Paul Schott Stevens, President & CEO, Investment Company Institute and Timothy W. Cameron, Asset Management Group—Head, Securities Industry and Financial Markets Association (January 18, 2018), *available at https://www.sec.gov/divisions/investment/noaction/2018/cryptocurrency-011818.htm.*

[21] *See* Prospectus supplement filed pursuant to Rule 424(b)(1) for INX Tokens (Registration No. 333–233363), *available at: https://www.sec.gov/Archives/edgar/data/1725882/000121390020023202/ea125858-424b1_inxlimited.htm.*

[22] *See* Prospectus filed by Stone Ridge Trust VI on behalf of NYDIG Bitcoin Strategy Trust Registration, *available at: https://www.sec.gov/Archives/edgar/data/1764894/000119312519309942/d693146d497.htm.*

[23] *See* Investment Advisers Act Release No. 6240 88 FR 14672 (March 9, 2023) (Safeguarding Advisory Client Assets).

[24] *See* Securities Exchange Act Release No. 90788, 86 FR 11627 (February 26, 2021) (File Number S7–25–20) (Custody of Digital Asset Securities by Special Purpose Broker-Dealers).

[25] *See* letter from Elizabeth Baird, Deputy Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Kris Dailey, Vice President, Risk Oversight & Operational Regulation, Financial Industry Regulatory Authority (September 25, 2020), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2020/finra-ats-role-in-settlement-of-digital-asset-security-trades-09252020.pdf.*

[26] *See* letter from Jeffrey S. Mooney, Associate Director, Division of Trading and Markets, U.S. Securities and Exchange Commission to Charles G. Cascarilla & Daniel M. Burstein, Paxos Trust Company, LLC (October 28, 2019), *available at: https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf.*

[27] *See, e.g.,* Form TA–1/A filed by Tokensoft Transfer Agent LLC (CIK: 0001794142) on January 8, 2021, *available at: https://www.sec.gov/Archives/edgar/data/1794142/000179414219000001/xslFTA1X01/primary_doc.xml.*

[28] As of December 1, 2021, the total market capitalization of all bitcoin in circulation was approximately $1.08 trillion.

[29] Data sourced from the CME Bitcoin Futures Report: 30 March 2023, *available at: https://www.cmegroup.com/markets/cryptocurrencies/bitcoin/bitcoin.volume.htm.*

[30] See, *e.g.,* Id.

[31] The CFTC's annual report for Fiscal Year 2022 (which ended on September 30, 2022) noted that the CFTC completed the fiscal year with 18 enforcement filings related to digital assets. ''Digital asset actions included manipulation, a $1.7 billion fraudulent scheme, and a decentralized autonomous organization (DAO) failing to register as a SEF or FCM or to seek DCM designation.'' *See* CFTC FY 2022 Agency Financial Report, *available at: https://www.cftc.gov/media/7941/2022afr/download.* Additionally, the CFTC filed on March 27, 2023, a civil enforcement action against the owner/operators of the Binance centralized digital asset trading platform, which is one of the largest bitcoin derivative exchanges. *See* CFTC Release No. 8680–23 (March 27, 2023), *available at: https://www.cftc.gov/PressRoom/PressReleases/8680-23.*

[32] *See https://www.dfs.ny.gov/virtual_currency_businesses.*

[33] *See* U.S. Department of the Treasury Enforcement Release: ''OFAC Enters Into $98,830 Settlement with BitGo, Inc. for Apparent Violations of Multiple Sanctions Programs Related to Digital Currency Transactions'' (December 30, 2020) *available at: https://home.treasury.gov/system/files/126/20201230_bitgo.pdf. See also* U.S. Department of the Treasury Enforcement Release: ''Treasury Announces Two Enforcement Actions for over $24M and $29M Against Virtual Currency Exchange, Bittrex, Inc.'' (October 11, 2022) *available at: https://home.treasury.gov/news/press-releases/jy1006. See also* U.S. Department of Treasure Enforcement Release ''OFAC Settles with Virtual Currency Exchange Kraken for $362,158.70 Related to Apparent Violations of the Iranian Transactions and Sanctions Regulations'' (November 28, 2022) *available at: https://home.treasury.gov/system/files/126/20221128_kraken.pdf.*

boom in crypto-asset markets through late 2021. In June 2022, PwC estimated that the number of crypto-specialist hedge funds was more than 300 globally, with $4.1 billion in assets under management. In addition, in a survey PwC found that 38 percent of surveyed traditional hedge funds were currently investing in 'digital assets,' compared to 21 percent the year prior.'' [34] The largest over-the-counter bitcoin fund previously filed a Form 10 registration statement, which the staff of the Commission reviewed and which took effect automatically, and is now a reporting company.[35] Established U.S. exchange-traded companies like Tesla, Inc., MicroStrategy Incorporated, and Square, Inc., among others, have announced substantial investments in bitcoin in amounts as large as $1.5 billion (Tesla) and $425 million (MicroStrategy). The foregoing examples demonstrate that bitcoin has gained mainstream usage and recognition across the U.S. market.

Despite these developments, access for U.S. retail investors to gain exposure to bitcoin via a transparent and U.S. regulated, U.S. exchange-traded vehicle remains limited. Instead current options include: (i) facing the counter-party risk, legal uncertainty, technical risk, and complexity associated with accessing spot bitcoin; (ii) over-the-counter bitcoin funds (''OTC Bitcoin Trusts'') with high management fees and potentially volatile premiums and discounts; [36] (iii) purchasing shares of operating companies that they believe will provide proxy exposure to bitcoin with limited disclosure about the associated risks; [37] or (iv) purchasing Bitcoin Futures exchange-traded funds (''ETFs''), as defined below, which represent a sub-optimal structure for long-term investors that will cost them significant amounts of money every year compared to Spot Bitcoin ETPs, as further discussed below. Meanwhile, investors in many other countries, including Canada and Brazil, are able to use more traditional exchange listed and traded products (including ETFs holding physical bitcoin) to gain exposure to bitcoin. Similarly, investors in Switzerland and across Europe have access to ETPs which trade on regulated exchanges and provide exposure to a broad array of spot crypto assets. U.S. investors, by contrast, are left with fewer and more risky means of getting bitcoin exposure, as described above.[38]

To this point, the lack of a Spot Bitcoin ETP exposes U.S. investor assets to significant risk because investors that would otherwise seek crypto asset exposure through a Spot Bitcoin ETP are forced to find alternative exposure through generally riskier means. For instance, many U.S. investors that held their digital assets in accounts at FTX,[39] Celsius Network LLC,[40] BlockFi Inc.[41] and Voyager Digital Holdings, Inc.[42] have become unsecured creditors in the insolvencies of those entities. If a Spot Bitcoin ETP was available, it is likely that at least a portion of the billions of dollars tied up in those proceedings would still reside in the brokerage accounts of U.S. investors, having instead been invested in a transparent, regulated, and well-understood structure—a Spot Bitcoin ETP. To this point, approval of a Spot Bitcoin ETP would represent a major win for the protection of U.S. investors in the crypto asset space. As further described below, the Trust, like all other series of Commodity-Based Trust Shares, is designed to protect investors against the risk of losses through fraud and insolvency that arise by holding bitcoin, on centralized platforms.

Additionally, investors in other countries, specifically Canada, generally pay lower fees than U.S. retail investors that invest in OTC Bitcoin Trusts due to the fee pressure that results from increased competition among available bitcoin investment options. Without an approved and regulated Spot Bitcoin ETP in the U.S. as a viable alternative, U.S. investors could seek to purchase shares of non-U.S. bitcoin vehicles in order to get access to bitcoin exposure. Given the separate regulatory regime and the potential difficulties associated with any international litigation, such an arrangement would create more risk exposure for U.S. investors than they would otherwise have with a U.S. exchange listed ETP. In addition to the benefits to U.S. investors articulated throughout this proposal, approving this proposal (and others like it) would provide U.S. ETFs and mutual funds with a U.S.-listed and regulated product to provide such access rather than relying on either more expensive, riskier U.S. based products or products listed and primarily regulated in other countries.

Bitcoin Futures ETFs

The Exchange and Sponsor applaud the Commission for allowing the launch of ETFs registered under the Investment Company Act of 1940, as amended (the ''1940 Act'') and the Bitcoin Futures Approvals that provide exposure to bitcoin primarily through CME Bitcoin Futures (''Bitcoin Futures ETFs''). Allowing such products to list and trade is a productive first step in providing U.S. investors and traders with transparent, exchange-listed tools for expressing an investment view on bitcoin. The Bitcoin Futures Approvals,

[34] *See* the FSOC ''Report on Digital Asset Financial Stability Risks and Regulation 2022'' (October 3, 2022) (at footnote 26) at *https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf.*

[35] *See* Letter from Division of Corporation Finance, Office of Real Estate & Construction to Barry E. Silbert, Chief Executive Officer, Grayscale Bitcoin Trust (January 31, 2020) *https://www.sec.gov/Archives/edgar/data/1588489/000000000020000953/filename1.pdf.*

[36] The premium and discount for OTC Bitcoin Trusts is known to move rapidly. For example, over the period of 12/21/20 to 1/21/21, the premium for the largest OTC Bitcoin Trust went from 40.18% to 2.79%. While the price of bitcoin appreciated significantly during this period and NAV per share increased by 41.25%, the price per share increased by only 3.58%. This means that investors are buying shares of a fund that experiences significant volatility in its premium and discount outside of the fluctuations in price of the underlying asset. Even operating within the normal premium and discount range, it's possible for an investor to buy shares of an OTC Bitcoin Trust only to have those shares quickly lose 10% or more in dollar value excluding any movement of the price of bitcoin. That is to say—the price of bitcoin could have stayed exactly the same from market close on one day to market open the next, yet the value of the shares held by the investor decreased only because of the fluctuation of the premium. As more investment vehicles, including mutual funds and ETFs, seek to gain exposure to bitcoin, the easiest option for a buy and hold strategy for such vehicles is often an OTC Bitcoin Trust, meaning that even investors that do not directly buy OTC Bitcoin Trusts can be disadvantaged by extreme premiums (or discounts) and premium/discount volatility.

[37] A number of operating companies engaged in unrelated businesses—such as Tesla (a car manufacturer) and MicroStrategy (an enterprise software company)—have announced investments as large as $5.3 billion in bitcoin. Without access to bitcoin exchange-traded products, retail investors seeking investment exposure to bitcoin may end up purchasing shares in these companies in order to gain the exposure to bitcoin that they seek. In fact, mainstream financial news networks have written a number of articles providing investors with guidance for obtaining bitcoin exposure through publicly traded companies (such as MicroStrategy, Tesla, and bitcoin mining companies, among others) instead of dealing with the complications associated with buying spot bitcoin in the absence of a Bitcoin ETP. *See e.g.,* ''7 public companies with exposure to bitcoin'' (February 8, 2021) available at: *https://finance.yahoo.com/news/7-public-companies-with-exposure-to-bitcoin-154201525.html;* and ''Want to get in the crypto trade without holding bitcoin yourself? Here are some investing ideas'' (February 19, 2021) available at: *https://www.cnbc.com/2021/02/19/ways-to-invest-in-bitcoin-without-holding-the-cryptocurrency-yourself-.html.*

[38] The Exchange notes that the list of countries above is not exhaustive and that securities regulators in a number of additional countries have either approved or otherwise allowed the listing and trading of Spot Bitcoin ETPs.

[39] *See* FTX Trading Ltd., et al., Case No. 22–11068.

[40] *See* Celsius Network LLC, et al., Case No. 22–10964.

[41] *See* BlockFi Inc., Case No. 22–19361.

[42] *See* Voyager Digital Holdings, Inc., et al., Case No. 22–10943.

however, have created a logical inconsistency in the application of the standard the Commission applies when considering Bitcoin ETP proposals.

As discussed further below, the standard applicable to Bitcoin ETPs is whether the listing exchange has in place a comprehensive surveillance sharing agreement with a regulated market of significant size in the underlying asset. Previous disapproval orders have made clear that a market that constitutes a regulated market of significant size is generally a futures and/or options market based on the underlying reference asset rather than the spot commodity markets, which are often unregulated.[43] Leaving aside the analysis of that standard until later in this proposal,[44] the Exchange believes that the following rationale the Commission applied to a Bitcoin Futures ETF should result in the Commission approving this and other Spot Bitcoin ETP proposals:

The CME ''comprehensively surveils futures market conditions and price movements on a real-time and ongoing basis in order to detect and prevent price distortions, including price distortions caused by manipulative efforts.'' Thus, the CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts, whether that attempt is made by directly trading on the CME Bitcoin Futures market or indirectly by trading outside of the CME Bitcoin Futures market. As such, when the CME shares its surveillance information with Arca, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[45]

CME Bitcoin Futures pricing is based on pricing from spot bitcoin markets. The statement from the Teucrium Approval that ''CME's surveillance can reasonably be relied upon to capture the effects on the CME Bitcoin Futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME Bitcoin Futures contracts . . . indirectly by trading outside of the CME Bitcoin Futures market,'' makes clear that the Commission believes that CME's surveillance can capture the effects of trading on the relevant spot markets on the pricing of CME Bitcoin Futures.

This was further acknowledged in the ''Grayscale lawsuit'' [46] when Judge Rao stated ''. . . the Commission in the Teucrium order recognizes that the futures prices are influenced by the spot prices, and the Commission concludes in approving futures ETPs that any fraud on the spot market can be adequately addressed by the fact that the futures market is a regulated one . . .''. The Exchange agrees with the Commission on this point and notes that the pricing mechanism applicable to the Shares is similar to that of the CME Bitcoin Futures.

In addition to potentially being more susceptible to manipulation than a Spot Bitcoin ETP, the structure of Bitcoin Futures ETFs provides negative outcomes for buy and hold investors as compared to a Spot Bitcoin ETP.[47] Specifically, the cost of rolling CME Bitcoin Futures contracts will cause the Bitcoin Futures ETFs to lag the performance of bitcoin itself and would cost U.S. investors significant amounts of money on an annual basis compared to Spot Bitcoin ETPs. Such rolling costs would not be required for Spot Bitcoin ETPs that hold bitcoin. Further, Bitcoin Futures ETFs could potentially hit CME position limits, which would force a Bitcoin Futures ETF to invest in non-futures assets for bitcoin exposure and cause potential investor confusion and lack of certainty about what such Bitcoin Futures ETFs are actually holding to try to get exposure to bitcoin, which would also materially change the risk profile associated with such an ETF. While Bitcoin Futures ETFs represent a useful trading tool, they are clearly sub-optimal as the sole exchange traded vehicle structure for U.S. investors that are looking for long-term exposure to bitcoin and could, based on the calculations above, unnecessarily cost U.S. investors significant amounts of money every year compared to Spot Bitcoin ETPs. The Exchange believes that any proposal to list and trade a Spot Bitcoin ETP should be reviewed by the Commission with this important investor protection context in mind.

Based on the foregoing, the Exchange and Sponsor believe that an objective review of the proposals to list Spot Bitcoin ETPs compared to and in view of the Bitcoin Futures ETFs and the Bitcoin Futures Approvals as well as limitations of existing approved product structures, would lead to the conclusion that Spot Bitcoin ETPs would benefit U.S. investors and should be available to U.S. investors. As such, this proposal and other comparable proposals to list and trade Spot Bitcoin ETPs should be approved by the Commission. In summary, U.S. investors lose significant amounts of money from holding Bitcoin Futures ETFs as compared to Spot Bitcoin ETPs, losses which could be prevented by the Commission approving Spot Bitcoin ETPs. Additionally, any concerns related to preventing fraudulent and manipulative acts and practices related to Spot Bitcoin ETPs would apply equally to the spot markets underlying the futures contracts held by a Bitcoin Futures ETF. Both the Exchange and Sponsor believe that the CME Bitcoin Futures market is a regulated market of significant size and that such manipulation concerns are mitigated, as described extensively below. After allowing and approving the listing and trading of Bitcoin Futures ETFs that hold primarily CME Bitcoin Futures, however, the only consistent outcome would be approving Spot Bitcoin ETPs on the basis that the CME Bitcoin Futures market is a regulated market of significant size.

Given the current landscape, approving this proposal (and others like it) and allowing Spot Bitcoin ETPs to be listed and traded alongside Bitcoin Futures ETFs would establish a consistent regulatory approach, provide U.S. investors with choice in product structures for bitcoin exposure, and offer flexibility in the means of gaining exposure to bitcoin through transparent, regulated, U.S. exchange-listed vehicles.

[43] *See* Winklevoss Order at 37593, specifically footnote 202, which includes the language from numerous approval orders for which the underlying futures markets formed the basis for approving series of ETPs that hold physical metals, including gold, silver, palladium, platinum, and precious metals more broadly; and 37600, specifically where the Commission provides that ''when the spot market is unregulated—the requirement of preventing fraudulent and manipulative acts may possibly be satisfied by showing that the ETP listing market has entered into a surveillance-sharing agreement with a regulated market of significant size in derivatives related to the underlying asset.'' As noted above, the Exchange believes that these citations are particularly helpful in making clear that the spot market for a spot commodity ETP need not be ''regulated'' in order for a spot commodity ETP to be approved by the Commission, and in fact that it's been the common historical practice of the Commission to rely on such derivatives markets as the regulated market of significant size because such spot commodities markets are largely unregulated.

[44] As further outlined below, both the Exchange and the Sponsor believe that the Bitcoin Futures market represents a regulated market of significant size and that this proposal and others like it should be approved on this basis.

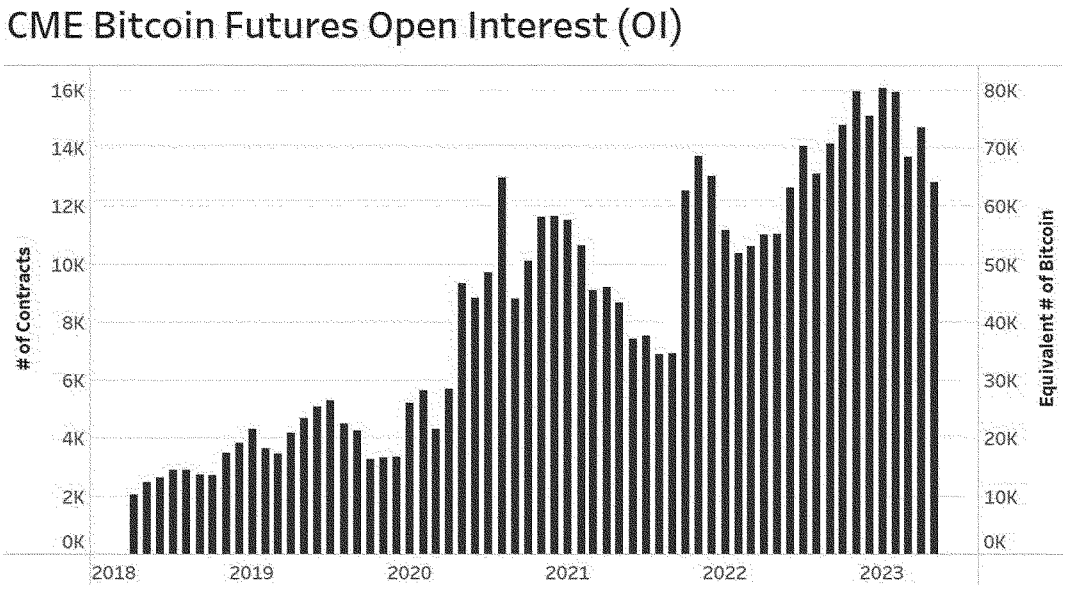
[45] *See* Teucrium Approval at 21679.

[46] *Grayscale Investments, LLC* v. *Securities and Exchange Commission,* et al., Case No. 22–1142.

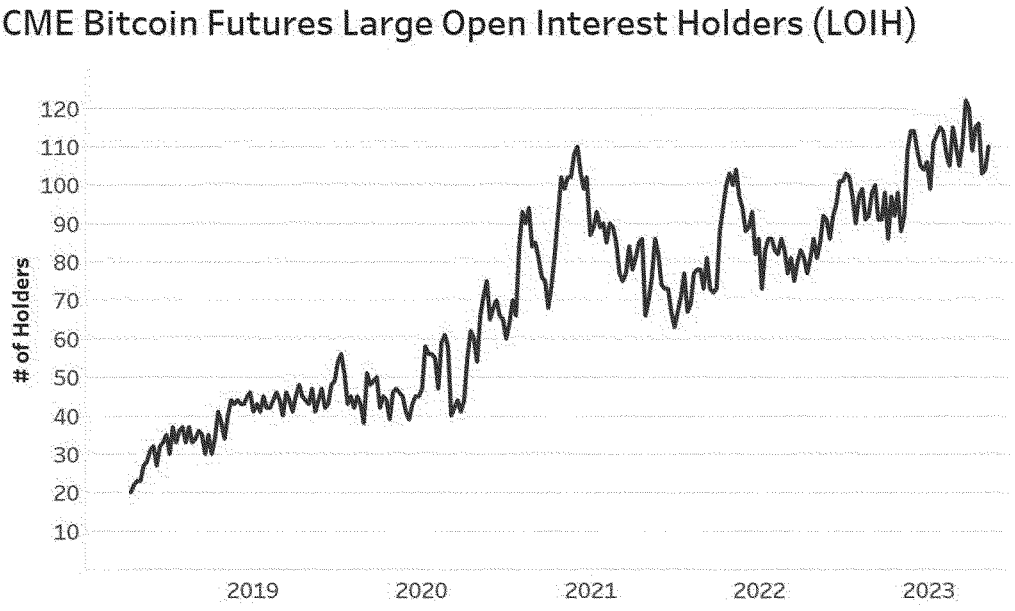
[47] *See e.g.,* ''Bitcoin ETF's Success Could Come at Trustholders' Expense,'' Wall Street Journal (October 24, 2021), available at: *https://www.wsj.com/articles/bitcoin-etfs-success-could-come-at-fundholders-expense-11635080580;* ''Physical Bitcoin ETF Prospects Accelerate,'' *ETF.com* (October 25, 2021), available at: *https://www.etf.com/sections/blog/physical-bitcoin-etf-prospects-shine?nopaging=1&__cf_chl_jschl_tk__=pmd_JsK.fjXz9eAQW9zol0qpzhXDrrlpIVdoCloLXbLjl44-1635476946-0-gqNtZGzNApCjcnBszQql.*

Bitcoin Futures

CME began offering trading in Bitcoin Futures in 2017. Each contract represents five bitcoin and is based on the CME CF Bitcoin Reference Rate.[48] The contracts trade and settle like other cash-settled commodity futures contracts. Nearly every measurable metric related to Bitcoin Futures has generally trended up since launch, although certain notional volume calculations have decreased roughly in line with the decrease in the price of bitcoin. For example, there were 143,215 Bitcoin Futures contracts traded in April 2023 (approximately $20.7 billion) compared to 193,182 ($5 billion), 104,713 ($3.9 billion), 118,714 ($42.7 billion), and 111,964 ($23.2 billion) contracts traded in April 2019, April 2020, April 2021, and April 2022, respectively.[49]



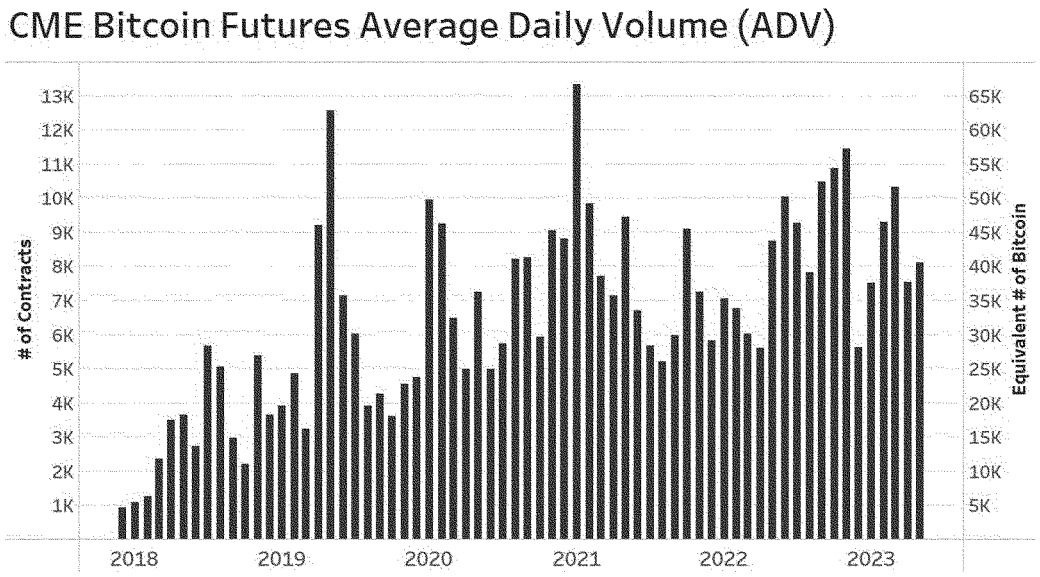
The number of large open interest holders [50] and unique accounts trading Bitcoin Futures have both increased, even in the face of heightened bitcoin price volatility.



[48] According to CME, the CME CF Bitcoin Reference Rate aggregates the trade flow of major bitcoin spot exchanges during a specific calculation window into a once-a-day reference rate of the U.S. dollar price of bitcoin. Calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. For additional information, refer to *https://www.cmegroup.com/trading/cryptocurrency-indices/cf-bitcoin-reference-rate.html?redirect=/trading/cf-bitcoin-reference-rate.html*.

[49] Source: CME, Yahoo Finance 4/30/23.

[50] A large open interest holder in Bitcoin Futures is an entity that holds at least 25 contracts, which is the equivalent of 125 bitcoin. At a price of approximately $29,268.81 per bitcoin on 4/30/2023, more than 100 firms had outstanding positions of greater than $3.65 million in Bitcoin Futures.



The Sponsor further believes that publicly available research, including research done as part of rule filings proposing to list and trade shares of Spot Bitcoin ETPs, corroborates the overall trend outlined above and supports the thesis that the Bitcoin Futures pricing leads the spot market and, thus, a person attempting to manipulate the Shares would also have to trade on that market to manipulate the ETP. Specifically, the Sponsor believes that such research indicates that Bitcoin Futures lead the bitcoin spot market in price formation.[51]

Section 6(b)(5) and the Applicable Standards

The Commission has approved numerous series of Trust Issued Receipts,[52] including Commodity-Based Trust Shares,[53] to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; [54] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place [55] with a regulated

[51] *See* Exchange Act Releases No. 94080 (January 27, 2022), 87 FR 5527 (April 12, 2022) (specifically ''Amendment No. 1 to the Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(3)(4), Commodity-Based Trust Shares''); 94982 (May 25, 2022), 87 FR 33250 (June 1, 2022); 94844 (May 4, 2022), 87 FR 28043 (May 10, 2022); and 93445 (October 28, 2021), 86 FR 60695 (November 3, 2021). *See also* Hu, Y., Hou, Y. and Oxley, L. (2019). ''What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective'' (available at: *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7481826/*). This academic research paper concludes that ''There exist no episodes where the Bitcoin spot markets dominates the price discovery processes with regard to Bitcoin futures. This points to a conclusion that the price formation originates solely in the Bitcoin futures market. We can, therefore, conclude that the Bitcoin futures markets dominate the dynamic price discovery process based upon time-varying information share measures. Overall, price discovery seems to occur in the Bitcoin futures markets rather than the underlying spot market based upon a time-varying perspective.''

[52] *See* Exchange Rule 14.11(f).

[53] Commodity-Based Trust Shares, as described in Exchange Rule 14.11(e)(4), are a type of Trust Issued Receipt.

[54] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[55] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement

Continued

market of significant size. Both the Exchange and CME are members of the intermarket surveillance group (''ISG'').[56] The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[57]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[58]

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Reference Rate) [59] would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the trading of the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant force influencing prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant daily trading volume in the Bitcoin Futures market, the size of bitcoin's market capitalization, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. As the court found in the Grayscale Order, the Exchange and the Sponsor submit that ''[b]ecause the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.''

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

The Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Trusts has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors including in connection with roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Trusts. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors to access bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in Bitcoin Futures ETFs and operating companies that represent imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Pando Asset Spot Bitcoin Trust

Donald J. Puglisi is the trustee (''Trustee''). The Bitcoin Custodian will be responsible for safekeeping of the Trust's bitcoin.

According to the Registration Statement, each Share will represent a fractional undivided beneficial interest and ownership in the Trust. The Trust's assets will consist of bitcoin held by the Bitcoin Custodian on behalf of the Trust and cash holdings, if any.

According to the Registration Statement, the Trust is neither an investment company registered under the Investment Company Act of 1940, as amended,[60] nor a commodity pool for purposes of the Commodity Exchange Act (''CEA''), and none of the Trust, the Trust or the Sponsor is subject to regulation as a commodity pool operator or a commodity trading adviser in connection with the Shares.

When the Trust sells or redeems its Shares, it will do so in cash or ''in-kind'' transactions in blocks of 5,000 Shares (a ''Creation Basket'') at the Trust's NAV. Authorized participants will deliver, or facilitate the delivery of, cash or bitcoin to the Trust's account with the Bitcoin Custodian in exchange for Shares when they purchase Shares, and the Trust, through the Bitcoin Custodian, will deliver cash or bitcoin to such authorized participants when they redeem Shares. Authorized participants may then offer Shares to the public at prices that depend on various factors, including the supply and demand for Shares, the value of the Trust's assets, and market conditions at the time of a transaction. Shareholders who buy or sell Shares during the day from their broker may do so at a premium or discount relative to the NAV of the Shares of the Trust.

Investment Objective

According to the Registration Statement and as further described

from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance-sharing agreement. *See* Securities Exchange Act Release No. 88284 (February 26, 2020), 85 FR 12595 (March 3, 2020) (SR–NYSEArca–2019–39) (the ''Wilshire Phoenix Disapproval'').

[56] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*.

[57] *See* Wilshire Phoenix Disapproval.

[58] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id*. at 37582.

[59] As further described below, the ''Index'' for the Trust is the CME CF Bitcoin Reference Rate.

[60] 15 U.S.C. 80a–1.

below, the investment objective of the Trust is to generally reflect the performance of the price of bitcoin before payment of the Trust's expenses. In seeking to achieve its investment objective, the Trust will only hold bitcoin, cash and cash equivalents. The Trust will value its Shares daily based on the value of bitcoin as reflected by the CME CF Bitcoin Reference Rate (the ''Index''), which is an independently calculated value based on an aggregation of executed trade flow of major bitcoin spot exchanges. Specifically, the Index is calculated based on certain transactions of all of its constituent bitcoin exchanges, which are currently Bitstamp, Coinbase, itBit, Kraken, Gemini, and LMAX Digital, and which may change from time to time. If the Index is not available or the Sponsor determines, in its sole discretion, that the Index should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Sponsor.

The Index

As described in the Registration Statement, the Trust will determine the bitcoin Index price and value its Shares daily based on the value of bitcoin as reflected by the Index. The Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot exchanges. The Index uses the same methodology as the CME CF Bitcoin Reference Rate (''BRR''), including utilizing the same constituent bitcoin exchanges, which is the underlying rate to determine settlement of CME Bitcoin Futures contracts, except that the Index is calculated as of 4 p.m. ET, whereas the BRR is calculated as of 4 p.m. London time. The Index is designed based on the International Organization of Securities Commissions (''IOSCO'') Principals for Financial Benchmarks. The administrator of the Index is CF Benchmarks Ltd. (the ''Index Provider'').

The Index was created to facilitate financial products based on bitcoin. It serves as a once-a-day benchmark rate of the U.S. dollar price of bitcoin (USD/BTC), calculated as of 4:00 p.m. ET. The Index aggregates the trade flow of several bitcoin exchanges, during an observation window between 3:00 p.m. and 4:00 p.m. ET into the U.S. dollar price of one bitcoin at 4:00 p.m. ET. Specifically, the Index is calculated based on the ''Relevant Transactions'' (as defined below) of all of its constituent bitcoin exchanges, which are currently Coinbase, Bitstamp, Kraken, itBit, LMAX Digital and Gemini (the ''Constituent Platforms''), as follows:

- All Relevant Transactions are added to a joint list, recording the time of execution, trade price and size for each transaction.
- The list is partitioned by timestamp into 12 equally-sized time intervals of 5 (five) minute length.
- For each partition separately, the volume-weighted median trade price is calculated from the trade prices and sizes of all Relevant Transactions, *i.e.,* across all Constituent Platforms. A volume-weighted median differs from a standard median in that a weighting factor, in this case trade size, is factored into the calculation.
- The Index is then determined by the equally-weighted average of the volume medians of all partitions.

The Index does not include any futures prices in its methodology. A ''Relevant Transaction'' is any cryptocurrency versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a Constituent Platform in the BTC/USD pair that is reported and disseminated by a Constituent Platform through its publicly available Application Programming Interface (''API'') and observed by the Index Provider.

The Sponsor believes that the use of the Index is reflective of a reasonable valuation of the average spot price of bitcoin and that resistance to manipulation is a priority aim of its design methodology. The methodology: (i) takes an observation period and divides it into equal partitions of time; (ii) then calculates the volume-weighted median of all transactions within each partition; and (iii) the value is determined from the arithmetic mean of the volume-weighted medians, equally weighted. By employing the foregoing steps, the Index thereby seeks to ensure that transactions in bitcoin conducted at outlying prices do not have an undue effect on the value of the Index, large trades or clusters of trades transacted over a short period of time will not have an undue influence on the Index value, and the effect of large trades at prices that deviate from the prevailing price are mitigated from having an undue influence on the Index value.

In addition, the Sponsor notes that an oversight function is implemented by the Index Provider in seeking to ensure that the Index is administered through codified policies for Index integrity.

Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com*.

Net Asset Value

NAV means the total assets of the Trust (which includes bitcoin and cash holdings) less total liabilities of the Trust. The Administrator will determine the NAV of the Trust on each day that the Exchange is open for regular trading, as promptly as practical after 4:00 p.m. EST. The NAV of the Trust is the aggregate value of the Trust's assets less its estimated accrued but unpaid liabilities (which include accrued expenses). In determining the Trust's NAV, the Administrator values the bitcoin held by the Trust based on the price set by the Index as of 4:00 p.m. EST. The Administrator also determines the NAV per Share.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

If the Index is not available or the Sponsor determines, in its sole discretion, that the Index should not be used, the Trust's holdings may be fair valued in accordance with the policy approved by the Sponsor.

Intraday Indicative Value

The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15 seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

Availability of Information

In addition to the price transparency of the Index, the Trust will provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust. The Trust will provide an Intraday Indicative Value (''IIV'') per Share updated every 15

seconds, as calculated by the Exchange or a third-party financial data provider during the Exchange's Regular Trading Hours (9:30 a.m. to 4:00 p.m. E.T.). The IIV will be calculated by using the prior day's closing NAV per Share as a base and updating that value during Regular Trading Hours to reflect changes in the value of the Trust's bitcoin holdings during the trading day.

The IIV disseminated during Regular Trading Hours should not be viewed as an actual real-time update of the NAV, which will be calculated only once at the end of each trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Trading Hours by one or more major market data vendors. In addition, the IIV will be available through on-line information services.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price [61] in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. Information about the Index, including key elements of how the Index is calculated, will be publicly available at *https://www.cfbenchmarks.com*.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index.

Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

Complete real-time data for the Bitcoin Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

The Bitcoin Custodian

The Bitcoin Custodian carefully considers the design of the physical, operational and cryptographic systems for secure storage of the Trust's private keys in an effort to lower the risk of loss or theft. The Bitcoin Custodian utilizes a variety of security measures to ensure that private keys necessary to transfer digital assets remain uncompromised and that the Trust maintains exclusive ownership of its assets. The Bitcoin Custodian will keep a substantial portion of the private keys associated with the Trust's bitcoin in ''cold storage'' [62] or similarly secure technology (the ''Cold Vault Balance'') The hardware, software, systems, and procedures of the Bitcoin Custodian may not be available or cost-effective for many investors to access directly Only specific individuals are authorized to participate in the custody process, and no individual acting alone will be able to access or use any of the private keys. In addition, no combination of the executive officers of the Sponsor, acting alone or together, will be able to access or use any of the private keys that hold the Trust's bitcoin.

Creation and Redemption of Shares

When the Trust sells or redeems its Shares, it will do so in cash or in-kind transactions in blocks of 5,000 Shares that are based on the quantity of bitcoin attributable to each Share of the Trust (*e.g.,* a Creation Basket) at the NAV. According to the Registration Statement, on any business day, an authorized participant may place an order to create one or more baskets. Purchase orders must be placed by 4:00 p.m. Eastern Time, or the close of regular trading on the Exchange, whichever is earlier. The day on which an order is received is considered the purchase order date. The total deposit of bitcoin required is an amount of bitcoin that is in the same proportion to the total assets of the Trust, net of accrued expenses and other liabilities, on the date the order to purchase is properly received, as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. Each night, the Sponsor will publish the amount of bitcoin that will be required in exchange for each creation order. The Administrator determines the required deposit for a given day by dividing the number of bitcoin held by the Trust as of the opening of business on that business day, adjusted for the amount of bitcoin constituting estimated accrued but unpaid fees and expenses of the Trust as of the opening of business on that business day, by the quotient of the number of Shares outstanding at the opening of business divided by the number of Shares in a Creation Basket. The procedures by which an authorized participant can redeem one or more Creation Baskets mirror the procedures for the creation of Creation Baskets.

Rule 14.11(e)(4)—Commodity-Based Trust Shares

The Shares will be subject to BZX Rule 14.11(e)(4), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange represents that, for initial and continued listing, the Trust must be in compliance with Rule 10A–3 under the Act. A minimum of 100,000 Shares will be outstanding at the commencement of listing on the Exchange. The Exchange will obtain a representation that the NAV will be calculated daily and that these values and information about the assets of the Trust will be made available to all

[61] As defined in Rule 11.23(a)(3), the term ''BZX Official Closing Price'' shall mean the price disseminated to the consolidated tape as the market center closing trade.

[62] The term ''cold storage'' refers to a safeguarding method by which the private keys corresponding to bitcoins stored on a digital wallet are removed from any computers actively connected to the internet. Cold storage of private keys may involve keeping such wallet on a non-networked computer or electronic device or storing the public key and private keys relating to the digital wallet on a storage device (for example, a USB thumb drive) or printed medium (for example, papyrus or paper) and deleting the digital wallet from all computers.

market participants at the same time. The Exchange notes that, as defined in Rule 14.11(e)(4)(C)(i), the Shares will be: (a) issued by a trust that holds a specified commodity [63] deposited with the trust; (b) issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

Upon termination of the Trust, the Shares will be removed from listing. The Trustee, Delaware Trust Company, is a trust company having substantial capital and surplus and the experience and facilities for handling corporate trust business, as required under Rule 14.11(e)(4)(E)(iv)(a) and that no change will be made to the trustee without prior notice to and approval of the Exchange. The Exchange also notes that, pursuant to Rule 14.11(e)(4)(F), neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions or delays in calculating or disseminating any underlying commodity value, the current value of the underlying commodity required to be deposited to the Trust in connection with issuance of Commodity-Based Trust Shares; resulting from any negligent act or omission by the Exchange, or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange, its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying commodity. Finally, as required in Rule 14.11(e)(4)(G), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange in a manner prescribed by the Exchange and keep current a list identifying all accounts for trading in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker shall trade in an underlying commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule. In addition to the existing obligations under Exchange rules regarding the production of books and records (see, *e.g.,* Rule 4.2), the registered Market Maker in Commodity-Based Trust Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or registered or non-registered employee affiliated with such entity for its or their own accounts for trading the underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the bitcoin underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares also will be subject to Rule 14.11(e)(4)(E)(ii), which sets forth circumstances under which trading in the Shares may be halted.

If the IIV or the value of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or the value of the Index occurs. If the interruption to the dissemination of the IIV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. BZX will allow trading in the Shares during all trading sessions on the Exchange. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in BZX Rule 11.11(a) the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01 where the price is greater than $1.00 per share or $0.0001 where the price is less than $1.00 per share. The Shares of the Trust will conform to the initial and continued listing criteria set forth in BZX Rule 14.11(e)(4).

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares.

The Exchange will communicate as needed regarding trading in the Shares and Bitcoin Futures with other markets and other entities that are members of the ISG, and the Exchange, or FINRA, on behalf of the Exchange, may obtain trading information regarding trading in

[63] For purposes of Rule 14.11(e)(4), the term commodity takes on the definition of the term as provided in the Commodity Exchange Act. As noted above, the CFTC has opined that Bitcoin is a commodity as defined in Section 1a(9) of the Commodity Exchange Act. *See* Coinflip.

the Shares and Bitcoin Futures from such markets and other entities.[64]

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin, Bitcoin Futures contracts, options on Bitcoin Futures, or any other bitcoin derivative through members acting as registered Market Makers, in connection with their proprietary or customer trades. As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (i) the procedures for the creation and redemption of Creation Baskets (and that the Shares are not individually redeemable); (ii) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (iii) how information regarding the IIV and the Trust's NAV are disseminated; (iv) the risks involved in trading the Shares outside of Regular Trading Hours[65] when an updated IIV will not be calculated or publicly disseminated; (v) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (vi) trading information. The Information Circular will also reference the fact that there is no regulated source of last sale information regarding bitcoin, that the Commission has no jurisdiction over the trading of bitcoin as a commodity, and that the CFTC has regulatory jurisdiction over the trading of Bitcoin Futures contracts and options on Bitcoin Futures contracts.

In addition, the Information Circular will advise members, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Shares. Members purchasing the Shares for resale to investors will deliver a prospectus to such investors. The Information Circular will also discuss any exemptive, no-action and interpretive relief granted by the Commission from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[66] in general and Section 6(b)(5) of the Act[67] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission has approved numerous series of Trust Issued Receipts, including Commodity-Based Trust Shares, to be listed on U.S. national securities exchanges. In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of Section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices;[68] and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act and that this filing, in conjunction with precedent filings, sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size and that, on the whole, the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by quantifiable investor protection issues that would be resolved by approving this proposal.

(i) Designed To Prevent Fraudulent and Manipulative Acts and Practices

In order to meet this standard in a proposal to list and trade a series of Commodity-Based Trust Shares, the Commission requires that an exchange demonstrate that there is a comprehensive surveillance-sharing agreement in place[69] with a regulated

[64] For a list of the current members and affiliate members of ISG, *see www.isgportal.com.*

[65] Regular Trading Hours is the time between 9:30 a.m. and 4:00 p.m. Eastern time.

[66] 15 U.S.C. 78f.

[67] 15 U.S.C. 78f(b)(5).

[68] As the Exchange has stated in a number of other public documents, it continues to believe that bitcoin is resistant to price manipulation and that ''other means to prevent fraudulent and manipulative acts and practices'' exist to justify dispensing with the requisite surveillance sharing agreement. The geographically diverse and continuous nature of bitcoin trading render it difficult and prohibitively costly to manipulate the price of bitcoin. The fragmentation across bitcoin platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of bitcoin prices through continuous trading activity challenging and impractical. To the extent that there are bitcoin exchanges engaged in or allowing wash trading or other activity intended to manipulate the price of bitcoin on other markets, such pricing does not normally impact prices on other exchange because participants will generally ignore markets with quotes that they deem non-executable. Moreover, the linkage between the bitcoin markets and the presence of arbitrageurs in those markets means that the manipulation of the price of bitcoin price on any single venue would require manipulation of the global bitcoin price in order to be effective. Arbitrageurs must have funds distributed across multiple trading platforms in order to take advantage of temporary price dislocations, thereby making it unlikely that there will be strong concentration of funds on any particular bitcoin exchange or OTC platform. As a result, the potential for manipulation on a trading platform would require overcoming the liquidity supply of such arbitrageurs who are effectively eliminating any cross-market pricing differences.

[69] As previously articulated by the Commission, ''The standard requires such surveillance-sharing agreements since ''they provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.'' The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading underlying securities for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules. The hallmarks of a surveillance-sharing agreement are that the agreement provides

market of significant size. Both the Exchange and CME are members of ISG. The only remaining issue to be addressed is whether the Bitcoin Futures market constitutes a market of significant size, which both the Exchange and the Sponsor believe that it does. The terms ''significant market'' and ''market of significant size'' include a market (or group of markets) as to which: (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to manipulate the ETP, so that a surveillance-sharing agreement would assist the listing exchange in detecting and deterring misconduct; and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[70]

The Commission has also recognized that the ''regulated market of significant size'' standard is not the only means for satisfying Section 6(b)(5) of the act, specifically providing that a listing exchange could demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement.[71]

(a) Manipulation of the ETP

According to the research and analysis presented above, the Bitcoin Futures market is the leading market for bitcoin price formation. Where Bitcoin Futures lead the price in the spot market such that a potential manipulator of the bitcoin spot market (beyond just the constituents of the Index) would have to participate in the Bitcoin Futures market, it follows that a potential manipulator of the Shares would similarly have to transact in the Bitcoin Futures market because the Index is based on spot prices. As such, the Exchange believes that part (a) of the significant market test outlined above is satisfied and that common membership in ISG between the Exchange and CME would assist the listing exchange in detecting and deterring misconduct in the Shares.

(b) Predominant Influence on Prices in Spot and Bitcoin Futures

The Exchange and Sponsor also believe that trading in the Shares would not be the predominant influence on prices in the Bitcoin Futures market or spot market for a number of reasons, including the significant daily trading volume in the Bitcoin Futures market, the size of bitcoin's market capitalization, and the significant liquidity available in the spot market. In addition to the Bitcoin Futures market data points cited above, the spot market for bitcoin is also very liquid. As the court found in the Grayscale Order, the Exchange and the Sponsor submit that ''[b]ecause the spot market is deeper and more liquid than the futures market, manipulation should be more difficult, not less.''

(c) Other Means To Prevent Fraudulent and Manipulative Acts and Practices

As noted above, the Commission also permits a listing exchange to demonstrate that ''other means to prevent fraudulent and manipulative acts and practices'' are sufficient to justify dispensing with the requisite surveillance-sharing agreement. The Exchange and Sponsor believe that such conditions are present in this case, in addition to the existence of a surveillance sharing agreement that meets the Commission's previously articulated standards.

(ii) Designed To Protect Investors and the Public Interest

The Exchange believes that the proposal is designed to protect investors and the public interest. Over the past several years, U.S. investor exposure to bitcoin through OTC Bitcoin Trusts has grown into the tens of billions of dollars, including through Bitcoin Futures ETFs. With that growth, so too has grown the quantifiable investor protection issues to U.S. investors including in connection with roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Trusts. The Exchange believes that the concerns related to the prevention of fraudulent and manipulative acts and practices have been sufficiently addressed for this proposal to be consistent with the Act and, to the extent that the Commission disagrees with that assertion, such concerns are now outweighed by investor protection concerns. As such, the Exchange believes that approving this proposal (and comparable proposals) provides the Commission with the opportunity to allow U.S. investors to access bitcoin in a regulated and transparent exchange-traded vehicle that would act to limit risk and benefit U.S. investors by: (i) reducing premium and discount volatility as compared to OTC investment vehicles; (ii) increasing competitive pressure on management fees resulting in fee compression/reductions; (iii) reducing risks and costs as compared to those associated with investing in Bitcoin Futures ETFs and operating companies that represent imperfect proxies for bitcoin exposure; and (iv) providing an alternative to custodying spot bitcoin.

Commodity-Based Trust Shares

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed on the Exchange pursuant to the initial and continued listing criteria in Exchange Rule 14.11(e)(4). The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Commodity-Based Trust Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust or the Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust or the Shares are not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12. The Exchange may obtain information regarding trading in the Shares and listed bitcoin derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

Availability of Information

The Exchange also believes that the proposal promotes market transparency in that a large amount of information is currently available about bitcoin and will be available regarding the Trust and the Shares. In addition to the price transparency of the Index, the Trust will

for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.'' The Commission has historically held that joint membership in the ISG constitutes such a surveillance sharing agreement. *See* Wilshire Phoenix Disapproval).

[70] *Id.*

[71] *See* Winklevoss Order at 37580. The Commission has also specifically noted that it ''is not applying a 'cannot be manipulated' standard; instead, the Commission is examining whether the proposal meets the requirements of the Exchange Act and, pursuant to its Rules of Practice, places the burden on the listing exchange to demonstrate the validity of its contentions and to establish that the requirements of the Exchange Act have been met.'' *Id.* at 37582.

provide information regarding the Trust's bitcoin holdings as well as additional data regarding the Trust.

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the current NAV per Share daily and the prior business day's NAV and the reported closing price; (b) the BZX Official Closing Price in relation to the NAV as of the time the NAV is calculated and a calculation of the premium or discount of such price against such NAV; (c) data in chart form displaying the frequency distribution of discounts and premiums of the Official Closing Price against the NAV, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (d) the prospectus; and (e) other applicable quantitative information. The Trust will also disseminate the Trust's holdings on a daily basis on the Trust's website. The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours. The aforementioned information will be published as of the close of business available on the Trust's website *www.pandoasset.com*.

The price of bitcoin will be made available by one or more major market data vendors, updated at least every 15 seconds during Regular Trading Hours.

The NAV for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA'').

As noted above, the Index is calculated daily and aggregates the notional value of bitcoin trading activity across major bitcoin spot exchanges. Index data and the description of the Index are based on information made publicly available by the Index Provider on its website at *https://www.cfbenchmarks.com*.

Quotation and last sale information for bitcoin is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters, as well as the Index. Information relating to trading, including price and volume information, in bitcoin is available from major market data vendors and from the exchanges on which bitcoin are traded. Depth of book information is also available from bitcoin exchanges. The normal trading hours for bitcoin exchanges are 24 hours per day, 365 days per year.

Complete real-time data for the Bitcoin Futures Contracts will be available by subscription through on-line information services. ICE Futures U.S. and CME also provide delayed futures and options on futures information on current and past trading sessions and market news free of charge on their respective websites. The specific contract specifications for Bitcoin Futures Contracts will also be available on such websites, as well as other financial informational sources.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

In sum, the Exchange believes that this proposal is consistent with the requirements of Section 6(b)(5) of the Act, that this filing sufficiently demonstrates that the CME Bitcoin Futures market represents a regulated market of significant size, and that on the whole the manipulation concerns previously articulated by the Commission are sufficiently mitigated to the point that they are outweighed by investor protection issues that would be resolved by approving this proposal.

The Exchange believes that the proposal is, in particular, designed to protect investors and the public interest. The investor protection issues for U.S. investors has grown significantly over the last several years, through roll costs for Bitcoin Futures ETFs and premium/discount volatility and management fees for OTC Bitcoin Trusts. As discussed herein, this growth investor protection concerns need to be reevaluated and rebalanced with the prevention of fraudulent and manipulative acts and practices concerns that previous disapproval orders have relied upon. Finally, the Exchange notes that in addition to all of the arguments herein which it believes sufficiently establish the CME Bitcoin Futures market as a regulated market of significant size, it is logically inconsistent to find that the CME Bitcoin Futures market is a significant market as it relates to the CME Bitcoin Futures market, but not a significant market as it relates to the bitcoin spot market for the numerous reasons laid out above.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather will facilitate the listing and trading of an additional exchange-traded product that will enhance competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file number SR–CboeBZX–2023–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–101. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–101 and should be submitted on or before January 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[72]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–28194 Filed 12–21–23; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99195; File No. SR–CboeBZX–2023–069]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the VanEck Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

December 18, 2023.

On September 6, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the VanEck Ethereum ETF (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on September 26, 2023.[3]

On September 27, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the performance of the MarketVector™ Ethereum Benchmark Rate (''Benchmark'') less the expenses of the Trust's operations.[8] The Trust's assets will consist of ether held by the Trust's custodian on behalf of the Trust.[9] The Trust will value its Shares daily based on the reported Benchmark.[10] The administrator of the Trust will determine the net asset value (''NAV'') of the Trust on each day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. ET.[11] In determining the Trust's NAV, the administrator values the ether held by the Trust based on the price set by the Benchmark as of 4:00 p.m. ET.[12] When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions with authorized participants in blocks of 50,000 Shares.[13]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2023–069 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[14] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[16]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Trust, has the Exchange properly filed its proposal to list and trade the Shares under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares?[17]

[72] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98457 (Sept. 20, 2023), 88 FR 66076 (''Notice''). The Commission has received no comments on the proposal.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98566, 88 FR 68236 (Oct. 3, 2023). The Commission designated December 25, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 66078. VanEck Digital Assets, LLC (''Sponsor'') is the sponsor of the Trust. *See id.* at 66077.

[9] *See id.* at 66077. The Trust generally does not intend to hold cash or cash equivalents; however, there may be situations where the Trust would unexpectedly hold cash on a temporary basis. *See id.*

[10] *See id.* at 66078.

[11] *See id.* at 66079.

[12] *See id.*

[13] *See id.* at 66077.

[14] 15 U.S.C. 78s(b)(2)(B).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] BZX Rule 14.11(e)(4)(C)(i) defines the term ''Commodity-Based Trust Shares'' as a security (a) that is issued by a trust that holds a specified commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum

Continued

2. The Exchange raises substantially similar arguments to support the listing and trading of the Shares as those made in proposals to list and trade spot bitcoin exchange-traded products (''Bitcoin ETPs''). Do commenters agree that arguments to support the listing of Bitcoin ETPs apply equally to the Shares? Are there particular features related to ether and its ecosystem, including its proof of stake consensus mechanism and concentration of control or influence by a few individuals or entities, that raise unique concerns about ether's susceptibility to fraud and manipulation?

3. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the ether markets and the ether markets' susceptibility to manipulation?

4. Based on data and analysis provided by the Exchange,[18] do commenters agree with the Exchange that the Chicago Mercantile Exchange (''CME''), on which CME ether futures trade, represents a regulated market of significant size related to spot ether? [19] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? [20] Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME ether futures market? [21]

5. The Exchange states that ether is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices ''exist to justify dispensing with the requisite surveillance sharing agreement'' with a regulated market of significant size related to spot ether.[22] In support, the Exchange states, among other things, that the geographically diverse and continuous nature of ether trading make it difficult and prohibitively costly to manipulate the price of ether, and that the fragmentation across ether platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ether prices through continuous trading activity challenging.[23] Do commenters agree with the Exchange's statements regarding the ether market's resistance to price manipulation?

6. The Exchange also states that it will execute a surveillance-sharing agreement with Coinbase, Inc. (''Coinbase'') that is intended to supplement the Exchange's market surveillance program.[24] According to the Exchange, the agreement is ''expected to have the hallmarks of a surveillance-sharing agreement between two members of the [Intermarket Surveillance Group], which would give the Exchange supplemental access to data regarding spot [ether] trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.'' [25] Based on the description of the surveillance-sharing agreement as provided by the Exchange, what are commenters' views of such an agreement if finalized and executed? Do commenters agree with the Exchange that such an agreement with Coinbase would be ''helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares''? [26]

7. The Exchange states that the ''Sponsor's research indicates daily correlation between the spot [ether] and the CME [ether] [f]utures is 0.998.'' [27] The Exchange further states that this ''high correlation'' indicates that there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on the CME ether futures market.[28] What are commenters' views on the correlation between the ether spot market and the CME ether futures market? What are commenters' views on the extent to which a surveillance-sharing agreement with the CME would assist in detecting and deterring fraud and manipulation that impacts an exchange-traded product (''ETP'') that holds spot ether, and on whether the Sponsor's daily price correlation analysis provides any evidence to this effect? What are commenters' views generally on whether an ETP that holds CME ether futures and an ETP that holds spot ether are similar products?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[29]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 12, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 26, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–069. 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

number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

[18] *See* Notice, 88 FR at 66081–84.

[19] *See id.* at 66078.

[20] *See id.* at 66084.

[21] *See id.*

[22] *See id.* at 66083 n.30.

[23] *See id.*

[24] *See id.* at 66084–85.

[25] *See id.* at 66085. The Exchange states that ''[t]his means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares.'' *Id.*

[26] *See id.* at 66084.

[27] *See id.* at 66081. The Exchange states that this is based on data from September 1, 2022, through September 1, 2023. *See id.*

[28] *See id.* at 66084.

[29] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–069 and should be submitted on or before January 12, 2024. Rebuttal comments should be submitted by January 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–28192 Filed 12–21–23; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99196; File No. SR–CboeBZX–2023–070]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the ARK 21Shares Ethereum ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

December 18, 2023.

On September 6, 2023, Cboe BZX Exchange, Inc. (''BZX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the ARK 21Shares Ethereum ETF (''Trust'') under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on September 27, 2023.[3]

On September 27, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under BZX Rule 14.11(e)(4), which governs the listing and trading of Commodity-Based Trust Shares on the Exchange.

The investment objective of the Trust will be to seek to track the performance of ether, as measured by the performance of the CME CF Ether-Dollar Reference Rate—New York Variant (''Index''), adjusted for the Trust's expenses and other liabilities.[8] The Trust's assets will consist of ether held by the Trust's custodian on behalf of the Trust.[9] The Trust will value its Shares daily based on the value of ether as reflected by the Index.[10] The administrator of the Trust will determine the net asset value (''NAV'') of the Trust on each day that the Exchange is open for regular trading, as promptly as practicable after 4:00 p.m. ET.[11] In determining the Trust's NAV, the administrator values the ether held by the Trust based on the price set by the Index as of 4:00 p.m. ET.[12] When the Trust sells or redeems its Shares, it will do so in ''in-kind'' transactions with authorized participants in blocks of 5,000 Shares.[13]

II. Proceedings To Determine Whether To Approve or Disapprove SR–CboeBZX–2023–070 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[14] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.''[16]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Trust, has the Exchange properly filed its proposal to list and trade the Shares under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares?[17]

[30] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98467 (Sept. 21, 2023), 88 FR 66515 (''Notice''). The Commission has received no comments on the proposal.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98565, 88 FR 68187 (Oct. 3, 2023). The Commission designated December 26, 2023, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 66518. 21Shares US LLC (''Sponsor'') is the sponsor of the Trust. *See id.* at 66515.

[9] *See id.* at 66515. The Trust generally does not intend to hold cash or cash equivalents; however, there may be situations where the Trust would unexpectedly hold cash on a temporary basis. *See id.* at 66515–16.

[10] *See id.* at 66518.

[11] *See id.* at 66519.

[12] *See id.*

[13] *See id.* at 66516.

[14] 15 U.S.C. 78s(b)(2)(B).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] BZX Rule 14.11(e)(4)(C)(i) defines the term ''Commodity-Based Trust Shares'' as a security (a) that is issued by a trust that holds a specified

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2. The Exchange raises substantially similar arguments to support the listing and trading of the Shares as those made in proposals to list and trade spot bitcoin exchange-traded products (''Bitcoin ETPs''). Do commenters agree that arguments to support the listing of Bitcoin ETPs apply equally to the Shares? Are there particular features related to ether and its ecosystem, including its proof of stake consensus mechanism and concentration of control or influence by a few individuals or entities, that raise unique concerns about ether's susceptibility to fraud and manipulation?

3. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the ether markets and the ether markets' susceptibility to manipulation?

4. Based on data and analysis provided by the Exchange,[18] do commenters agree with the Exchange that the Chicago Mercantile Exchange (''CME''), on which CME ether futures trade, represents a regulated market of significant size related to spot ether? [19] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? [20] Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME ether futures market? [21]

5. The Exchange states that ether is resistant to price manipulation and that other means to prevent fraudulent and manipulative acts and practices ''exist to justify dispensing with the requisite surveillance sharing agreement'' with a regulated market of significant size related to spot ether.[22] In support, the Exchange states, among other things, that the geographically diverse and continuous nature of ether trading make it difficult and prohibitively costly to manipulate the price of ether, and that the fragmentation across ether platforms, the relatively slow speed of transactions, and the capital necessary to maintain a significant presence on each trading platform make manipulation of ether prices through continuous trading activity challenging.[23] The Exchange also states that offering only in-kind creations and redemptions ''reduces the potential for manipulation of the Shares through manipulation of the Index or any of its individual constituents, again emphasizing that a potential manipulator of the Shares would have to manipulate the entirety of the ether spot market, which is led by the [CME] ether [f]utures market.'' [24] Do commenters agree with the Exchange's statements regarding the ether market's resistance to price manipulation?

6. The Exchange also states that it will execute a surveillance-sharing agreement with Coinbase, Inc. (''Coinbase'') that is intended to supplement the Exchange's market surveillance program.[25] According to the Exchange, the agreement is ''expected to have the hallmarks of a surveillance-sharing agreement between two members of the [Intermarket Surveillance Group], which would give the Exchange supplemental access to data regarding spot [ether] trades on Coinbase where the Exchange determines it is necessary as part of its surveillance program for the Commodity-Based Trust Shares.'' [26] Based on the description of the surveillance-sharing agreement as provided by the Exchange, what are commenters' views of such an agreement if finalized and executed? Do commenters agree with the Exchange that such an agreement with Coinbase would be ''helpful in detecting, investigating, and deterring fraud and market manipulation in the Commodity-Based Trust Shares''? [27]

7. The Exchange states that the ''Sponsor's research indicates that daily correlation between the [s]pot [ether] and the CME [ether] [f]utures . . . was over 99.88%.'' [28] The Exchange further states that this ''high correlation'' in pricing between CME ether futures and spot ether indicates that there is a reasonable likelihood that a person attempting to manipulate the Trust would also have to trade on the CME ether futures market.[29] What are commenters' views on the correlation between the ether spot market and the CME ether futures market? What are commenters' views on the extent to which a surveillance-sharing agreement with the CME would assist in detecting and deterring fraud and manipulation that impacts an exchange-traded product (''ETP'') that holds spot ether, and on whether the Sponsor's daily return correlation analysis provides any evidence to this effect? What are commenters' views generally on whether an ETP that holds CME ether futures and an ETP that holds spot ether are similar products?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[30]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 12, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 26, 2024.

Comments may be submitted by any of the following methods:

commodity deposited with the trust; (b) that is issued by such trust in a specified aggregate minimum number in return for a deposit of a quantity of the underlying commodity; and (c) that, when aggregated in the same specified minimum number, may be redeemed at a holder's request by such trust which will deliver to the redeeming holder the quantity of the underlying commodity.

[18] *See* Notice, 88 FR at 66521.

[19] *See id.* at 66518.

[20] *See id.* at 66522.

[21] *See id.*

[22] *See id.* at 66521 n.29.

[23] *See id.*

[24] *See id.* at 66522.

[25] *See id.*

[26] *See id.* at 66522–23. The Exchange states that ''[t]his means that the Exchange expects to receive market data for orders and trades from Coinbase, which it will utilize in surveillance of the trading of Commodity-Based Trust Shares.'' *Id.* at 66523.

[27] *See id.* at 66522.

[28] *See id.* at 66521. The Exchange states that this is based on a pairwise correlation performed by the Sponsor of ether daily returns across top centralized spot cryptocurrency platforms and the CME from March 19, 2021, to September 5, 2023. *See id.*

[29] *See id.* at 66522.

[30] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBZX–2023–070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBZX–2023–070. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBZX–2023–070 and should be submitted on or before January 12, 2024. Rebuttal comments should be submitted by January 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–28193 Filed 12–21–23; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99200; File No. SR–NASDAQ–2023–035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Hashdex Nasdaq Ethereum ETF Under Nasdaq Rule 5711(i) (Trust Units)

December 18, 2023.

On September 20, 2023, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Hashdex Nasdaq Ethereum ETF (''Fund'') under Nasdaq Rule 5711(i) (Trust Units). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[3]

On November 15, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Fund, a series of the Tidal Commodities Trust I (''Trust''), under Nasdaq Rule 5711(i), which governs the listing and trading of Trust Units on the Exchange.

The investment objective of the Fund is to have the daily changes in the net asset value (''NAV'') of the Shares reflect the daily changes in the price of the Nasdaq Ether Reference Price (NQETH) (''Benchmark''), less expenses from the Fund's operations.[8] The Benchmark is designed to track the price performance of ether.[9] Under normal market conditions, the Fund will invest in ether, ether futures contracts listed on the Chicago Mercantile Exchange, Inc. (''CME''),[10] and in cash and cash equivalents.[11] The Fund will use the CME's Exchange for Physical (''EFP'') transactions to acquire and dispose of spot ether.[12] The Fund will be subject to investment restrictions on spot ether which cap the Fund's exposure to the ether spot market to a specified proportion of the Fund's NAV and restrict the Fund's notional exposure to ether to a set proportion.[13] The sub-administrator of the Fund will calculate the NAV of the Fund once each trading day, as of the earlier of the close of the Nasdaq or 4:00 p.m. New York time.[14] To determine the value of Ether Futures Contracts, the Fund's sub-administrator will use the Ether Futures Contract settlement price on the exchange on which the contract is traded, except that the fair value of Ether Futures Contracts may be used when Ether Futures Contracts close at their price fluctuation limit for the day. The value of spot ether held by the Fund would be determined by the Sponsor and by Hashdex Asset Management Ltd. (''Digital Asset Adviser'') in good faith based on a methodology that is entirely derived from the settlement prices of Ether Futures Contracts on the CME and that considers all available facts and all available information on the valuation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98563 (Sept. 27, 2023), 88 FR 68214 (''Notice''). The Commission has received no comments on the proposal.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98948, 88 FR 81156 (Nov. 21, 2023). The Commission designated January 1, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See* Notice, 88 FR at 68215. The Fund is managed and controlled by Toroso Investments LLC (''Sponsor''). *See id.* at 68214.

[9] *See id.*

[10] According to the Exchange, the CME currently offers two ether futures contracts: one contract representing 50 ether (''ETH Contracts'') and another contract representing 0.10 ether (''MET Contracts,'' and collectively, ''Ether Futures Contracts''). *See id.* at 68214.

[11] *See id.* at 68214. The Fund will hold a mix of Ether Futures Contracts, spot ether, and cash and cash equivalents, subject to certain investment restrictions. *See id.* at 68219.

[12] *See id.* at 68219. According to the Exchange, EFP transactions are a type of private agreement between two parties to trade a futures position for the underlying asset. In an EFP transaction, two parties exchange equivalent but offsetting positions in an Ether Futures Contract and the underlying physical ether. In the context of the Fund, these transactions will be used to purchase and sell spot ether by delivering or receiving the equivalent futures position. *See id.* at 68229.

[13] *See id.* at 68227–28.

[14] *See id.* at 68231. The Fund's NAV will include any unrealized profit or loss on open ether futures contacts and any other credit or debit accruing to the Fund but unpaid or not received by the Fund. *See id.*

date.[15] When the Fund sells or redeems its Shares, it will do so in cash transactions with authorized participants in blocks of 10,000 Shares.[16]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2023–035 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[17] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [19]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Fund, has the Exchange properly filed its proposal to list and trade the Shares under Nasdaq Rule 5711(i) (Trust Units)? [20]

2. The Exchange raises similar arguments to support the listing and trading of the Shares as those made in proposals to list and trade spot bitcoin exchange-traded products (''Bitcoin ETPs''). Do commenters agree that arguments to support the listing of Bitcoin ETPs apply equally to the Shares? Are there particular features related to ether and its ecosystem, including its proof of stake consensus mechanism and concentration of control or influence by a few individuals or entities, that raise unique concerns about ether's susceptibility to fraud and manipulation?

3. What are commenters' views on whether the proposed Fund and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices? What are commenters' views generally with respect to the liquidity and transparency of the ether markets and the ether markets' susceptibility to manipulation?

4. Based on data and analysis provided by the Exchange,[21] what are commenters views on whether the CME, on which CME ether futures trade and through which the Fund intends to engage in EFP transactions to purchase or sell spot ether, represents a regulated market of significant size related to spot ether? [22] What are commenters' views on whether there is a reasonable likelihood that a person attempting to manipulate the Shares would also have to trade on the CME to manipulate the Shares? [23] Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME ether futures market? [24]

5. The Exchange states that the Fund intends to adopt ''an innovative approach to mitigate the risks of fraud and manipulation that are unique to the Fund'' by ''structur[ing] the operation of the Fund such that the regulated market of significant size in relation to the Fund is the [CME] because it is the same market on which the Fund trades its non-cash assets.'' [25] The Exchange further states that the Fund has features that underscore its significant interrelationship with the CME, including that the Fund (i) utilizes futures-based pricing for spot ether such that the NAV calculation for the spot ether holdings of the Fund will be derived from the CME ether futures curve; (ii) is subject to investment restrictions on spot ether; (iii) will use CME EFP transactions to acquire and dispose of spot ether ''instead of transactions on unregulated spot exchanges''; and (iv) will utilize only cash creations and redemptions.[26] Based on the structure and operation of the Fund and the Fund's investments as described in the filing, what are commenters' views on whether the CME represents a regulated market of significant size related to spot ether? [27]

6. The Fund will only use CME EFP transactions to acquire and dispose of spot ether.[28] The Exchange states that ''trading activity in EFP transactions is sporadic'' but that, ''[n]onetheless, the Sponsor believes that a large number of liquidity providers are ready to execute this type of transaction and can provide enough liquidity to support the [Fund's] demand.'' [29] Do commenters agree? Why or why not?

7. The value of spot ether held by the Fund would be determined using a futures-based spot price methodology that is derived from the settlement prices of ether futures contracts on the CME.[30] The Exchange presents data [31] that it states ''strongly suggests that [futures-based spot pricing] is a suitable choice for the NAV calculation.'' [32] The Exchange states that futures-based spot pricing ''could create some level of uncertainty due to the potential divergences between the [futures-based spot price] and the spot prices observed in unregulated markets'' but that authorized participants ''will always be in a position to hedge their exposure using exclusively the [CME ether futures market], which will make them more likely to provide liquidity to the Fund

[15] *See id.* at 68222, 68231–32. According to the Exchange, this ''futures-based spot price'' methodology involves a calculation that is sensitive to both the length of time (''tenor'') until each Ether Futures Contract is due for settlement and the final settlement price for each contract. The calculation takes into account each contract's tenor and the tenor squared. This approach is designed to give more importance to contracts that are due for settlement in the near term. The calculation produces a set of weighting factors, with each factor indicating the contribution of the corresponding Ether Futures Contract to the estimated current spot price of ether. The estimated spot price is the component of the result corresponding to a tenor of zero days. The Sponsor and Digital Asset Advisor do not use data from ether trading platforms or directly from spot ether trading activity in determining the value of spot ether held by the Fund. *See id.* at 68222–23.

[16] *See id.* at 68232–33.

[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78f(b)(5).

[20] Nasdaq Rule 5711(i)(3)(B) defines the term ''Trust Units'' as a security that is issued by a trust or other similar entity that is constituted as a commodity pool that holds investments comprising or otherwise based on any combination of futures contracts, options on futures contracts, forward contracts, swap contracts, commodities and/or securities.

[21] *See* Notice, 88 FR at 68218, 68220–21, 68226–27.

[22] *See id.* at 68219.

[23] *See id.* at 68219–20.

[24] *See id.* at 68220–21.

[25] *See id.* at 68219.

[26] *See id.*

[27] *See id.*

[28] *See, e.g., id.* at 68229–30.

[29] *See id.* at 68230.

[30] *See id.* at 68231.

[31] *See id.* at 68222–25.

[32] *See id.* at 68225.

thus making its market price converge to its NAV.'' [33] Do commenters agree with the Exchange? Why or why not?

8. Some sponsors of proposed ether exchange-traded products have made statements regarding the correlation between ether spot markets and the CME ether futures market.[34] What are commenters' views on the correlation between the ether spot market and the CME ether futures market? What are commenters' views on the extent to which a surveillance-sharing agreement with the CME would assist in detecting and deterring fraud and manipulation that impacts an exchange-traded product (''ETP'') that also holds spot ether, and on whether correlation analysis provides any evidence to this effect? What are commenters' views on the Sponsor's own statistical analysis of the relationship between prices in certain unregulated ether markets and prices of CME ether futures contracts? [35] What are commenters' views generally on whether an ETP that holds only CME ether futures and an ETP that *also* holds spot ether are similar products?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[36]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 12, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 26, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2023–035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2023–035. 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–NASDAQ–2023–035 and should be submitted on or before January 12, 2024. Rebuttal comments should be submitted by January 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–28196 Filed 12–21–23; 8:45 am]

BILLING CODE 8011–01–P

[33] *See id.*

[34] *See, e.g.,* Notice of Filing of a Proposed Rule Change to List and Trade Shares of the VanEck Ethereum ETF under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 98457 (Sept. 20, 2023), 88 FR 66076 (Sept. 26, 2023), 66081 (stating that ''The Sponsor's research indicates daily correlation between the spot ETH and the CME ETH Futures is 0.998 from the period of 9/1/22 through 9/1/23.'').

[35] *See* Notice, 88 FR at 68226–27.

[36] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[37] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99203; File No. SR–PEARL–2023–71]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 2615(d) To Eliminate the Contingent Open

December 18, 2023.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 14, 2023, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 2615(d) regarding the Contingent Open performed on the Exchange's equity trading platform (referred to herein as ''MIAX Pearl Equities'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxglobal.com/markets/us-equities/pearl-equities/rule-filings,* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 2615(d) regarding the Contingent Open performed on MIAX Pearl Equities. In sum, the Exchange proposes to amend Exchange Rule 2615(d) to no longer provide for a Contingent Open at 9:45 a.m. Eastern Time. As amended, Exchange Rule 2615(d) would instead provide that the Exchange would perform its Opening Process after the security begins trading on the primary listing market at any time during the trading day. The Exchange also proposes to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901. These changes are described in more detail below.

Background

Exchange Rule 2615 sets forth the Exchange's Opening Process and Contingent Open. Each trading day, the Exchange begins trading in an equities security by performing its Opening Process after the start of Regular Trading Hours [3] by matching eligible buy and sell orders at the midpoint of the National Best Bid and Offer (''NBBO''),[4] as described below. Prior to the beginning of Regular Trading Hours,[5] Users [6] who wish to participate in the Opening Process may enter orders to buy or sell that are designated as Regular Trading Hours Only (''RHO'').[7] Pursuant to Exchange Rule 2615(a), only orders that include a time-in-force of RHO may participate in the Opening Process. Orders designated as Post Only,[8] Intermarket Sweep Orders, (''ISOs''),[9] include a Minimum Execution Quantity instruction,[10] and orders that include a time-in-force other than RHO are not eligible to participate in the Opening Process. Market Orders [11] may include a time-in-force of Immediate-or-Cancel (''IOC''),[12] and are, therefore, not eligible to participate in the Opening Process. Meanwhile, Limit Orders,[13] Primary Peg Orders,[14] and Midpoint Peg Orders [15] that include a time-in-force of RHO are eligible to participate in the Opening Process. All Self-Trade-Protection (''STP'') modifiers, as described in Exchange Rule 2614(f), are honored during the Opening Process.

Exchange Rule 2615(b) provides that during the Opening Process, the Exchange attempts to match eligible buy and sell orders at the midpoint of the NBBO. All orders eligible to trade at the midpoint are processed in time sequence, beginning with the order with the oldest timestamp. The Opening Process concludes when no remaining orders, if any, can be matched at the midpoint of the NBBO. At the conclusion of the Opening Process, the unexecuted portion of orders that were eligible to participate in the Opening Process are placed on the MIAX PEARL Equities Book [16] in time sequence, cancelled, executed, or routed to away Trading Centers [17] in accordance with the terms of the order.

Pursuant to Exchange Rule 2615(c), the Exchange calculates the midpoint of the NBBO as follows. When the primary listing exchange is the New York Stock Exchange LLC (''NYSE'') or NYSE American LLC (''NYSE American''), the Opening Process is priced at the midpoint of the: (i) first NBBO subsequent to the first reported trade and first two-sided quotation on the primary listing exchange after 9:30:00 a.m. Eastern Time; or (ii) then prevailing NBBO when the first two-sided quotation is published by the primary listing exchange after 9:30:00 a.m. Eastern Time, but before 9:45:00 a.m. Eastern Time if no first trade is reported by the primary listing exchange within one second of publication of the first two-sided quotation by the primary listing exchange. For any other primary listing exchange, such as The Nasdaq Stock Market LLC (''Nasdaq''), NYSE Arca, LLC (''NYSE Arca''), and Cboe BZX Exchange, Inc. (''Cboe BZX''), the Opening Process is priced at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the primary listing exchange after 9:30:00 a.m. Eastern Time.

Exchange Rule 2615(d) describes the Contingent Open and provides that if the conditions to establish the price of the Opening Process described above do not occur by 9:45:00 a.m. Eastern Time, the Exchange will conduct a Contingent Open and match all orders eligible to participate in the Opening Process at the midpoint of the then prevailing NBBO. Exchange Rule 2615(d) further provides that if the midpoint of the NBBO is not available for the Contingent Open, all orders are handled in time sequence, beginning with the order with the oldest timestamp, and are placed on the MIAX PEARL Equities Book, cancelled, executed, or routed to away Trading Centers in accordance with the terms of the order.

Proposed Change

The Exchange proposes to amend Exchange Rule 2615(d) to no longer provide for a Contingent Open at 9:45 a.m. Eastern Time. Instead, the Exchange would not open trading in an equity security until that equity security began trading on the primary listing market and the conditions to establish the opening price set forth under Exchange Rule 2615(c) described above occur. At such time, the Exchange will perform its Opening Process and match all eligible orders at the midpoint of the NBBO, if any, and feed any unexecuted orders onto the MIAX Pearl Equities Book in time sequence, as described above. The Opening Process may occur anytime during Regular Trading Hours, including at or after 9:45 a.m. Eastern Time.

The Exchange initially adopted the Contingent Open under Exchange Rule 2615(d) as part of its proposal to adopt rules governing the trading of equity securities on MIAX Pearl Equities.[18] The initial intent was to align Exchange Rule 2615 with similar rules and functionality available on other equities exchanges. The other exchanges on

[3] The term ''Regular Trading Hours'' means ''the time between 9:30 a.m. and 4:00 p.m. Eastern Time.'' *See* Exchange Rule 1901.

[4] The term ''NBBO'' means ''the national best bid and offer.'' *See* Exchange Rule 1901.

[5] According to Exchange Rule 2600(a), Users may begin to enter orders starting at 7:30 a.m. Eastern Time.

[6] The term ''User'' means ''any Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Exchange Rule 2602.'' *See* Exchange Rule 1901.

[7] Exchange Rule 2614(b)(2).

[8] Exchange Rule 2614(c)(2).

[9] Exchange Rule 2614(d).

[10] Exchange Rule 2614(c)(7).

[11] Exchange Rule 2614(a)(2).

[12] Exchange Rule 2614(b)(1). Market Orders may include a time-in-force of RHO solely when coupled with the PAC routing option for purposes of routing away to participate in the primary listing market's opening or re-opening process and will continue to not be eligible to participate in the Exchange's Opening Process. *See* Exchange Rule 2617(b)(5)(ii).

[13] Exchange Rule 2614(a)(1).

[14] Exchange Rule 2614(a)(3)(i)(B) [sic].

[15] Exchange Rule 2614(a)(3)(i)(A) [sic].

[16] The term ''MIAX Pearl Equities Book'' means the electronic book of orders in equity securities maintained by the System. *See* Exchange Rule 1901.

[17] The term ''Trading Center'' has the same meaning as in Rule 600(b)(82) of Regulation NMS. *See* Exchange Rule 100.

[18] *See* Securities Exchange Act Release No. 89563 (August 14, 2020), 85 FR 51510 (August 20, 2020) (SR–PEARL–2020–03) (adopting rules for MIAX Pearl Equities including Exchange Rule 2615(d)).

which the Exchange based Rule 2615(d) are non-primary listing exchanges that, unlike the Exchange, offer an early trading session.[19] The Exchange currently only offers a Regular Trading Session.[20] Normally, an early trading session ends and a regular trading session begins when a security is opened for trading on that market. On a non-primary listing market like on which the Exchange based its Rules, this requires the security is to be [sic] open for trading on the primary listing market. Where a security has not begun to trade on the primary listing market, a Contingent Open serves an important purpose of prescribing an end to the early trading session and beginning of the regular trading session on that non-primary listing exchange. A Contingent Open allows a non-primary listing exchange that provides an early trading session to transition to a regular trading session in a timely manner where a security has not opened for trading on the primary listing market.[21]

The Exchange currently does not offer an early trading session and, therefore, the Contingent Open does not serve as a transition from an early trading session to a regular trading session. A Contingent Open simply allows the Exchange to trade a security when that security has not yet opened on the primary listing market. Once open on the primary listing market, the market for that security may be more robust and the security is likely trading at prices that more closely resemble its value due to that security having been subject to the primary listing market's opening auction process. Therefore, in the absence of an early trading session, the Exchange believes it is not necessary for it perform a Contingent Open at 9:45 a.m. Eastern Time. Instead, the Exchange believes it is appropriate for it to wait for a security to be trading on the primary listing market before it also begins to trade that security. The Exchange believes this could result in eligible orders being matched in the Opening Process at a midpoint of the NBBO that better reflects the security's trading characteristics and value.

In the Exchange's experience, most securities are open by 9:45:00 a.m. Eastern Time and the Exchange performs its Opening Process and is trading practically the entire market. However, at times, a security may not open by 9:45:00 a.m. This is common in less liquid securities. In these cases, the Exchange would not begin to trade a security if and until that security opens for trading on the primary listing market.[22]

As a result of the proposed changes, Exchange Rule 2615(d) would be amended to no longer provide for a Contingent Open. Instead, Exchange Rule 2615(d) would provide that ''[t]he Exchange will perform the Opening Process at any time during Regular Trading Hours when the conditions to establish the price of the Opening Process set forth under paragraph (c) [of Exchange Rule 2615] occur.''

Lastly, the Exchange proposes to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901. Currently, the term ''Regular Trading Session'' shall mean the time between the completion of the Opening Process or Contingent Open as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time. The Exchange proposes to remove the reference to the Contingent Open so that the Regular Trading Session would now be from the time of the completion of the Opening Process as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time.

Implementation

The Exchange will implement the proposed changes to Exchange Rule 2615(d) on the effective date of this proposed rule change. The Exchange will issue a Regulatory Alert announcing the exact implementation date of this proposal.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Section 6(b)(5),[24] in particular, because it is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As discussed above, the Exchange initially adopted the Contingent Open to align its rule with similar functionality available at other equities exchanges.[26] These other exchanges on which the Exchange based Rule 2615(d) currently offer early trading sessions,[27] while the Exchange does not. On these exchanges, a Contingent Open serves as the end to the early trading session and beginning of the regular trading session. As discussed above, the Exchange believes it is not necessary for it perform a Contingent Open at 9:45 a.m. Eastern Time. The Exchange does not currently offer an early trading session and does not have a need for a Contingent Open to serve as a transition to its Regular Trading Session. Instead, the Exchange would prefer to wait to perform its Opening Process until the security begins to trade on the primary listing market before it also begins to trade that security. As noted above, the Exchange matches orders during its Opening Process at the midpoint of the NBBO. The Exchange believes that the midpoint of the NBBO present after the security is opened by the primary listing exchange may better reflect the true market for the security due to increased liquidity and improved market quality. Therefore, the Exchange believes the proposal promotes just and equitable principles of trade, and removes impediments to and perfects the mechanism of a free and open market and a national market system because a security might be trading at prices that are more in-line with its normal trading behavior.

The proposed rule change would also not permit unfair discrimination between customers, issuers, brokers, or dealers because no User would be able to trade the security until the Exchange performs its Opening Process as described herein. The proposal is not designed to target any single type of market participant. It is simply intended to amend Exchange Rule 2615(d) to no longer provide for a Contingent Open. Should the Exchange begin to offer an

[19] *See, e.g.,* Cboe EDGX Exchange Rules 11.1(a)(1) and 11.7(d), *and* Cboe EDGA Exchange, Inc. Rules 11.1(a)(1) and 11.7(d).

[20] The term ''Regular Trading Session'' means ''the time between the completion of the Opening Process or Contingent Open as defined in Exchange Rule 2615 and 4:00 p.m. Eastern Time.'' *See* Exchange Rule 1901.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 72676 (July 25, 2014), 79 FR 44520 (July 31, 2014) (Notice); *and* 73468 (October 29, 2014), 79 FR 65450 (November 4, 2014) SR–EDGX–2014–18 (Notice of Filing of Amendment Nos. 1 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To Amend EDGX Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions) (SR–EDGX–2014–18).

[22] Should the Exchange seek to adopt an early trading session in the future, it anticipates that it would also seek to readopt a Contingent Opening Process at that time to set a time at which a security would transition from the early to regular trading sessions where it has not begun trading on the primary listing market. The Exchange will submit a filing with the Commission pursuant to Section 19(b)(1) should it decide to adopt an early trading session in the future.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

[25] *Id.*

[26] *See supra* note 18.

[27] *See supra* note 19.

early trading session, the Contingent Open Process would serve as a transition period from the early to regular trading sessions, as it does today on other markets. The Exchange believes that, in the meantime, it may benefit all market participants for the Exchange to wait to trade a security until that security is opened by the primary listing exchange where that security's market may be more robust.

The Exchange is not aware of any rule or regulation that requires an exchange to perform a Contingent Open or trade all securities for a full trading day. Should the Exchange seek to adopt an early trading session in the future, it anticipates that it would also seek to readopt a Contingent Open to set a time at which a security would transition from the early to regular trading sessions where it has not begun trading on the primary listing market.

Lastly, the Exchange's proposal to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901 remove impediments to and perfect the mechanism of a free and open market and a national market system because it would ensure the Exchange's rules are clear and continue to not include an ambiguities and references that could cause potential investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Specifically, the Exchange does not believe the proposed rule change would impose an undue burden on intramarket competition on the Exchange because all Users would be impacted equally. No User would be able to trade an equity security on the Exchange until that security is opened by the primary listing market and the Exchange conducts its Opening Process. Other exchanges simply begin trading equity securities at 9:30:00 a.m. Eastern Time regardless of whether the security was opened by the primary listing exchange.[28] Meanwhile, as noted above, other exchanges employ a contingent open at 9:45 a.m. Eastern Time.[29] Market participants that wish to trade between 9:30 a.m. Eastern Time and the time the security is opened by the primary listing exchange may send their orders to these exchanges. Therefore, the proposed rule change should not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

In addition, the Exchange does not believe the proposed rule change would impose an undue burden on intermarket competition between exchanges. The Exchange is not aware of any rule or regulation that requires an exchange to perform a Contingent Open or trade all securities for a full trading day. The Exchange simply proposes to wait until an equity security is open for trading by the primary listing market before it conducts its own Opening Process and begins to trade that security. As stated above, other exchanges begin to trade an equity security at 9:30 a.m. Eastern Time and those exchanges may enjoy some competitive advantage as a result of the proposed rule change. The Exchange understands that it may suffer the competitive disadvantage until the time it performs its Opening Process. However, the Exchange does not believe the amount of trading volume that may be directed away from the Exchange to these exchanges would cause an unfair burden on competition between it and its exchange competitors. This competitive dynamic exists today with regard to pre-market and post-market trading on exchanges. The Exchange does not currently compete for order flow pre or post market because it does not offer trading outside of Regular Trading Hours. Therefore, the proposed rule change does not introduce any new competitive issues between exchanges. Based on the above, the Exchange does not believe the proposed rule change would impose a burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Lastly, the Exchange's proposal to make a corresponding change to remove a reference to the Contingent Open in the definition of Regular Trading Session in Exchange Rule 1901 will have no competitive impact because it is simply a corresponding change to ensure the Exchange's rules are clear and continue to not include an ambiguities and references that could cause potential investor confusion.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A) of the Act[30] and Rule 19b–4(f)(6)[31] thereunder, the Exchange has designated this proposal as one that effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[32]

A proposed rule change filed under Rule 19b–4(f)(6)[33] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[34] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that matching orders at the midpoint of the NBBO after a security is open on the primary market, as occurs during the Exchange's Opening Process, may better reflect the true market for the security than a midpoint execution during the Contingent Open, which may occur prior to the security being open on the primary listing market. The Exchange also states that waiver of the operative delay would not have a material impact on trading because: (i) the Exchange currently does not offer an early trading session and, therefore, the Contingent Open does not serve as a transition from an early trading session to a regular trading session; and (ii) the Exchange does not currently attract a material amount of order flow at the beginning of the trading day, and thus any impact by the Exchange not performing a Contingent Open would be minimal. Therefore, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and

[28] *See, e.g.,* NYSE National, Inc. Rule 7.34(a)(2) (defining Core Trading Session), *and* NYSE Chicago Rule 7.34(a)(2) (defining Core Trading Session).

[29] *See supra* note 27.

[30] 15 U.S.C. 78s(b)(3)(A).

[31] 17 CFR 240.19b–4(f)(6).

[32] In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[33] 17 CFR 240.19b–4(f)(6).

[34] 17 CFR 240.19b–4(f)(6)(iii).

designates the proposed rule change operative upon filing.[35]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[36] to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email *to rule-comments@sec.gov.* Please include File Number SR–PEARL–2023–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–PEARL–2023–71. 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–PEARL–2023–71 and should be submitted on or before January 12, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–28197 Filed 12–21–23; 8:45 am]

BILLING CODE 8011–01–P

[35] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[36] 15 U.S.C. 78s(b)(2)(B).

[37] 17 CFR 200.30–3(a)(12), 59.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IA–6507]

Notice of Intention To Cancel Registration Pursuant to the Investment Advisers Act of 1940

Notice is given that the Securities and Exchange Commission (the ''Commission'') intends to issue an order, pursuant to section 203(h) of the Investment Advisers Act of 1940 (the ''Act''), cancelling the registration of Vista Financial Advisors, LLC File No. 801–122832, hereinafter referred to as the ''*registrant.*''

Section 203(h) provides, in pertinent part, that if the Commission finds that any person registered under section 203, or who has pending an application for registration filed under that section, is no longer in existence, is not engaged in business as an investment adviser, or is prohibited from registering as an investment adviser under section 203A, the Commission shall by order, cancel the registration of such person.

The registrant indicated on its most recent Form ADV filing that it is a large advisory firm that has regulatory assets under management of $100 million or more.[1] The Commission believes, based on the facts it has, that the registrant did not at the time of the Form ADV filing, and does not currently, maintain the required assets under management to remain registered with the Commission, nor does it appear eligible to register with the Commission pursuant to any other provision of the Advisers Act. Accordingly, the Commission believes that reasonable grounds exist for a finding that this registrant is no longer eligible to be registered with the Commission as an investment adviser and that the registration should be cancelled pursuant to section 203(h) of the Act.

Notice is also given that any interested person may, by January 12, 2024, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the cancellation, accompanied by a statement as to the nature of his or her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, and he or she may request that he or she be notified if the Commission should order a hearing thereon. Any such communication should be emailed to the Commission's Secretary at *Secretarys-Office@sec.gov.*

At any time after January 12, 2024, the Commission may issue an order cancelling the registration, upon the basis of the information stated above, unless an order for a hearing on the cancellation shall be issued upon request or upon the Commission's own motion. Persons who requested a hearing, or who requested to be advised as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

Any adviser whose registration is cancelled under delegated authority may appeal that decision directly to the Commission in accordance with rules 430 and 431 of the Commission's rules of practice (17 CFR 201.430 and 431).

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.*

FOR FURTHER INFORMATION CONTACT: Asaf Barouk, Senior Counsel at 202–551–6999; SEC, Division of Investment Management, Office of Chief Counsel, 100 F Street NE, Washington, DC 20549–8549.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.[2]

Dated: December 18, 2023.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–28212 Filed 12–21–23; 8:45 am]

BILLING CODE 8011–01–P

[1] Section 203A of the Act generally prohibits an investment adviser from registering with the Commission unless it meets certain requirements. See Advisers Act section 203A(a); 17 CFR 275.203A–2.

[2] 17 CFR 200.30–5(e)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99198; File No. SR–NYSEARCA–2023–63]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the Grayscale Ethereum Futures Trust (ETH) ETF Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts)

December 18, 2023.

On September 19, 2023, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Grayscale Ethereum Futures Trust (ETH) ETF (''Trust'') under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts). The proposed rule change was published for comment in the **Federal Register** on October 3, 2023.[3]

On November 15, 2023, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act [6] to determine whether to approve or disapprove the proposed rule change.

I. Summary of the Proposal

As described in more detail in the Notice,[7] the Exchange proposes to list and trade the Shares of the Trust under NYSE Arca Rule 8.200–E, Commentary .02, which governs the listing and trading of Trust Issued Receipts on the Exchange.

According to the Exchange, the Chicago Mercantile Exchange, Inc. (''CME'') currently offers two Ethereum futures contracts, one contract representing 50 Ether (''ETH Contracts'') and another contract representing 0.10 Ether (''MET Contracts'').[8] The investment objective of the Trust is to have the daily changes in the net asset value (''NAV'') of the Shares reflect the daily changes in the price of a specified benchmark (''Benchmark''), which is the average of the closing settlement prices for the first to expire and second to expire ETH Contracts listed on the CME.[9] Under normal market conditions, the Trust will invest in the first to expire and second to expire ETH Contracts and MET Contracts (collectively, ''Ether Futures Contracts'') and in cash and cash equivalents.[10] The administrator of the Trust will calculate the NAV once each trading day, as of the earlier of the close of the New York Stock Exchange or 4:00 p.m. Eastern Standard Time.[11] To determine the value of Ether Futures Contracts, the Trust's administrator will use the Ether Futures Contract settlement price on the exchange on which the contract is traded, except that the fair value of Ether Futures Contracts may be used when Ether Futures Contracts close at their price fluctuation limit for the day.[12] When the Trust sells or redeems its Shares, it will do so in transactions with authorized participants in blocks of 10,000 Shares.[13]

II. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEARCA–2023–63 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act [14] to determine whether the proposed rule change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be ''designed to prevent fraudulent and manipulative acts and practices'' and ''to protect investors and the public interest.'' [16]

The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice, in addition to any other comments they may wish to submit about the proposed rule change. In particular, the Commission seeks comment on the following questions and asks commenters to submit data where appropriate to support their views:

1. Given the nature of the underlying assets held by the Trust, has the Exchange properly filed its proposal to list and trade the Shares under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts)? [17]

2. The Exchange raises substantially similar arguments to support the listing and trading of the Shares as those made in Commission orders approving the listing and trading of CME bitcoin futures-based exchange-traded products

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98567 (Sept. 27, 2023), 88 FR 68171 (''Notice''). The Commission has received no comments on the proposal.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 98944, 88 FR 81171 (Nov. 21, 2023). The Commission designated January 1, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Notice, *supra* note 3.

[8] *See id.* at 68171

[9] *See id.* at 68171–72.

[10] *See id.* at 68172.

[11] *See id.* at 68175.

[12] *See id.*

[13] *See id.* at 68176. The filing does not specify whether such transactions would be required to be in-kind or in cash. The filing states that an authorized purchaser who places a purchase order will transfer to the Trust's custodian the required amount of cash, cash equivalents, and/or ether futures by the end of the next business day following the purchase order date or by the end of such later business day, not to exceed three business days after the purchase order date, as agreed to between the authorized purchaser and the custodian when the purchase order is placed. *See id.* The filing also states that the redemption distribution from the Trust will consist of an amount of cash, cash equivalents, and/or exchange listed ether futures that is in the same proportion to the total assets of the Trust on the date that the order to redeem is properly received as the number of Shares to be redeemed under the redemption order is in proportion to the total number of Shares outstanding on the date the order is received. *See id.*

[14] 15 U.S.C. 78s(b)(2)(B).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

[17] NYSE Arca Rule 8.200–E(b) defines a ''Trust Issued Receipt'' as a security (1) that is issued by a trust which holds specific securities deposited with the trust; (2) that, when aggregated in some specified minimum number, may be surrendered to the trust by the beneficial owner to receive the securities; and (3) that pay beneficial owners dividends and other distributions on the deposited securities, if any are declared and paid to the trustee by an issuer of the deposited securities. NYSE Arca Rule 8.200–E, Commentary .02(c) provides that the Exchange may list and trade Trust Issued Receipts investing in ''Financial Instruments.'' NYSE Arca Rule 8.200–E, Commentary .02(b)(4) further defines ''Financial Instruments'' as any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars and floors; and swap agreements.

(''CME Bitcoin Futures ETPs''). Do commenters agree that arguments to support the listing of CME Bitcoin Futures ETPs apply equally to the Shares? Are there particular features related to ether and its ecosystem, including its proof of stake consensus mechanism and concentration of control or influence by a few individuals or entities, that raise unique concerns about ether futures' susceptibility to fraud and manipulation?

3. What are commenters' views on whether the proposed Trust and Shares would be susceptible to manipulation? What are commenters' views generally on whether the Exchange's proposal is designed to prevent fraudulent and manipulative acts and practices?

4. Based on data and analysis provided by the Exchange,[18] do commenters agree with the Exchange that the CME represents a regulated market of significant size related to the holdings of the Trust? [19] Do commenters agree with the Exchange that trading in the Shares would not be the predominant influence on prices in the CME ether futures market? [20]

5. The Exchange states that several exchange-traded funds (''ETFs'') registered under the Investment Company Act of 1940 that hold ether futures contracts have filed registration statements with the Commission and that these ETFs would offer identical exposure to the Trust.[21] The Exchange asserts that ''if the Commission allows these ETFs to begin trading, then it should also approve the Trust for trading.'' [22] Do commenters agree? Why or why not?

III. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, and the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[23]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by January 12, 2024. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by January 26, 2024.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NYSEARCA–2023–63 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NYSEARCA–2023–63. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NYSEARCA–2023–63 and should be submitted on or before January 12, 2024. Rebuttal comments should be submitted by January 26, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2023–28195 Filed 12–21–23; 8:45 am]

BILLING CODE 8011–01–P

[18] *See* Notice, 88 FR at 68174–75.

[19] *See id.*

[20] *See id.* at 68175.

[21] *See id.* at 68173.

[22] *See id.*

[23] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[24] 17 CFR 200.30–3(a)(57).

DEPARTMENT OF STATE

[Public Notice: 12290]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Recasting Antiquity: Whistler, Tanagra, and the Female Form'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Recasting Antiquity: Whistler, Tanagra, and the Female Form'' at the Michael C. Carlos Museum, Emory University, Atlanta, Georgia, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW, (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of

1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–28204 Filed 12–21–23; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 12291]

Notice of Determinations; Culturally Significant Object Being Imported for Exhibition—Determinations: Exhibition of ''Mosaic of the House of the Citharist of Pompeii'' Object

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that a certain object being imported from abroad pursuant to an agreement with its foreign owner or custodian for temporary exhibition or display in the Department of Greek and Roman Art of The Metropolitan Museum of Art, New York, New York, and at possible additional exhibitions or venues yet to be determined, is of cultural significance, and, further, that its temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Nicole L. Elkon,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2023–28205 Filed 12–21–23; 8:45 am]

BILLING CODE 4710–05–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at December 14, 2023 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on December 14, 2023, in Corning, New York, the Commission approved the applications of certain water resources projects and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: December 14, 2023.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, and Secretary, telephone: (717) 238–0423, ext. 1312, fax: (717) 238–2436; email: *joyler@srbc.gov*. Regular mail inquiries may be sent to the above address. See also the Commission website at *www.srbc.gov.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above, these actions were also taken: (1) presented the William Jeanes award to Charlie and Joyce Andrews; (2) approved one grant agreement; (3) approved an authorization to release a proposed general permit GP–03 for public comment; (4) tabled an authorization to release a proposed rulemaking for public comment until the March 2024 business meeting; (5) ratification of two settlement agreements for regulatory violations, and (6) actions on 20 regulatory program projects.

Project Applications Approved

1. *Project Sponsor and Facility:* Appalachian Utilities, Inc., Pine Creek Township, Clinton County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.576 mgd from Well 5 and 0.381 mgd from Well 6.

2. *Project Sponsor and Facility:* Conyngham/Sugarloaf Joint Municipal Authority, Conyngham Borough, Luzerne County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.023 mgd from Well 1, 0.051 mgd from Well 3, and 0.216 mgd from Well 7 (Docket No. 20070301).

3. *Project Sponsor and Facility:* Eagles Crossing, Inc. (Conodoguinet Creek), North Middleton and Lower Frankford Townships, Cumberland County, Pa. Applications for renewal of surface water withdrawal of up to 0.249 mgd (peak day) and consumptive use of up to 0.249 mgd (30-day average) (Docket No. 19981207).

4. *Project Sponsor and Facility:* EQT ARO LLC (Pine Creek), Watson Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20181202).

5. *Project Sponsor and Facility:* Hummel Station, LLC (Susquehanna River), Shamokin Dam Borough and Monroe Township, Snyder County, Pa. Applications for renewal of surface water withdrawal of up to 10.000 mgd (peak day) and consumptive use of up to 6.500 mgd (peak day) (Docket No. 20081222).

6. *Project Sponsor:* KBK–HR Associates, LLC. *Project Facility:* Honey Run Golf Club, Dover Township, York County, Pa. Applications for renewal of surface water withdrawals (peak day) of up to 0.382 mgd from Honey Run and 0.350 mgd from Little Conewago Creek, and consumptive use of up to 0.200 mgd (30-day average) (Docket Nos. 20081215, 20081216, and 20081217).

7. *Project Sponsor and Facility:* Keystone Landfill, Inc., Dunmore Borough, Lackawanna County, Pa. Application for renewal of consumptive use of up to 0.360 mgd (peak day) (Docket No. 20080611).

8. *Project Sponsor and Facility:* Koppers Inc., Clinton Township, Lycoming County, Pa. Application for renewal of consumptive use of up to 0.040 mgd (peak day) (Docket No. 19880204).

9. *Project Sponsor:* Lucky Bear, LLC. *Project Facility:* Liberty Forge Golf Course (Yellow Breeches Creek), Lower and Upper Allen Townships, Cumberland County, Pa. Applications for renewal of surface water withdrawal of up to 0.432 mgd (peak day) and consumptive use of up to 0.375 mgd (peak day) (Docket No. 19980906).

10. *Project Sponsor and Facility:* Newport Borough Water Authority, Howe Township, Perry County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.037 mgd from Well 10 and 0.050 mgd from Well 14 (Docket Nos. 19920506 and 19920706).

11. *Project Sponsor and Facility:* Nicholas Meat, LLC, Greene Township, Clinton County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.288 mgd from Well WS–1, 0.173 mgd from Well WS–3, and 0.144 mgd from Well WS–4.

12. *Project Sponsor and Facility:* Pennsylvania General Energy Company, L.L.C. (Loyalsock Creek), Plunketts Creek Township, Lycoming County, Pa. Modification to intake location and design for the surface water withdrawal (Docket No. 20200312).

13. *Project Sponsor and Facility:* Repsol Oil & Gas USA, LLC (Seeley Creek), Wells Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20181207).

14. *Project Sponsor and Facility:* Repsol Oil & Gas USA, LLC (Wyalusing Creek), Stevens Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 1.500 mgd (peak day) (Docket No. 20181208).

15. *Project Sponsor and Facility:* Seneca Resources Company, LLC (Cowanesque River), Nelson Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.533 mgd (peak day) (Docket No. 20181210).

16. *Project Sponsor and Facility:* Seneca Resources Company, LLC (Cowanesque River), Westfield Township, Tioga County, Pa. Application for renewal of surface water withdrawal of up to 0.400 mgd (peak day) (Docket No. 20181211).

17. *Project Sponsor and Facility:* Stewartstown Borough Authority, Stewartstown Borough, York County, Pa. Application for renewal of groundwater withdrawal of up to 0.044 mgd (30-day average) from Well 6 (Docket No. 19930903).

18. *Project Sponsor and Facility:* Village of Sidney, Town of Unadilla, Otsego County, N.Y. Applications for groundwater withdrawals (30-day averages) of up to 0.999 mgd from Well PW–2 and 0.999 mgd from Well PW–3.

19. *Project Sponsor and Facility:* Walker Township Water Association, Inc., Walker Township, Centre County, Pa. Application for renewal of groundwater withdrawal of up to 0.523 mgd (30-day average) from Snydertown Well 3 (Docket No. 20070905).

Project Tabled

1. *Project Sponsor:* Aqua Pennsylvania, Inc. *Project Facility:* Eagle Rock Utilities System, North Union Township, Schuylkill County, Pa. Application for groundwater withdrawal of up to 0.216 mgd (30-day average) from Well ER–7.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: December 19, 2023.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2023–28255 Filed 12–21–23; 8:45 am]

BILLING CODE 7040–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determinations of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia and Panama; Correction

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with the Harmonized Tariff Schedule of the United States (HTSUS), the Office of the United States Trade Representative (USTR) is providing notice of its determinations of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia and Panama. The level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) the United States-Chile Free Trade Agreement (Chile FTA); (ii) the United States-Morocco Free Trade Agreement (Morocco FTA); (iii) the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR); (iv) the United States-Peru Trade Promotion Agreement (Peru TPA); (v) the United States-Colombia Trade Promotion Agreement (Colombia TPA); and (vi) the United States-Panama Trade Promotion Agreement (Panama TPA). In the **Federal Register** of December 13, 2023, The Office of the U.S. Trade Representative published a document that omitted information. This document corrects that notice.

DATES: This notice is applicable on January 1, 2024.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at (202) 395–9419 or *Erin.H.Nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: This document corrects the notice published December 13, 2023 at 88 FR 86439.

I. Chile FTA

Pursuant to section 201 of the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Chile FTA.

Note 3(a) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of goods classified under HS subheadings1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus.

Note 3(b) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9822.02.01 in any calendar year (CY) (beginning in CY2016) in the quantity of goods equal to the amount of Chile's trade surplus in subdivision (a) of the note.

During CY2022, the most recent year for which data are available, Chile's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 677,267 metric tons according to data published by its customs authority, the *Servicio Nacional de Aduana.* Based on this data, USTR has determined that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 3(b) to subchapter XXII of HTSUS chapter 98, goods of Chile are not eligible to enter the United States duty-free under subheading 9822.02.01 in CY2024.

II. Morocco FTA

Pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented the Morocco FTA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Morocco FTA.

Note 6(a) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus.

Note 6(b) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9822.03.01 in any CY in the quantity of goods equal to the amount of Morocco's trade surplus in subdivision (a) of the note.

During CY2022, the most recent year for which data are available, Morocco's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 813,832 metric tons according to data published by its customs authority, *the Office des Changes.* Based on this data, USTR has determined that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 6(b) to subchapter XXII of HTSUS chapter 98, goods of Morocco are not eligible to enter the United States duty-free under subheading 9822.03.01 in CY2024.

III. CAFTA–DR

Pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025), Presidential Proclamation No. 8331 of December 23, 2008 (73 FR 79585), and Presidential Proclamation No. 8536 of June 12, 2010 (75 FR 34311), implemented the CAFTA–DR on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the CAFTA–DR.

Note 25(b)(i) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 and its imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that CY. In each successive year after CY2022, the aggregate quantity for each country increases, from the aggregate quantity permitted in the prior calendar year, by the quantity set out in that note.

Costa Rica

During CY2022, the most recent year for which data are available, Costa Rica's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 80,351 metric tons according to data published by the *Costa Rican Customs Department, Ministry of Finance.* Based on this data, USTR has determined that Costa Rica's trade surplus is 80,351 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 for Costa Rica for CY2024 is 14,960 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Costa Rica that may be entered duty-free under subheading 9822.05.20 in CY2024 is 14,960 metric tons (*i.e.,* the amount that is the lesser of Costa Rica's trade surplus and the specific quantity set out in that note for Costa Rica for CY2024).

Dominican Republic

During CY2022, the most recent year for which data are available, the Dominican Republic's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 4,169 metric tons according to data published by the *General Directorate of Customs (DGA).* Based on this data, USTR has determined that the Dominican Republic's trade surplus is negative. Therefore, in accordance with U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98, goods of the Dominican Republic are not eligible to enter the United States duty-free under subheading 9822.05.20 in CY2024.

El Salvador

During CY2022, the most recent year for which data are available, El Salvador's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 328,773 metric tons according to data published by the *Central Bank of El Salvador.* Based on this data, USTR has determined that El Salvador's trade surplus is 328,773 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 for El Salvador for CY2024 is 38,760 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY 2024 is 38,760 metric tons (*i.e.,* the amount that is the lesser of El Salvador's trade surplus and the specific quantity set out in that note for El Salvador for CY2024).

Guatemala

During CY2022, the most recent year for which data are available, Guatemala's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 1,440,875 metric tons according to data published by the *Guatemalan Sugar Association (ASAZGUA) and Bank of Guatemala.* Based on these data, USTR has determined that Guatemala's trade surplus is 1,440,875 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 for Guatemala for CY2024 is 53,580 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY 2024 is 53,580 metric tons (*i.e.,* the amount that is the lesser of Guatemala's trade surplus and the specific quantity set out in that note for Guatemala for CY2024).

Honduras

During CY2022, the most recent year for which data are available, Honduras' exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 129,017 metric tons according to data published by the *Central Bank of Honduras.* Based on this data, USTR has determined that Honduras' trade surplus is 129,017 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 for Honduras for CY 2024 is 10,880 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of

Honduras that may be entered duty-free under subheading 9822.05.20 in CY 2024 is 10,880 metric tons (*i.e.,* the amount that is the lesser of Honduras' trade surplus and the specific quantity set out in that note for Honduras for CY2024).

Nicaragua

During CY2022, the most recent year for which data are available, Nicaragua's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 340,879 metric tons according to data published by the *National Committee of Sugar Producers (CNPA).* Based on this data, USTR has determined that Nicaragua's trade surplus is 340,879 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTSUS chapter 98 for Nicaragua for CY 2024 is 29,920 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY2024 is 29,920 metric tons (*i.e.,* the amount that is the lesser of Nicaragua's trade surplus and the specific quantity set out in that note for Nicaragua for CY2024).

IV. Peru TPA

Pursuant to section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note), Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105) implemented the Peru TPA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Peru TPA.

Note 28(c) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus.

Note 28(d) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that note for that CY.

During CY2022, the most recent year for which data are available, Peru's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 289,046 metric tons according to data published by the *National Superintendence of Customs and Tax Administration (SUNAT).* Based on this data, USTR has determined that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTSUS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY2024.

V. Colombia TPA

Pursuant to section 201 of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42; 19 U.S.C. 3805 note), Presidential Proclamation No. 8818 of May 14, 2012 (77 FR 29519) implemented the Colombia TPA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Colombia TPA.

Note 32(b) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Colombia's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Colombia's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Colombia TPA and Colombia's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Colombia's trade surplus.

Note 32(c)(i) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar goods of Colombia entered under subheading 9822.08.01 in an amount equal to the lesser of Colombia's trade surplus or the specific quantity set out in that note for that CY.

During CY2022, the most recent year for which data are available, Colombia's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 276,069 metric tons according to data published by the *Colombian National Tax and Customs Directorate (DIAN).* Based on this data, USTR has determined that Colombia's trade surplus is 276,069 metric tons. The specific quantity set out in U.S. Note 32(c)(i) to subchapter XXII of HTSUS chapter 98 for Colombia for CY2024 is 59,000 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Colombia that may be entered duty-free under subheading 9822.08.01 in CY2024 is 59,000 metric tons (*i.e.,* the amount that is the lesser of Colombia's trade surplus and the specific quantity set out in that note for Colombia for CY2024).

VI. Panama TPA

Pursuant to section 201 of the United States-Panama Trade Promotion Agreement Implementation Act (Pub. L. 112–43; 19 U.S.C. 3805 note), Presidential Proclamation No. 8894 of October 29, 2012 (77 FR 66505) implemented the Panama TPA on behalf of the United States and modified the HTSUS to reflect the tariff treatment provided for in the Panama TPA.

Note 35(a) to subchapter XXII of HTSUS chapter 98 requires USTR to publish annually a determination of the amount of Panama's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Panama's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Panama TPA and Panama's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Panama's trade surplus.

Note 35(c) to subchapter XXII of HTSUS chapter 98 provides duty-free treatment for certain sugar goods of Panama entered under subheading 9822.09.17 in an amount equal to the lesser of Panama's trade surplus or the specific quantity set out in that note for that CY.

During CY2022, the most recent year for which data are available, Panama's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 413 metric tons according to data published by the National Institute of Statistics and Census, Office of the General Comptroller of Panama; and the Ministry of Commerce and Industry of Panama. Based on this data, USTR has determined that Panama's trade surplus is negative. Therefore, in accordance with that note, goods of Panama are not eligible to enter the United States duty-free under subheading 9822.09.17 in CY2024.

Douglas McKalip,

Chief Agricultural Negotiator, Office of the United States Trade Representative.

[FR Doc. 2023–27761 Filed 12–21–23; 8:45 am]

BILLING CODE 3390–F4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Request To Release Airport Property for Land Disposal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to rule on release of airport property for land disposal at the St. Louis Lambert International Airport (STL), St. Louis, Missouri.

SUMMARY: The FAA proposes to rule and invites public comment on the release of land at the St. Louis Lambert International Airport (STL), St. Louis, Missouri.

DATES: Comments must be received on or before January 22, 2024.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to: James Neidel, Planning Manager, St. Louis Lambert International Airport, P.O. Box 10212, Lambert Station, St. Louis, MO 63145, (314) 551–5027.

FOR FURTHER INFORMATION CONTACT: Amy J. Walter, Airports Land Specialist, Federal Aviation Administration, Airports Division, ACE–620G, 901 Locust, Room 364, Kansas City, MO 64106, (816) 329–2603, *amy.walter@faa.gov.* The request to release property may be reviewed, by appointment, in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release four parcels totaling approximately 0.72 acres of airport property at the St. Louis Lambert International Airport (STL) under the provisions of 49 U.S.C. 47107(h)(2). The Planning Manager for the St. Louis Lambert International Airport requested a release from the FAA to sell four tracts of land, totaling approximately 0.72 acres. Buyer, St. Louis County Parks, will add the land to their adjacent existing park. The FAA determined that the request to release property at the St. Louis Lambert International Airport (STL) submitted by the Sponsor meets the procedural requirements of the FAA and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The St. Louis Lambert International Airport (STL) is proposing the release of airport property containing four tracts of land, totaling approximately 0.72 acres. The release of land is necessary to comply with Federal Aviation Administration Grant Assurances that do not allow federally acquired airport property to be used for non-aviation purposes. The sale of the subject property will result in the land at the St. Louis Lambert International Airport (STL) being changed from aeronautical to non-aeronautical use and release the lands from the conditions of the Airport Improvement Program Grant Agreement Grant Assurances in order to dispose of the land. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for general aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon appointment and request, inspect the application, notice and other documents determined by the FAA to be related to the application in person at the St. Louis Lambert International Airport.

Issued in Kansas City, MO, on December 18, 2023.

James A. Johnson,

Director, FAA Central Region, Airports Division.

[FR Doc. 2023–28140 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2023–2221]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Notice of Proposed Outdoor Laser Operation(s)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves the gathering of information necessary for the FAA to ensure proposed outdoor laser operations will not interfere with air traffic operations.

DATES: Written comments should be submitted by February 20, 2024.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: 800 Independence Ave. SW, Washington, DC 20591, ATTN: Manager, Airspace Rules and Regulations, AJV–P21.

FOR FURTHER INFORMATION CONTACT: Juan Sebastian Yanguas by email at: *juan.s.yanguas@faa.gov*; phone: 202–267–8783.

SUPPLEMENTARY INFORMATION: The information to be collected will be used to and/or is necessary because the FAA must evaluate proposed outdoor laser operations requiring a Food and Drug Administration (FDA) variance from 21 CFR 1040.11(c) for a laser light show, display, or device.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0662.

Title: Notice of Proposed Outdoor Laser Operation(s).

Form Numbers: FAA Form 7140–1.

Type of Review: Renewal of an information collection.

Background: No laser light show, projection system, or device may vary from compliance with 21 CFR 1040.11(c) in design or use without the approval of an application for variance in accordance with 21 CFR 1010.4 using FDA Form 3147. In order to obtain a variance from 21 CFR 1040.11(c) for a laser light show, display, or device (as described on FDA Form 3147); advance written notification must be made as early as possible to appropriate federal, state, and local authorities providing show itinerary with dates and locations clearly and completely identified, and a basic description of the proposed effects including a statement of the maximum power output intended. Such notifications must be made, but not

necessarily be limited, to the FAA for any projections into open airspace at any time (*e.g.,* set up, alignment, rehearsals, and performances). If the FAA objects to any laser effects, the objections will be resolved and any conditions requested by FAA will be adhered to. If these conditions cannot be met, the objectionable effects will be deleted from the show.

FAA Advisory Circular (AC) 70–1B with Change 1, Outdoor Laser Operations, provides information for those proponents planning to conduct outdoor laser operations that may affect aircraft operations in the United States (U.S.) National Airspace System (NAS). In addition, this AC explains the necessity to notify the FAA, how to notify the FAA of the planned laser operation, and any action the FAA will take to respond to such notifications. Furthermore, the AC includes instructions for completing and submitting the requisite FAA Form 7140–1, Notice of Proposed Outdoor Laser Operation(s).

Respondents: Approximately 455 laser operations.

Frequency: One time per laser operation.

Estimated Average Burden per Response: Approximately four hours per form.

Estimated Total Annual Burden: Approximately 1,820 hours.

Issued in Washington, DC, on December 18, 2023.

Frank Lias,

Manager, Rules & Regulations Group, AJV–P2, Air Traffic Organization.

[FR Doc. 2023–28242 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Transportation Project in Florida

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by Florida Department of Transportation (FDOT) and other Federal Agencies.

SUMMARY: The FHWA, on behalf of the FDOT, is issuing this notice to announce actions taken by FDOT and other Federal Agencies that are final agency actions. These actions relate to the proposed project that involves the extension of the Poinciana Parkway [State Road (SR) 538] from its planned terminus at County Road (CR) 532 to the Western Beltway (SR 429)/Sinclair Road interchange. The total project length is 4.97 miles and features a six-lane limited access toll facility with modifications to interchanges at CR 532, SR 429/I–4 Beyond the Ultimate, and Sinclair Road. These actions grant licenses, permits, or approvals for the project.

DATES: By this notice, the FHWA, on behalf of FDOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal Agency actions on the listed highway project will be barred unless the claim is filed on or before May 20, 2024. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

ADDRESSES: Project documents can be viewed or download from the project website: *www.PoincianaExtension.com,* or by contacting FDOT Office of Environmental Management, 605 Suwannee Street, MS 37, Tallahassee, Florida 32399, during normal business hours are 8 a.m. to 5 p.m. (eastern standard time), Monday through Friday, except State holidays.

FOR FURTHER INFORMATION CONTACT: Jennifer Marshall, P.E., Director, FDOT Office of Environmental Management; telephone (850) 414–4316; email: *Jennifer.Marshall@dot.state.fl.us.*

SUPPLEMENTARY INFORMATION: Effective December 14, 2016, and as subsequently renewed on May 26, 2022, the FHWA assigned, and the FDOT assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that FDOT and other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, or approvals for the proposed improvement highway project. The actions by FDOT and other Federal Agencies on the project, and the laws under which such actions were taken are described in the Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) approved on November 15, 2023, and in other project records for the listed project. The Environmental Assessment (EA) with Finding of No Significant Impact (FONSI) and other documents for the listed project are available by contacting FDOT at the address provided above.

The project subject to this notice is:

Project Location: Osceola County, Polk County, Florida. The Poinciana Parkway Extension Connector project connects the Poinciana Parkway (SR 538) at CR 532 to the I–4 and SR 429 interchange, modifying the future CR 532 interchange, the I–4/SR 429 interchange, and the Sinclair Road interchange to accommodate the Poinciana Parkway Extension Connector.

Project Actions: This notice applies to the Environmental Assessment (EA) with Finding of No Significant Impact (FONSI), and all other Federal Agency licenses, permits, or approvals for the listed project as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321 *et seq.*]; Federal–Aid Highway Act (FAHA) [23 U.S.C. 109 and 23 U.S.C. 128]; 23 CFR part 771.

2. *Air:* Clean Air Act (CAA) [42 U.S.C. 7401–7671(q)], with the exception of project level conformity determinations [42 U.S.C. 7506].

3. *Noise:* Noise Control Act of 1972 [42 U.S.C. 4901–4918]; 23 CFR 772.

4. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [23 U.S.C. 138 and 49 U.S.C. 303]; 23 CFR part 774; Land and Water Conservation Fund (LWCF) [54 U.S.C. 200302–200310].

5. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and 1536]; Marine Mammal Protection Act [16 U.S.C. 1361–1423h], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(f)]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act (MBTA) [16 U.S.C. 703–712]; Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801–1891d], with Essential Fish Habitat requirements [16 U.S.C. 1855(b)(2)].

6. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 3006101 *et seq.*]; Archaeological Resources Protection Act of 1979 (ARPA) [16 U.S.C. 470(aa)–470(II)]; Preservation of Historical and Archaeological Data [54 U.S.C.312501–312508]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013; 18 U.S.C. 1170].

7. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000d–2000d–1]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. *Wetlands and Water Resources:* Clean Water Act (section 319, section 401, section 404) [33 U.S.C. 1251–1387]; Coastal Barriers Resources Act (CBRA) [16 U.S.C. 3501–3510]; Coastal Zone Management Act (CZMA) [16 U.S.C. 1451–1466]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300f–300j–26];

Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Wetlands Mitigation, [23 U.S.C. 119(g) and 133(b)(3)]; Flood Disaster Protection Act [42 U.S.C. 4001–4130].

9. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

10. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 18, 2023.

Karen M. Brunelle,

Director, Office of Project Development, Federal Highway Administration, Tallahassee, Florida.

[FR Doc. 2023–28234 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2001–11213, Notice No. 28]

Drug and Alcohol Testing: Determination of Minimum Random Testing Rates for 2024

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notification of determination.

SUMMARY: This notification of determination announces FRA's minimum annual random drug and minimum annual random alcohol testing rates for covered service, maintenance-of-way (MOW), and mechanical (MECH) employees for calendar year 2024.

DATES: This determination takes effect December 22, 2023.

FOR FURTHER INFORMATION CONTACT: Gerald Powers, FRA Drug and Alcohol Program Manager, by email: *gerald.powers@dot.gov* or by telephone: 202–493–6313; or Melissa Van Dermeir, FRA Drug and Alcohol Program Specialist, by email: *melissa.vandermeir@dot.gov* or by telephone: 312–720–9491.

SUPPLEMENTARY INFORMATION: Each year, FRA sets its minimum annual random testing rates after considering the last two complete calendar years of railroad industry drug and alcohol program data submitted to DOT's Management Information System (MIS) for DOT drug and alcohol testing results. FRA, however, reserves the right to consider factors in addition to MIS-reported data before deciding whether to lower annual minimum random testing rates. *See* 85 FR 81265 (Dec. 15, 2020).

To summarize, FRA is announcing that its minimum annual random drug and alcohol testing rates for the period between January 1, 2024, through December 31, 3024 (Calendar Year 2024) will continue to be as follows:

Covered service employees—25 percent for drugs and 10 percent for alcohol.

MOW employees—25 percent for drugs and 10 percent for alcohol.

MECH employees—50 percent for drugs and 25 percent for alcohol.

These rates are minimums, and railroads and railroad contractors may conduct random testing at higher rates than those required by this notification of determination.

Discussion

Random Testing Rates for Covered Service Employees

The rail industry's random drug testing positive rate for covered service employees remained below 1.0 percent for 2021 and 2022. The Administrator has therefore determined the minimum annual random drug testing rate for covered service employees will remain at 25 percent for Calendar Year 2024. The industry-wide random alcohol testing violation rate for covered service employees remained below .5 percent for 2021 and 2022. The Administrator has therefore determined the minimum random alcohol testing rate for covered service employees will remain at 10 percent for Calendar Year 2024.

Random Testing Rates for MOW Employees

The rail industry's random drug testing positive rate for MOW employees remained below 1.0 percent for 2021 and 2022. The Administrator has therefore determined the minimum annual random drug testing rate for MOW employees will remain at 25 percent for calendar year 2024. The industry-wide random alcohol testing violation rate for MOW employees remained below 0.5 percent for 2021 and 2022. The Administrator has therefore determined the minimum random alcohol testing rate for MOW employees will remain at 10 percent for Calendar Year 2024.

Random Testing Rates for MECH Employees

FRA does not have the two full years of MIS data required to adjust the random testing rates for MECH employees, because those employees became subject to FRA random drug and alcohol testing in March 2022. *See* 87 FR 5719, February 2, 2022. The Administrator has therefore determined that the minimum random testing rates for MECH employees will remain at 50 percent for drugs and 25 percent for alcohol for Calendar Year 2024.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2023–28264 Filed 12–21–23; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

[TREAS–DO–2023–0014]

Request for Information on Financial Inclusion

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Request for information (RFI).

SUMMARY: The Department of the Treasury (Treasury) invites public input to inform its development of a national strategy for financial inclusion. This request for information (RFI) offers the opportunity for interested individuals and organizations to identify opportunities to advance financial inclusion through policy, government programs, financial products and services, technology, and other tools and infrastructure.

DATES: Written comments and information are requested on or before February 20, 2024.

ADDRESSES: Please submit comments electronically through the Federal eRulemaking Portal: *https://www.regulations.gov.*

In general, all comments will be available for inspection at *www.regulations.gov.* Comments, including attachments and other

supporting materials, are part of the public record. Do not submit any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Natalia Li, Director, Office of Consumer Policy, 202–622–1388, *natalia.li@treasury.gov;* Nora Esposito, Senior Advisor, Office of Consumer Policy, 202–604–9307, *nora.esposito@treasury.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Financial Services and General Government Appropriations Act, 2023 (FSGG), enacted December 29, 2022, directed Treasury to develop a national strategy to improve financial inclusion. Specifically, the FSGG tasked Treasury with developing a strategy to broaden access to financial services among underserved communities and improve the ability of such communities to use and benefit from financial tools and services. The FSGG stated that ''the strategy should establish national objectives for financial inclusion, set benchmarks for measuring progress, and offer recommendations for how public policy, government programs, financial products and services, technology, and other tools and infrastructure can advance financial inclusion.'' [1]

Treasury intends for the strategy to identify clear and actionable opportunities for the public, private, and nonprofit sectors to advance financial inclusion. Treasury is therefore seeking information and recommendations from all interested parties for the purpose of advancing financial inclusion through policy, government programs, financial products and services, technology, and other tools and market infrastructure. Treasury is committed to including a broad range of perspectives in efforts to promote financial inclusion and is particularly interested in the views and needs of underserved communities.

II. Overview

Households rely on consumer financial products and services, from transaction accounts to mortgages, to meet their financial needs and goals. However, historic and ongoing discrimination, exclusion, and disparate treatment have resulted in significant disparities in access to and use of financial products and services across different populations and communities, including low-income and low-wealth communities, Black, Indigenous, (and) People of Color or BIPOC communities, and women. Improving inclusion in the financial system is a critical part of fostering financial security, expanding opportunities to build wealth, and closing the racial wealth gap.

While definitions of ''financial inclusion'' vary, conventional interpretations of the term often center around accessibility, indicating that financial inclusion pertains to access to core financial products and services like bank accounts, credit, and digital payments.[2] Beyond access, the term can also be used in ways that incorporate considerations of the affordability, utility, safety, sustainability, and suitability of financial products and services. Financial inclusion can involve things other than specific products or services, such as financial information or education that helps consumers learn how to access and use financial products, or to avoid frauds, scams, and other predatory financial practices. The interpretation of the term is also influenced by the unique socioeconomic, cultural, and regulatory context in which the term is used. Financial inclusion is often associated with other areas more broadly related to the status of consumer finances, including financial well-being and financial health, among others.

The ability to access and use financial products and services can confer significant benefits to consumers. At the household level, access to financial products and services enhances households' ability to make payments, save, and borrow, helping to facilitate full participation in the economy and the ability to both manage day-to-day needs and navigate financial shocks or emergencies. Certain financial products and services also play a central role in facilitating individual and household financial security and wealth; for example, financing for businesses or educational opportunities can help generate future financial benefit. Financial inclusion can meaningfully enhance consumers' ability to transact and save, as well as enable investments that bolster income and wealth, which can ultimately have positive impacts on the overall economy.

The United States has well-established financial infrastructure which provides many consumers with broad access to financial products and services. A commonly cited measure relating to the state of financial inclusion and access to financial services is the unbanked rate, the share of households without a checking or savings account at a bank or credit union. The most recent 2021 FDIC National Survey of Unbanked and Underbanked Households found that an estimated 4.5 percent, or 5.9 million, of all U.S. households were unbanked, the lowest since the survey began in 2009.[3] Recent data from the Federal Reserve Board indicates that in 2022, 82 percent of all adults reported having a credit card, and the majority of adults who applied for credit were approved for the amount they requested.[4]

However, there are significant disparities in how well the financial system functions for different populations and communities. Low-income and low-wealth communities, racial and ethnic minorities, Native and Tribal communities, people with disabilities, women, LGBTQI communities, immigrants, individuals with limited English proficiency, justice-involved individuals, and other underserved individuals and groups experience differences in access to the financial system and use of financial products and services, with consequences for their economic security and wealth-building capacity. These disparities relate to historic and intentional exclusion from the financial system, ongoing forms of discrimination and predatory practices, and other barriers.

In 2021, while only 2 percent of white households were unbanked, 11 percent of Black households, and 9 percent of Hispanic households lacked bank accounts. Persistent disparities in unbanked rates between white and minority households are found at all income levels.[5] Additionally, in 2021, 14.1 percent of households were ''underbanked,'' meaning respondents had a bank account but also used often-costly alternative financial services within the past year to meet needs that they were unable to meet through offerings from traditional financial service providers, such as quickly

[1] U.S. Congress, Joint Explanatory Statement for Financial Services and General Government Appropriations Bill, 2023, 117th Congress, *https://www.congress.gov/117/cprt/HPRT50347/CPRT-117HPRT50347.pdf.*

[2] *See* The World Bank, *Financial Inclusion, https://www.worldbank.org/en/topic/financialinclusion/overview,* and United Nations Secretary-General's Special Advocate for Inclusive Finance for Development, *Financial Inclusion, https://www.unsgsa.org/financial-inclusion.*

[3] Federal Deposit Insurance Corporation, 2021 FDIC National Survey of Unbanked and Underbanked Households (Jul. 2023), *https://www.fdic.gov/analysis/household-survey/2021report.pdf.*

[4] Federal Reserve Board, Report on the Economic Well-Being of U.S. Households in 2022 (SHED) (May 2023), *https://www.federalreserve.gov/publications/2023-economic-well-being-of-us-households-in-2022-banking-credit.htm.*

[5] *See* Federal Deposit Insurance Corporation, *op cit.* 3.

cashing checks, sending money overseas, or accessing short-term credit.[6] Underbanked households were more likely to belong to racial and ethnic minority groups, have lower incomes, or have a disability. For those unable to access these financial products and services, managing day-to-day finances can be difficult and expensive.

Disparities also exist in access to financial products and services used to facilitate long-term financial security and wealth. Beyond un- and underbanked rates, there are disparities among different groups in the use of financial products and services, including tax-advantaged retirement accounts, stock market investments, insurance, and small business loans. In 2020, while 54 percent of white households reported owning a retirement account, only 28 percent of Hispanic households and 36 percent of Black households reported having an account. In 2022, rates of stock and business ownership were 65 percent and 16 percent respectively for white households. These rates stood at 40 percent and 11 percent for Black households and 27 percent and 13 percent for Hispanic households. Lack of access to such financial products and services can hinder households' ability to manage financial shocks and build long-term financial security, which is reflected in persistent gaps in broader economic measures between different groups. According to data from the Federal Reserve Board, in 2022, median wealth among Black and Hispanic households was only 15 and 20 percent, respectively, of that of white households.[7] Members of minority groups also have consistently lower financial well-being scores as measured by the Consumer Financial Protection Bureau's Financial Well-Being Scale.[8] As these figures demonstrate, equalizing financial access and inclusion is a necessary component of fostering financial security for all Americans and closing the racial wealth gap.

There are many reasons that individual consumers may face barriers accessing or using traditional financial products and services, and the challenges different communities face are diverse. Further, while some consumers may have the ability to access traditional financial products and services, they may prefer to manage their financial needs through other means. In 2021, unbanked households' most-cited reasons for not having a bank account were account fees and minimum balance requirements, as well as concerns over privacy and lack of trust in banks.[9] In addition to financial precarity, some of these concerns may relate to legacies of historic mistreatment of certain communities by the financial system, and to ongoing forms of discrimination.[10]

New developments in the provision of financial products and services have implications for financial inclusion. Recent efforts to foster competition and innovation in the financial sector may benefit consumers as providers develop new or improved offerings.[11] In addition, both traditional banks and non-bank entities have increasingly offered financial products and services through digital channels, opening access to financial products and services for some consumers.[12] However, the ''digital divide,'' or gap between those with and without broadband access, presents a significant limitation to the potential inclusionary benefits of digital financial services, while also potentially creating new disparities in access.[13]

Expanding the provision of certain financial products and services may also raise concerns about predatory or exploitative practices. Providing financial services to certain households on unfair, deceptive, or abusive terms, or in a way that exposes consumers to inappropriate levels of risk can result in financial harm to consumers and communities and may also undermine trust in financial service providers. As financial institutions continue to innovate their products or business models, ensuring that resulting consumer products and services are safe, beneficial, and do not perpetuate or create new forms of exclusion or discrimination is vital to efforts to promote financial inclusion.

III. Request for Information

Treasury welcomes input on any matter that commenters believe is relevant to Treasury's efforts to develop a national strategy for financial inclusion. Commenters are encouraged to address all of the following questions, and to provide any other comments relevant to work improving financial inclusion for underserved communities. Where possible, please provide specific examples.

A. Defining Financial Inclusion

1. How do you or your organization define financial inclusion?

(a) Some definitions of financial inclusion include considerations of access, safety, usefulness, appropriateness, and affordability of financial products and services, among others. What are the key elements of your definition and why do you include them?

(b) Some topics related to financial inclusion include financial health, financial well-being, financial capability, and financial resilience. Do any of these or other related topics relate to or influence your definition of financial inclusion, and if so, why?

(c) Given the multiple elements and terms associated with financial inclusion, is there an alternative term that you believe should be used instead of financial inclusion?

2. What do you consider to be in and out of scope for efforts to promote financial inclusion?

(a) Which financial products and services should consumers be able to access in order to be considered financially included? Please provide specific examples. Are there particular qualities that are important for these products and services to have?

(b) Which consumer financial activities are relevant when considering how to advance financial inclusion? For example, do you consider accessing tax benefits you may be eligible for, sending peer-to-peer payments, or transacting in cash relevant? Do you consider activities like saving for retirement, investing, purchasing a home, or

[6] Alternative financial products and services include nonbank transaction or credit products or services, which are often associated with comparatively higher costs than those of traditional financial products and services. *See* Federal Deposit Insurance Corporation, *op cit.* 3.

[7] Federal Reserve Board, 2022 Survey of Consumer Finances (SCF) (Oct. 2023), *https://www.federalreserve.gov/econres/scfindex.htm.*

[8] For more details about the CFPB's definition and measurement of financial well-being, see CFPB, Making Ends Meet in 2022 (Dec. 2022), *cfpb_making-ends-meet-in-2022_report_2022–12.pdf* (*consumerfinance.gov*), and *https://www.consumerfinance.gov/data-research/research-reports/financial-well-being-scale/.*

[9] *See* Federal Deposit Insurance Corporation, *op cit.* 3.

[10] U.S. Department of the Treasury, Freedman's Bank Demise, *https://home.treasury.gov/about/history/freedmans-bank-building/freedmans-bank-demise,* Amalie Zinn, Michael Neal, Vanessa G. Perry, *Building Trust in the Financial System is Key to Closing the Racial Wealth Gap,* Urban Institute (Jun. 2023), *https://www.urban.org/urban-wire/building-trust-financial-system-key-closing-racial-wealth-gap,* Rocio Sanchez-Moyano and Bina Patel Shrimali, The Racialized Roots of Financial Exclusion, Federal Reserve Bank of San Francisco (Aug. 2021), *https://www.frbsf.org/community-development/publications/community-development-investment-review/2021/august/the-racialized-roots-of-financial-exclusion/.*

[11] E.O. 14036, 86 FR 36987 (Jul. 9, 2021).

[12] U.S. Department of the Treasury, Report to the White House Competition Council, Assessing the Impact of New Entrant Non-bank Firms on Competition in Consumer Finance Markets (Nov. 2022), *https://home.treasury.gov/system/files/136/Assessing-the-Impact-of-New-Entrant-Nonbank-Firms.pdf.*

[13] U.S. Government Accountability Office, Broadband: National Strategy Needed to Guide Federal Efforts to Reduce Digital Divide (May 2022), *https://www.gao.gov/products/gao-22-104611.*

starting or growing a business relevant to financial inclusion? Are there consumer financial activities that are not relevant?

(c) What is the relationship between financial inclusion and financial security? Between financial inclusion and building wealth?

B. Barriers to Financial Inclusion

1. Are there features of the existing financial system (for example, pricing strategies, fees, penalties, underwriting methods and standards, uses of consumer data, technological systems or constraints, institutional protocols related to fraud or risk management, or other features) that limit or create inequalities in the ability of consumers and communities to access, use, and benefit from financial products and services? Which features are the most limiting, and for whom? Please provide specific examples.

2. What is the role of other factors such as broadband access, mobile or digital proficiency, language access, individuals' broader economic circumstances, or availability of unbiased information about products and services in financial inclusion? Please provide specific examples, including which community or communities might face resulting impacts.

3. What barriers do underserved communities in particular experience in accessing, using, and benefiting from financial products and services?

(a) If relevant, what are the community-specific barriers faced by members of your community or the communities you serve or represent in relation to accessing or building credit, accessing or using savings and investment tools (including those that facilitate retirement security), managing financial risk, acquiring assets, or other financial activities? Please provide specific examples.

C. Measuring Financial Inclusion

1. What are key indicators that can be used to measure and track financial inclusion? If possible, please provide specific examples of existing data sources.

(a) What are appropriate quantitative and qualitative measures of financial inclusion? For example, this could include the share of households that own a credit card or transaction account, or consumers' beliefs about how well financial products and services fit their needs.

(b) What are appropriate individual and/or system-level measures of financial inclusion? For example, this could include the share of consumers' total payments made electronically, or consumers' average savings balances. More broadly, this could include metrics related to availability, affordability, utilization or benefit of financial products and services, such as the number of bank branches available in a certain area, average transaction costs, rates of utilization for a given product or service, or consumer outcomes related to product or service use.

(c) Are there any intermediate benchmarks or indicators that should be tracked to measure overall progress toward financial inclusion?

2. If relevant, how do you measure or track the state of financial inclusion (or exclusion) in your community or in the communities you serve or represent? Please provide specific examples.

D. Actions To Promote Financial Inclusion

1. Please describe examples of existing programs, initiatives, products, or services successful in promoting financial inclusion. Why were these effective and what are promising practices or other lessons learned?

2. What should be done to improve financial inclusion for underserved communities?

(a) How can initiatives to promote financial inclusion be tailored to address the unique needs and preferences of underserved communities, and how can the financial system build trust among consumers who have been excluded? Please provide specific examples.

(b) If relevant, what do you or your organization do to promote financial inclusion for underserved communities? Please provide specific examples.

(c) If relevant, what would you or your organization need (for example, information, resources, policies, regulatory actions, etc.) to be able to better meet the financial needs of underserved communities? Please provide specific examples.

3. What can be done to enable responsible, equitable innovation in financial products and services that enhances financial inclusion while ensuring robust consumer protections, including privacy and data security? For example, could novel data sources, data analytic techniques or algorithms be leveraged to promote access to financial products while ensuring privacy protections and safeguarding consumer data?

(a) What are examples of innovative financial products, services, and strategies that have enhanced individuals' ability to access, use, and benefit from these offerings?

(b) What can be done (in financial institution practice, policy, regulation, or otherwise) to ensure that efforts to promote financial inclusion, or products marketed as inclusionary do not result in or perpetuate discriminatory or predatory practices?

4. What should be prioritized (in policy, regulation, practice or otherwise) in the effort to promote financial inclusion?

(a) In your view, what are the most significant opportunities to advance financial inclusion both broadly and for underserved communities in particular? Please provide specific examples.

5. What roles should the public, private, and nonprofit sectors play in promoting financial inclusion?

6. In your view, what should a national strategy for financial inclusion contain or aim to accomplish?

E. Other Topics Related to Financial Inclusion

1. Are there additional aspects of or topics related to financial inclusion that Treasury should be aware of in developing a national strategy for financial inclusion?

Natalia V. Li,

Director, Office of Consumer Policy.

[FR Doc. 2023–28263 Filed 12–21–23; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2024 Harriet Tubman and Greatest Generation Commemorative Coin Programs

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the 2024 Harriet Tubman and Greatest Generation Commemorative Coin Programs.

FOR FURTHER INFORMATION CONTACT: Ann Bailey, Sr. Program Manager for Sales and Marketing; United States Mint; 801 9th Street NW, Washington, DC 20220; or call 202–354–7500.

SUPPLEMENTARY INFORMATION: Pricing for the 2024 Harriet Tubman and Greatest Generation Commemorative Coin Programs is as follows:

Coin	Introductory price	Regular price
Silver Proof (both programs)	$82.00	$87.00
Silver Uncirculated (both programs)	77.00	82.00
Clad Proof (both programs)	49.00	54.00
Clad Uncirculated (both programs)	47.00	52.00

Products containing gold coins will be priced according to the Pricing of Numismatic and Commemorative Gold and Platinum Products Grid posted at *www.usmint.gov.*

(Authority: Public Laws 117–162, 117–163)

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2023–28191 Filed 12–21–23; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2024–02; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of a final rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2024–02. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective dates see the separate documents, which follow.

RULES LISTED IN FAC 2024–02

Subject	FAR case	Analyst
Use of Project Labor Agreements for Federal Construction Projects	2022–003	Bowman.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document following this summary. FAC 2024–02 amends the FAR as follows:

Use of Project Labor Agreements for Federal Construction Projects (FAR Case 2022–003)

This final rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14063, Use of Project Labor Agreements for Federal Construction Projects. E.O. 14063 expands the definition of ''construction,'' raises the threshold for a large-scale construction project from $25 million to $35 million and establishes a series of exceptions to the PLA requirements. Additionally, the E.O. mandates that Federal Government agencies require the use of project labor agreements (PLAs) for large-scale Federal construction projects, where the total estimated cost of the construction contract to the Government is $35 million or more, unless an exception applies. The final rule is not expected to have a significant economic impact on a substantial number of small entities participating on a project that requires a PLA because the E.O. limits the requirement for mandatory PLAs to projects exceeding $35 million, unless an exception applies.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2024–02 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2024–02 is effective December 22, 2023 except for FAR Case 2022–003, which is effective January 22, 2024.

John M. Tenaglia,

Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

Karla Smith Jackson,

Assistant Administrator for Procurement, Senior Procurement Executive/Deputy CAO, National Aeronautics and Space Administration.

[FR Doc. 2023–27735 Filed 12–21–23; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 7, 22, 36, and 52

[FAC 2024–02; FAR Case 2022–003; Docket No. 2022–0003, Sequence No. 1]

RIN 9000–AO40

Federal Acquisition Regulation: Use of Project Labor Agreements for Federal Construction Projects

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement an Executive Order pertaining to project labor agreements in Federal construction projects.

DATES: Effective January 22, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Bowman, Procurement Analyst, at 202–803–3188 or by email at *dana.bowman@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2024–02, FAR Case 2022–003.

SUPPLEMENTARY INFORMATION:

FOR FURTHER INFORMATION CONTACT: The analyst whose name appears in the table below in relation to the FAR case. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

I. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 87 FR 51044 on August 19, 2022, to amend the FAR to implement 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. The E.O. also directs the Office of Management and Budget (OMB) to issue implementation guidance to agencies on exceptions and reporting. The preamble to the proposed rule contained detailed information on the use of PLAs.

DoD, GSA, and NASA received comments on the proposed rule from 8,334 respondents.

II. Discussion and Analysis

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes

The final rule removes proposed text that was intended to clarify direction that prevented agencies from requiring a contractor or subcontractor to enter into a PLA with any particular labor organization when there were multiple signatory labor organizations representing the same trade. While an agency still cannot require a contractor or subcontractor to enter into a PLA with any particular labor organization, the clarifying language added to the proposed rule did not reflect how PLAs are established. When a PLA is established by one or more labor organizations for a project, all entities are required to enter into that PLA as there are not multiple PLAs on a project. As a result, the text was removed at 22.504(c), Labor organizations.

The final rule also removes similar text that prevented contractors from requiring subcontractors to enter into a PLA with any particular labor organization at FAR provision 52.222–33, Notice of Requirement for Project Labor Agreement, and Alternates I, II, and III, and FAR clause 52.222–34, Project Labor Agreement, and Alternates I and II. The final rule text requires all subcontractors to become a party to the PLA negotiated by the prime contractor.

B. Analysis of Public Comments

1. Effects on Competition and Marketplace Diversity

Comment: Numerous respondents raised concerns that the policy shift reflected in E.O. 14063, from discretionary use of PLAs to a mandate, will have a negative impact on agencies' ability to use competition to achieve best value for the taxpayer. A respondent raised concerns that even if a solicitation is open to all contractors, a Government mandate for use of a PLA will limit the number of competitors able or willing to compete on a project, especially with respect to non-unionized contractors and small businesses. Based upon the results of a survey conducted of the construction industry, a respondent indicated that reduced participation would increase costs to the Government and, ultimately, the taxpayers. Another respondent requested the Government remain competitively neutral to open competition and to reduce barriers to marketplace entrants. Similarly, another respondent requested that the market dictate whether businesses will be successful. Numerous others support ''open competition.''

Response: Section 5 of the E.O. provides agencies with the authority to grant an exception, and specifically section 5(b) of the E.O. provides an exception to the requirement for a PLA if the requirement would substantially reduce the number of potential bidders so as to frustrate full and open competition. Agencies may consider criteria in FAR 22.504(d) to determine if the use of a PLA is appropriate for the construction project. In determining whether fair and reasonable pricing may be achieved, FAR 36.104(c)(2) directs contracting officers to undertake a current and proactive examination of the market conditions in the project area to determine national, regional, and local entity interest in participating on a project that requires a PLA, and to understand the availability of unions, and unionized and non-unionized contractors.

While many respondents expressed concerns about competition, several other respondents argued that the E.O. and rule are consistent with competitive bidding. Several respondents cited a study of education construction spending indicating no statistically significant difference in bids between surveyed projects requiring PLAs and those that did not. See Emma Waitzman & Peter Philips, UC Berkeley Labor Ctr., Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California 3, 48 (2017)).

Comment: Some respondents were concerned that the rule limits non-union contractors bidding on Federal projects and requested justification for only allowing union contractors to bid on Federal contracts over $35M.

Response: Under the E.O., both union and non-union prime contractors and subcontractors may compete for contracts and subcontracts without regard to prior participation in collective bargaining agreements (CBAs).

Comment: Numerous respondents asserted that the rule violates the requirement for full and open competition in the Competition in Contracting Act of 1984 (CICA) because PLAs discriminate and injure competition among potential bidders who are not signatories to CBAs. Another respondent added that the rule is arbitrary and capricious because it requires Federal agencies to impose PLAs on bidders or contractors without knowing the PLAs' terms.

Response: The E.O. and final rule do not violate CICA, which generally requires full and open competition through competitive procedures that are best suited under the circumstances of the procurement, 41 U.S.C. 3301(a). CICA defines full and open competition as meaning ''that all responsible sources are permitted to submit sealed bids or competitive proposals on the procurement.'' See 41 U.S.C. 107. Neither the E.O. nor final rule bar any responsible sources from submitting sealed bids or competitive proposals, nor do they provide a preference for contractors already a party to a CBA. Section 4 of the E.O. requires a PLA to allow all contractors and subcontractors to compete without regard to whether they are otherwise parties to CBAs.

The E.O. and the final rule require PLAs to contain various terms that guarantee against strikes, lockouts, and similar job disruptions. In addition, under the final rule, an agency maintains the authority to ensure that the PLA includes any additional terms that the agency deems necessary to satisfy its needs. As a result, an agency will know the material terms of any resulting PLA when it issues a solicitation that requires a PLA.

2. Cost

Comment: Numerous respondents expressed concerns that mandatory

PLAs and compliance would increase the cost of construction projects and undermine taxpayer investments in infrastructure projects, resulting in fewer infrastructure improvements, less job creation, and higher state and local taxes. Several respondents cited studies that indicate the increase in cost is estimated at 12–20 percent. These respondents relied on two reports from the Beacon Hill Institute, which found that PLAs raised construction costs on Massachusetts construction contracts by 12 percent or raised construction costs on Connecticut contracts by about 20 percent. Other respondents expressed concerns about costs and cited a report from the New Jersey Department of Labor & Workforce Development, Annual Report to the Governor and Legislature: use of Project Labor Agreements in Public Works Building Projects in Fiscal Year 2008, which estimated that average costs per square foot were higher for PLA projects than for non-PLA projects.

Alternatively, some respondents cited analyses that compared projects built with PLAs to those built without and found that there was no statistically significant difference in project costs after controlling for factors such as the size and complexity of the project. See, *e.g.,* Dale Belman et al., Project Labor Agreements' Effect on School Construction Costs in Massachusetts, 49 Indus. Rels. 44, 60 (2010)). Some respondents asserted that PLAs are effective mechanisms for providing structure and stability to construction contracts, controlling construction costs, ensuring efficient completion of quality projects, and establishing fair wages and benefits for all workers. Another respondent asserted that there is no reason to assume union workers lead to higher costs because they are typically more productive. Higher wage rates also may induce contractors to substitute capital and other inputs for labor, which would mitigate the effects of higher labor costs.

Response: As expressed in the E.O., PLAs may help mitigate challenges to the efficient completion of quality construction projects, such as a shortage in the supply of labor or labor dispute delays. PLAs may provide structure and stability to construction projects by securing the commitment of all stakeholders on a construction project. There have been numerous studies which found that there is no definitive and compelling evidence to support the assertion that PLAs increase costs on Federal construction projects. In 2012, the Congressional Research Service report, R41310 Project Labor Agreements, studied the effects of PLAs on costs and found that the evidence was ''inconclusive.'' A study commissioned by the Department of Labor, Implementation of Project Labor Agreements in Federal Construction Projects: An Evaluation, was conducted in 2011 and concluded that the research supporting the New Jersey Department of Labor and Workforce Development report may be misleading, because it relied on bid costs without taking into consideration other key variables, like geographic location, project type, or work site environment. Subsequent research revisited the Massachusetts school construction contracts discussed in the Beacon Hill studies and concluded that, once additional variables were taken into account, the effects were not statistically significant. Dale Belman et al., The Effect of Project Labor Agreements on the Cost of School Construction (2005) and Dale Belman et al., Project Labor Agreements' Effect on School Construction Costs in Massachusetts (2010). Other research, that found no statistically significant difference in cost between projects that utilized PLAs and those that did not, includes Emma Waitzman & Peter Philips, UC Berkeley Labor Ctr., Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California (2017) and an analysis of 130 affordable housing projects in Los Angeles, California, ''Did PLAs on LA Affordable Housing Projects Raise Construction Costs?'' conducted by Peter Philips & Scott Littlehale, (Univ. of Utah Dep't of Econ., Working Paper No. 2015–03, 2015).

If it appears that a PLA will significantly raise costs on a particular Federal construction project and the Government could not obtain and determine a fair and reasonable price, the FAR would prohibit the award of the contract. The final rule provides an exception at FAR 22.504(d)(ii) in the event that market research indicates that requiring a PLA on a project would substantially reduce the number of potential offerors to such a degree that the Government could not meet its requirements at a fair and reasonable price.

Comment: Numerous respondents expressed concerns that employers and employees will incur additional costs for fringe benefits and union dues that are unnecessary and duplicative. The respondents were concerned that non-union employees paying union dues will never realize the benefits provided by the unions due to union vesting standards.

Response: Neither the E.O. nor the final rule require non-union employees to pay union dues or join a union. Non-union contractors are free to negotiate provisions in PLAs to accommodate existing fringe benefits. For example, a PLA may allow non-union contractors to opt out of contributing to health and welfare funds designated under the PLA, if the benefits provided by the non-union contractor are equal in value to those provided under the PLA.

Comment: Numerous respondents expressed concerns that inefficient union work rules limit an employer's ability to effectively manage employee skill sets and work assignments. The respondents claim that union rules prohibit productivity practices employed by non-union contractors such as multiskilling on contracts with PLAs. Numerous other respondents asserted that PLAs prevent disputes and ensure a steady workforce. Those respondents indicate that PLAs provide several important benefits when coordinating work performed by multiple contractors on complex projects, such as uniform work rules and project schedules, expeditious dispute resolution, craft and subcontractor jurisdictional alignment, and project scheduling trade sequencing.

Response: Generally, PLAs govern the work rules for all contractors and subcontractors on a project, regardless of whether the contractor or subcontractor has previously been party to a collective bargaining agreement. Contractors can negotiate PLAs that include flexibility in how work is assigned or to allow exceptions to generally applicable work rules to meet unique needs.

Comment: Numerous respondents expressed concerns that the proposed rule will increase the cost to the taxpayer for public works projects passed by Congress, such as those funded under the Infrastructure Investment and Jobs Act (IIJA) of 2021, which did not include PLA requirements. Another respondent is concerned that the PLA requirement contradicts the Congressional intent in the IIJA.

Response: The majority of projects funded by the IIJA will be conducted under federally funded grants, rather than FAR-based contracts. This final rule applies to FAR-based contracts; however, nothing in this rule or the IIJA precludes contractors working on grant-funded projects from entering into PLAs.

Comment: A respondent expressed concerns that the Government has not provided data on the costs or benefits of the PLA mandate. The respondent is concerned that the data does not justify

that the use of PLAs will promote economy and efficiency. Another respondent stated analysis based on information obtained via the Freedom of Information Act disproves the reasoning used in the E.O. that PLAs promote economy and efficiency.

Response: The E.O., as implemented in the final rule, reflects the President's judgment that large-scale construction projects may pose special challenges to efficient and timely procurement and that the increased use of PLAs may help address those challenges. (Section 1 of the E.O.) For example, because construction employers typically lack a permanent workforce, those employers may face difficulties predicting labor costs while bidding on contracts and securing a steady supply of skilled labor to complete those projects on time and on budget. Moreover, because construction projects typically involve multiple employers working on a single location, a labor dispute involving one employer can delay an entire project. A lack of coordination among various employers, or inconsistent or uncertain terms and conditions of employment among various groups of workers, can also create friction and disputes in the absence of an agreed-upon resolution mechanism. These problems tend to be especially pronounced on large-scale projects, which tend to be more complex and of longer duration. For these reasons, expanding the use of PLAs is expected to promote the economy and efficiency of Federal contracting by promoting efficient and timely completion of projects by skilled labor. Given these challenges, use of a PLA can further economy and efficiency in Federal contracting by increasing coordination amongst multiple employers and trade unions, preventing costly labor disputes, promoting labor management stability, improving reliable access to skilled labor (including by promoting equity), and bolstering contractors' compliance with employment law.

Expanding the use of PLAs on a large-scale Federal construction project can be particularly beneficial to the economy and efficiency of Federal contracting amidst a challenging construction labor market. As the Supreme Court explained in *Boston Harbor,* Congress expressly authorized PLAs in section 8(f) of the National Labor Relations Act (NLRA) ''to accommodate conditions specific to that industry'' including ''the contractor's need for . . . a steady supply of skilled labor.'' *Bldg. & Constr. Trades Council* v. *Associated Builders & Contractors of Mass./R.I., Inc.* (''*Boston Harbor*''), 507 U.S. 218, 231(1993).

Today, the construction industry faces a significant nationwide labor shortage. See, *e.g.,* Garo Hovnanian, Ryan Luby, and Shannon Peloquin, Bridging the labor mismatch in US construction (2022). Meanwhile, demand for construction workers' skilled labor is only projected to grow. The Department of Labor projects, on average, that there will be 646,100 job openings in the construction and extraction occupations every year over the coming years. See, Bureau of Labor Statistics, Construction and Extraction Occupations, Dep't of Labor (Sept. 6, 2023). Measures that promote a steady supply of skilled labor are expected to improve the economy and efficiency of Federal contracting in the modern labor market.

PLAs can help reduce the effects of the construction labor shortage on Federal contractors' projects in several ways. First, PLAs can attract more high-skilled workers to Federal construction projects by providing higher compensation for craft positions. Although both union and non-union contractors reported difficulty filling job openings for craft workers in 2021, after the pandemic-related disruptions to the construction labor market, union contractors were 14 percent less likely to struggle to fill craft positions. See Frank Manzo IV, Larissa Petrucci, & Robert Bruno, Ill. Econ. Policy Inst., The Union Advantage During the Construction Labor Shortage (2022). Second, PLAs provide access to union hiring halls, which can help ensure a steady supply of skilled labor. The same study found that union contractors were 21 percent less likely than non-union contractors to experience delays in completing projects due to labor shortages. This recent data is consistent with the Department of Labor (DOL) 2011 study, Implementation of Project Labor Agreements in Federal Construction Projects: An Evaluation, which found that a PLA reached by New York City schools on a construction contract helped avert skilled labor shortages over the course of the 5-year construction program. The study found that there were ''no instances of shortages in skilled labor on any of the'' city schools' projects, ''although such shortages occurred regularly elsewhere in the city during this same period.'' Non-union contractors are also more likely than union contractors to report struggling to hire qualified craft workers, suggesting that PLAs can promote high-quality, as well as on-time, construction of Federal projects. This final rule is expected to help the Federal Government efficiently complete important projects in a challenging construction market.

A study also found that using PLAs on Federal construction projects may reduce turnover and absenteeism. There is less turnover among craft workers working under CBAs than those that are not. See Frank Manzo IV, Larissa Petrucci, & Robert Bruno, Ill. Econ. Policy Inst., The Union Advantage During the Construction Labor Shortage (2022). Studies suggest that unionized workplaces may be safer than non-union workplaces, meaning that PLAs may promote productivity by preventing absenteeism or job losses due to workplace injuries. See, *e.g.,* Alison D. Morantz, Coal Mine Safety: Do Unions Make a Difference, Indus. & Labor Relations Review (2012).

Because all employers on a PLA are required to enter the same agreement with coordinated work rules, PLAs can streamline administration of large-scale construction projects. On complex projects without a PLA, contractors may work with multiple trade unions and, as a result, may struggle to coordinate multiple collective bargaining agreements providing for different start times, break times, rules governing overtime, holidays, and dispute resolutions procedures. Those differences can create undue costs, delays, and inefficiencies in Federal construction projects which can be effectively addressed through a PLA. As a study commissioned by the Department of Labor explained, uniform work rules on PLAs promote efficiency, productivity, and cost savings. See Dep't of Labor, Implementation of Project Labor Agreements in Federal Construction Projects: An Evaluation (2011). Moreover, the study concluded, by standardizing the terms and conditions of employment at the outset of a project, PLAs can promote predictability of project costs. Id. at 3–4. For example, a four-year PLA used by the New York City School Construction Authority (NYCASA) to rehabilitate and renovate city schools saved $221 million dollars over a five-year PLA by standardizing construction workers' shifts. Id. at 4–5.

The E.O. requires PLAs on Federal construction projects to contain no-strike and no-lockout clauses. As a result, this requirement is expected to prevent costly delays associated with labor disputes. According to the 2011 DOL study, during the period covered by the NYCASA PLA, a strike by a trade union resulted ''in a shutdown of numerous large construction projects across the City and substantial delay and related costs'' to parties involved—while construction on the projects

covered by NYCASA's PLA continued uninterrupted. An audit analyzing the results of the NYCASA PLA found that there was ''no disruption of work or threat of strike on any of the projects'' covered by the PLA ''at any time'' that the PLA was in effect.

For these reasons and others, the final rule reflects the language provided in section 1 of the E.O., which states that the increased use of PLAs on large-scale construction projects can help address special challenges to efficient and timely Federal procurement. Finally, when an agency determines that a PLA requirement would not advance the Government's interests in achieving economy and efficiency, the agency may, on a case-by-case basis, utilize an exception provided in section 5 of the E.O.

3. Procurement Delays

Comment: Some respondents expressed concerns that mandatory PLAs will cause procurement delays, contradicting the rule's stated objective, to ''promote economy and efficiency'' in the administration and completion of Federal construction projects. These respondents assert that use of PLAs may result in costly bid protests, litigation, and other delays.

Response: While procurement delays may be caused by numerous other factors, there is no conclusive evidence to support that specifically requiring a PLA will be the sole reason for additional delays or litigation. Rather, the final rule reflects the judgment that the overall effect of PLAs is expected to promote timely construction of Federal projects. Section 1 of the E.O. states that expanding the use of PLAs will help prevent delays by preventing costly labor disputes on Federal construction projects, promote a reliable stream of skilled labor on Federal projects, and promote coordination across multiple employers and unions. For example, a PLA executed by the New York City School Construction Authority (NYCASA) to rehabilitate and renovate city schools helped avert substantial delays in construction. See Dep't of Labor, Implementation of Project Labor Agreements in Federal Construction Projects: An Evaluation (2011). During the period covered by the PLA, a strike by a trade union resulted ''in a shutdown of numerous large construction projects across the City and substantial delay and related costs'' to parties involved—while construction on the projects covered by NYCASA's PLA continued uninterrupted. An audit analyzing the results of the PLA found that there was ''no disruption of work or threat of strike on any of the projects'' covered by the PLA ''at any time'' that the PLA was in effect and that ''there were no instances of shortages in skilled labor on any of the NYCASA projects'' covered by the PLA—although similar shortages ''occurred regularly'' on other projects in the same city during the same time period. Id. Another study of school construction projects in San Diego found that ''project delays are considerably lower'' on projects covered by a PLA. Richard Parker & Louis Rea, San Diego Unified School District, San Diego Unified School District Project Stabilization Agreement: A Review of Construction Contractor and Labor Considerations iii (2011).

One study found that union contractors were 14 percent less likely than non-union contractors to struggle to fill craft positions and 21 percent less likely than non-union contractors to experience delays in completing projects due to labor shortages. See Frank Manzo IV, Larissa Petrucci, & Robert Bruno, Ill. Econ. Policy Inst., The Union Advantage During the Construction Labor Shortage 5 (2022).

Comment: A respondent is concerned that there are no meaningful criteria to grant exceptions; therefore, agency decisions will be inherently arbitrary and capricious and will delay construction projects.

Response: The rule reflects specific criteria provided in section 5 of the E.O, under which an agency may grant an exception. The rule provides additional details to ensure agency decisions comply with the E.O.

4. Effects on Workforce

Comment: Many respondents commented on the rule's likely impact on non-unionized contractors. Some respondents asserted that PLAs don't discourage or prevent non-union contractors from participating on projects with PLAs. However, another respondent expressed concerns that non-union contractors will not bid on projects that mandate a PLA since it requires that they recognize the union as the representative of their employees (without their input) on that job, and could require them to use the union hiring hall to obtain most or all construction labor, exclusively hire apprentices from union programs, follow union work rules, and pay into union benefit and multi-employer pension plans. While not specifically stating that it would prevent bidding on work, several other respondents expressed similar concerns. Numerous respondents were concerned that non-union contractors represent the vast majority of construction contractors in the country and their unwillingness to compete will potentially limit the Government's access to the best available contractors for a given construction project.

Response: Neither the E.O. nor the final rule preclude non-union contractors from bidding on projects requiring a PLA. Non-union contractors who choose to enter a project-specific PLA may do so without becoming a union employer for purposes of other projects. The E.O. expressly states that a PLA shall ''allow all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.'' This language is reflected in the final rule. The DOL website contains useful information about the operation of PLAs. See *https://www.dol.gov/general/good-jobs/project-labor-agreement-resource-guide.*

Studies and court cases have shown that PLAs can have significant non-union contractor participation. One study noted that on the Boston Harbor project, the subject of the Supreme Court's decision in *Bldg. & Constr. Trades Council* v. *Associated Builders & Contractors of Mass./R.I., Inc.* 507 U.S. 230, 231 (1993), 102 of 257 subcontractors were nonunion, notwithstanding that as much as three quarters of Boston construction contractors were unionized. See Robert W. Kopp & John Gaal, The Case for Project Labor Agreements, Constr. Law., (1999); *see also Associated Builders & Contractors, Inc., S. California Chapter* v. *Metro. Water Dist. of S. California,* 69 Cal. Rptr. 2d 885, 888 (Ct. App. 1997).

The E.O. and the rule contain an exception for solicitations where a market analysis suggests that there will not be sufficient bidders so as to frustrate full and open competition.

Comment: Numerous respondents stated that the proposed rule discriminates against non-union employees, placing non-union general contractors and subcontractors at a significant competitive disadvantage. A respondent explained that the requirement for offerors to negotiate with labor unions—a party with which the offeror has no authority to compel negotiations—effectively grants labor unions the power to prevent certain offerors from submitting an acceptable offer.

Response: PLAs have been used successfully for decades in construction projects in all parts of the United States, and there is no data to suggest that parties have been systematically unable to negotiate PLAs because of bad-faith bargaining by unions. Since the final rule applies to large-scale Federal

construction projects, the Government assumes that there is a significant economic incentive for both the union and the prospective offeror to reach agreement on a PLA.

Comment: Numerous respondents expressed concerns that mandatory PLAs will exacerbate nationwide labor shortages in the construction industry because unions will only hire from union halls/union apprenticeship programs and the majority of the workforce has opted not to join unions. Numerous respondents were similarly concerned that PLAs prevent the use of a contractor's current workforce, requiring the use of union members hired out of local union halls.

Response: The Government does not expect PLAs to negatively impact the outcome of the current nationwide labor shortage. Research indicates that the skilled labor shortage is less severe among union contractors than non-union contractors. One report revealed that union contractors are 14 percent less likely to experience difficulty in filling craft worker positions and 21 percent less likely to experience delays in project completion times due to labor shortages than non-union contractors. See Frank Manzo IV, Larissa Petrucci, & Robert Bruno, Ill. Econ. Policy Inst., The Union Advantage During the Construction Labor Shortage 5 (2022). Use of PLAs is expected to help the Government efficiently complete projects in a tight construction labor market. While many PLAs do require contractors to use the union's hiring hall for referrals, they do not necessarily prevent the use of a contractor's workforce. The union hiring halls are legally required to refer workers to the project without regard to whether the workers are union members. Ultimately, the contractor retains the right to decide whom to hire.

Comment: Some respondents expressed concerns that unions negatively impact local labor markets by bringing in non-local union labor rather than hiring locally. Numerous respondents were concerned that PLA mandates will result in more contract awards to union-signatory contractors whose employees are union members at the expense of taxpayers, fair and open competition, and local workers and businesses. Alternately, some respondents indicated that PLAs can benefit local labor markets by including local recruitment and hiring goals specifically targeting historically marginalized workers intended to expand the pool of skilled workers and promote diverse economic development. Participation in registered apprenticeship programs and pre-apprenticeship programs will also help to recruit women, people of color, and other underrepresented individuals into the construction industry.

Response: While unions have the ability to recruit skilled workers nationally to address local skilled labor shortages, the intent of the policy implemented in this rule is not to replace local workers for the sole purpose of employing union members. PLAs can offer opportunities to grow and train the local workforce, specifically targeting underrepresented individuals.

Comment: Numerous respondents expressed concerns that PLAs can interfere with existing CBAs that contractors have already negotiated with unions.

Response: Many PLAs include a ''supremacy clause'' that incorporates the individual CBAs of the trades by reference and supersedes any other labor agreement that might otherwise apply to the project. Use of the supremacy clause can be an important benefit of a PLA on long term projects because individual CBAs may expire and need to be re-negotiated during the project. The terms of the PLA would take over to prevent work stoppages and other jobsite delays.

Comment: A respondent asserted PLAs will mitigate increasing requests for equitable adjustments caused by workers walking off the job for higher pay.

Response: PLAs prevent work stoppages and other job disruptions. As a result, projects covered by PLAs can continue without additional costs or delays.

Comment: A respondent asserted that non-union entities produce better quality construction, pay employees, and provide benefits that are as good, or better than union shops. Another respondent asserted that employees do not want or need a union that will not give them additional benefits beyond what they have and will require them to pay dues. Alternatively, a respondent asserted that PLAs establish wages, benefits, and other terms of employment across an entire project and have been used in both the public and private sector for the better part of a century.

Response: Non-union contractors may negotiate with the union that is party to the PLA to opt out of certain terms, especially when current benefits are equivalent to those provided by the union. As a general matter, the U.S. Department of the Treasury report, Labor Unions and the U.S. Economy (2023) indicates that the costs of union dues or fair-share fees to workers is typically offset by increased wages and fringe benefits. In addition, for both contractors and for unions, the benefits of a PLA go beyond wages and fringe benefits. A PLA establishes work schedules for all contractors, ensures efficient utilization of labor, prevents job disruptions, and provides mutually binding procedures for resolving disputes.

Comment: Several respondents indicated that expanded use of PLAs will support workforce quality, safety, and stability, and help guarantee on-target and on-budget completion of projects that employ thousands of workers across various trades and industries. PLAs promote safe, timely, cost-effective execution of the most complex and national security conscious construction projects yet designed. In contrast, a respondent asserted that in the period from 2001 to 2009 during which PLA requirements were prohibited for Federal contracts and grants, there were no reports of widespread cost overruns, delays, strikes, or poor-quality construction on Federal projects attributable to the lack of a government-mandated PLA, indicating that PLA mandates are not needed to ensure economy and efficiency in government contracting. Another respondent asserted there is no evidence to support claims that PLAs guarantee better safety, quality, or construction delivery.

Response: Expanded use of PLAs is expected to support safe, on-time, efficient, and high-quality construction, in part by helping to secure a skilled workforce for Federal construction projects. Ensuring compliance with workplace laws on Federal construction projects has many important benefits to economy and efficiency for covered projects, including attracting skilled workers, reducing labor conflict and disruption, reducing turnover, and preventing workplace injuries.

One study found that union contractors (who are more likely to work on PLA-covered projects) have stronger safety records than non-union contractors. The study looked at more than 37,000 Occupational Safety and Health Administration (OSHA) inspections in the construction industry and estimated that union worksites were 19 percent less likely to have OSHA violations than non-union worksites. When OSHA inspections do uncover OSHA violations at unionized worksites, those worksites have 34 percent fewer violations per inspection that non-unionized worksites. See Frank Manzo IV, Michael Jekot, and Robert Bruno, Ill. Econ. Policy Inst., The Impact of Unions on Construction Worksite Health & Safety (2021). PLAs

may improve workplace safety by ensuring that construction workplaces have more apprentice-trained journeyworkers with critical safety skills. A study conducted in California found that construction contractors employing more apprentice-trained journeyworkers experienced significantly lower rates of injuries. See Emma Waitzman & Peter Philips, UC Berkeley Labor Ctr., Project Labor Agreements and Bidding Outcomes: The Case of Community College Construction in California 10, 16 (2017). Improving worker safety is especially urgent in the construction industry, which has the second-highest number of occupational deaths of any industry in the United States. See Bureau of Labor Statistics, National Census of Occupational Injuries in 2021, USDL–22–2309 (2022).

Comment: A respondent asserted that PLAs are more advantageous than regular ''pre-hire'' agreements because they can systematize labor relations across multiple trades, contractors and subcontractors.

Response: While PLAs can cover large, multi-year projects with multiple unions, PLAs can also cover any construction project, regardless of size, when only one union is involved.

Comment: A respondent expressed concerns that PLAs can blur the line between employer and employee, which could result in ''co-employment issues.'' The respondent also suggested that PLAs will remove an important differentiating factor between subcontractors and will deter their engagement when they cannot negotiate the terms and conditions for their own employees. The respondent asked whether prime contracts will include terms related to ''co-employment risks'' when utilizing a mandated PLA.

Response: In Federal contracts, prime contractors are already responsible for every subcontractor's performance and compliance with the requirement to pay workers a prevailing wage under the Davis-Bacon Act (see FAR clause 52.222–11). Contractors can and do select subcontractors based upon criteria other than wage rates, such as subcontractor's records of experience, quality, safety, timeliness, or any other metric deemed critical to the success of the project.

Comment: Numerous respondents expressed concerns that specialists in the construction field employed by foreign firms would be unwilling to sign a PLA.

Response: The E.O. and final rule apply equally to foreign firms participating on a project within the United States that requires a PLA. The rule assumes that certain conditions that may impact the Government's interests in achieving economy and efficiency would be known prior to the performance of market research. Based upon those conditions and/or results of market research, the agency may determine that an exception would apply.

Comment: Numerous respondents expressed concerns that union apprenticeship requirements and completion rates would mean that it would take more than 14 years for all government-registered construction industry apprenticeship program completers to fill the estimated 650,000 vacant construction jobs needed just in 2022. These respondents argue that excluding the non-union workforce development practices and systems already in place exacerbates the skilled labor shortage by steering work to participants in union-affiliated, Government-registered apprenticeship programs at the expense of contractors that engage in alternative workforce development efforts. Alternatively, several respondents asserted that PLAs promote equitable development of a skilled workforce by supporting privately funded union training programs. Another respondent asserted higher skilled trades require the workforce development and skill training of the union-sector joint apprenticeship system to build and maintain the skill base of the industry.

Response: E.O. 14063 does not impose a requirement for union-affiliated apprenticeship programs, as both union and non-union contractors can participate on projects with a PLA. Neither the E.O. nor the rule require employers to use apprentices from union-affiliated and/or Government-registered apprenticeship programs. Non-union contractors may negotiate with the union that is party to the PLA to use their own apprenticeship programs during the project.

The number of apprenticeships programs and the number of apprentices graduating from those programs has been steadily increasing. In the ten-year period from 2013 to 2023, the number of workers enrolled in an apprenticeship program nearly doubled from 286,069 to 581,110. The number of women in these programs nearly quadrupled from 24,594 to 83,254. See Data and Statistics, *ETA.gov* (2023).

5. Compliance With Law

Comment: Several respondents asserted that PLAs are a deterrent to violations of various worker protection laws and protect against common workplace abuses to include worker misclassification, employment status, and wage theft. They asserted that PLAs ensure workers receive fair wages and benefits, which includes participation in federally-mandated programs such as Social Security and Medicare.

Response: Use of PLAs may help reduce the risk of noncompliance with labor laws in the construction industry under Federal construction projects. The presence of unions on construction work sites is expected to result in increased oversight, protection against retaliation, and grievance procedures that promote compliance with such laws and protect workers who raise concerns about an employer's conduct. Empirical research shows that union coverage generally is associated with fewer violations of employment law and suggests that unionization fosters reporting violations of law to enforcement agencies. See Ioana Marinescu, Yue Qiu, & Aaron Sojourner, Wage Inequality & Labor Rights Violations (National Bureau of Economic Research., Working Paper No. 28475, February, 2021).

Comment: A respondent urged the Council to amend the proposal to explicitly confirm that parties involved in PLA negotiations shall never be required to reach an agreement with unions but should be required only to engage in good faith bargaining to impasse, consistent with the requirements of the NLRA.

Response: Unless an exception is authorized, section 3 of the E.O. requires every contractor or subcontractor engaged in construction on the project to agree, for that project, to negotiate or become a party to a PLA with one or more appropriate labor organizations. Agencies will consider all relevant circumstances in determining whether an exception is authorized.

Comment: A respondent expressed concern that the rule interferes and discriminates against the rights of construction contractors and employees under NLRA. That respondent also argued that the E.O. is preempted by the NLRA ''because it is not limited in its scope to a single project.'' Similarly, another respondent is concerned that the PLA rule is subject to challenge under labor law conflict preemption principles because it conflicts with policies in the NLRA which protects the rights of employees to refrain from union representation. By contrast, other respondents noted that PLAs are expressly authorized by section 8(f) of the NLRA and were unanimously upheld by the Supreme Court in *Building & Constr. Trades Council* v. *Associated Builders & Contractors of*

Mass. (*Boston Harbor*), 507 U.S. 218, 227–30 (1990).

Response: The E.O. and final rule are not preempted by the NLRA, nor do they unlawfully interfere with or discriminate against the rights of contractors or employees. PLAs are expressly authorized in section 8(f) of the NLRA. Section 4(f) of the E.O. expressly requires any PLA reached under it to allow contractors and subcontractors to compete for work on the project without regard for their union status. The E.O. also requires that PLAs reached under its authority fully conform to all statutes, including the NLRA which prohibits the use of union hiring halls in a manner that discriminates against non-union workers.

The E.O. as implemented in this final rule is not preempted by the NLRA because it reflects the Government's interests in efficient procurement of goods and services. The NLRA does not preempt Government agencies from reaching PLAs where the Government is acting as a ''market participant'' protecting its proprietary interests, rather than as a regulator. *Boston Harbor,* 507 U.S. at 227–30. The Government is acting in its role as a market participant by establishing a presumption in favor of PLAs to advance the economical and efficient use of Government funds—including, by promoting quality assurance, efficient and on-time completion, and stability. Courts have repeatedly found that uses of similar agreements in Government-funded projects are not preempted under the NLRA. For example, in *Airline Service Providers Association* v. *Los Angeles World Airports,* 873 F.3d 1074 (9th Cir. 2017), an appellate court held that a requirement that contractors enter labor peace agreements was not preempted by the NLRA. In another case, an appellate court held that a city requirement that parties receiving certain tax benefits use a neutrality agreement and no-strike agreement was not preempted by the NLRA because the conditions were tailored to protect the city's proprietary interest. *See Hotel Employees & Restaurant Employees Union* v. *Sage Hospitality,* 390 F.3d 206 (3rd Cir. 2004). In addition, the Government may also prohibit Federal agencies from requiring the use of PLAs because the Government acts in its proprietary capacity when it does so. *See Bldg. and Constr. Trades Dep't, AFL–CIO* v. *Allbaugh,* 295 F.3d 28, 34–36) (D.C. Cir. 2002).

While the NLRA does not provide a right to refrain from union ''representation,'' the NLRA does allow employees to choose not to become union members. Non-members may opt not to pay union dues and instead pay agency fees covering only the share of dues used directly for representation, such as for collective bargaining or grievance procedures. However, under Section 9(a) of the NLRA, a union is the ''exclusive'' representative for all employees in that unit. Similarly, under the NLRA, a union has a duty of fair representation to all employees, regardless of whether they are union members or not. As a result, the NLRA provides workers a right to opt out of union membership, but not union representation.

Although the E.O. and final rule addresses more than one project, the rule is not preempted by the NLRA. Section 5 of the E.O. establishes a presumption in favor of PLAs, but also contemplates a case-by-case analysis in which agencies may grant exceptions to that presumption where a PLA would not advance the Government's proprietary interests.

Comment: A respondent expressed concern that the rule interferes and discriminates against the rights of construction contractors and employees under the Employee Retirement Income Security Act of 1974 (ERISA) by ''taking nonunion workers pay for the benefit of union pension plans without just compensation.'' The respondent also suggested that the rule conflicted with the National Apprenticeship Act, which the respondent wrote prohibits ''union versus non-union discrimination.''

Response: The final rule does not interfere with employees' or contractors' rights under ERISA or the National Apprenticeships Act. PLAs reached under the E.O. and the final rule must conform to all applicable statutes, including ERISA and the National Apprenticeships Act. The possibility that non-union workers may contribute to benefit plans for which they may or may not ultimately vest does not violate ERISA, which permits and regulates defined benefit plans that do not vest immediately (29 U.S.C. 1053). In addition, ERISA does not bar government entities from establishing bidding conditions, *e.g.,* requiring a PLA, related to benefit programs when those entities act as market participants.

The National Apprenticeship Act does not prohibit PLAs or prohibit contractors from entering into CBAs that require the use of a particular apprenticeship program, as long as that program is appropriately registered where required. Neither the E.O. or final rule specify or limit PLA provisions regarding apprenticeship programs, which may be the subject of bargaining between the parties to the agreement within the bounds of applicable law.

Comment: A respondent suggested that this final rule is unnecessary because existing Federal law and enforcement by agencies like the Occupational Health and Safety Administration is sufficient to guarantee workers' rights, fair pay, and safety.

Response: Ensuring compliance with workplace laws on Federal construction projects has many important benefits to economy and efficiency for covered projects, including attracting skilled workers, reducing labor conflict and disruption, reducing turnover, and preventing workplace injuries. Despite Federal and local protections for construction workers and ongoing enforcement efforts by the Department of Labor and others, construction remains one of the country's most high-violation industries. See U.S. Department of Labor, Wage & Hour Division, Low-Wage, High-Violation Industries (2022) at *https://www.dol.gov/agencies/whd/data/charts/low-wage-high-violation-industries.* For example, a study (''An Empirical Methodology to Estimate the Incidence and Costs of Payroll Fraud in the Construction Industry,'' dated January 2020, *http://www.nasrcc.org/wp-content/uploads/2021/03/Wage-and-Tax-Fraud-Report.pdf*) conducted on this topic estimates that up to one in five construction employees are misclassified as independent contractors, costing those workers at least $811 million in unpaid overtime and premium pay in 2017 alone. Additionally, the U.S. Department of Labor, Bureau of Labor Statistics News Release USDL–22–2309 (*https://www.bls.gov/news.release/pdf/cfoi.pdf*) revealed that Construction workers are also particularly vulnerable to health and safety violations: the industry has the second-highest number of occupational deaths of any industry in the United States.

6. Impact on Small Business

Comment: A respondent encouraged the Council to re-evaluate the excessive cost of compliance on small entities and explore alternatives to this rulemaking as it relates to small entities under the Regulatory Flexibility Act. Numerous respondents expressed concerns that the rule does not adequately calculate the disparate negative economic impact and expensive compliance costs shouldered by Federal small business general contractors and subcontractors, noting that the number of small businesses awarded Federal construction contracts declined 60 percent from 2010 to 2020.

Response: Unless an exception in section 5 of the E.O. applies, there are no alternatives that would reduce the impact on or exempt small entities from its requirements. The impact of the rule is updated to take into consideration the numerous public comments regarding the burden calculations. OMB and DOL will work with the Small Business Administration (SBA) to determine the best way to help small entities in understanding how to negotiate or participate in a construction project with a PLA.

Comment: Numerous respondents expressed concerns about the complexity and cost burdens associated with the rule. The respondents were concerned that PLAs will create a barrier to entry for many small, minority, and women-owned businesses, which will also negatively impact agency achievement of socio-economic and small business contracting goals. Some were concerned that these entities will choose to work on commercial projects rather than those that require PLAs.

Response: OMB and DOL intend to work with SBA to determine the best way to help small entities in understanding how to negotiate or participate in a construction project with a PLA.

Comment: A respondent recommended consideration of a requirement relieving a small business from having to join a union if it agrees to pay the prevailing wages and other benefits established in union negotiation. The respondent suggested that removal of this mandatory requirement would allow the Federal Government to achieve its objective with the PLA but at less cost to the small business.

Response: Neither the E.O. nor the final rule require any entity, regardless of size, to join a union. Contractors and subcontractors may negotiate with the union that is party to the PLA to opt out of certain terms, to include when current benefits are equivalent to those provided by the union.

Comment: A respondent recommended modifying the rule to reflect the diminishing cost-benefit to small firms by providing for a threshold contract value for covered subcontractors. The respondent stated that a proper cost-benefit analysis would show that a small firm that has only a few contracts per year will absorb a higher cost of compliance than a firm with multiple yearly contracts. Thus, this rule will have a negative economic impact on a substantial number of smaller firms, demonstrating why the mandatory flow down cutoff has merit. The respondent expressed concerns that the rule requires small business subcontractors to comply with the mandatory flow down but does not allow the small business to utilize the contracting agency resources to resolve disputes that may occur during contract performance.

Response: The E.O. does not provide a threshold for subcontractor participation. The E.O. requires that all subcontractors agree to become a party to the PLA negotiated by the prospective offeror or prime contractor in order to participate on the project unless an exception applies. Providing relief above a certain threshold for smaller dollar subcontracts could unintentionally frustrate the benefits of a PLA, which depend on the participation of all contractors and subcontractors working on the contract being part of the PLA. The final rule assumes that subcontractors will work with prospective offerors or the prime contractor to ensure terms and conditions are negotiated into a PLA prior to deciding to participate on a project that requires a PLA. PLAs are intended to prevent disputes and provide an avenue for quick resolution.

Comment: A respondent was concerned that small entity annual receipts would increase due to increased labor costs, which will result in the small entity outgrowing the size standard for the North American Industry Classification System (NAICS) to qualify for small business set-asides and recommends that such set-asides be exempt from PLAs.

Response: While construction costs do fluctuate over time, there is no evidence to support that PLAs specifically will increase costs and cause a small entity to outgrow the size standard for the associated NAICS code. See section II. B. 2 of the Preamble for the discussion of Costs related to the use of PLAs.

Comment: A respondent asserted that unions require a bond and other types of requirements that eliminate small companies.

Response: This rule does not amend or impose new bond requirements. 40 U.S.C. chapter 31, subchapter III, Bonds (formerly known as the Miller Act) requires performance and payment bonds, or an alternative payment protection, for any Federal construction contract exceeding $150,000 unless an exception applies. The bonds protect the Government's interests but also contain payment protections that are beneficial for subcontractors.

Comment: A respondent was concerned that the rule will discourage small business from bidding on covered Federal construction contracts and thereby impose obstacles on the use of small business preferences required by Federal agencies in violation of the Small Business Act (15 U.S.C. 637(d)).

Response: The final rule does not change the use of small business preferences in procurements subject to the Small Business Act. Implementation of the rule is not expected to impact the Government's ability to achieve its small business goals. For fiscal year 2022, the Federal Government reached 104.05 percent of its small business contracting goals. PLAs can be helpful to small businesses by providing them with a level playing field and access to expanded skilled labor pools, while streamlining project administration and the negotiation of workplace terms and conditions.

7. Alternative Approaches

Comment: A respondent recommended agencies include a provision to establish a Community Workforce Agreement (CWA) approach in 22.504(c) to promote diversity and inclusion, and local resident business opportunities.

Response: A CWA is an agreement that may be negotiated and incorporated as part of a PLA. A CWA may help agencies and prime contractors meet small business subcontracting goals and other objectives. The final rule permits, but does not require, CWAs. This is consistent with the language of the E.O. and provides appropriate flexibility for the parties to take unique local needs into consideration when negotiating PLAs on a project-by-project basis.

Comment: A respondent recommended requiring PLAs to include a ''core employee'' provision, which would allow non-union contractors to use their own employees without those employees registering with a union's hiring hall.

Response: Non-union contractors are currently able to negotiate core employee provisions in PLAs. Even when a PLA does not include a ''core employee'' provision, the PLA will not prevent using the contractor's workforce. If the union that is a party to a PLA operates an exclusive hiring hall, a non-union contractor's workers may register with that hiring hall for referrals to the project. If there is a non-exclusive hiring hall, contractors may hire their prior workers without those workers registering for a referral.

Comment: Some respondents requested that this final rule require that agencies use PLAs on projects that fall under the $35M threshold in certain circumstances. Alternatively, another respondent requested the rule eliminate

the option to use PLAs on small projects because of the respondent's concern about potential impacts on small and diverse businesses.

Response: The rule implements section 7 of the E.O., which allows an agency to require the use of a PLA in circumstances where the total cost to the Federal Government is less than that for a large-scale construction project if appropriate.

Comment: A respondent recommended that the rule consider exceptions for contractors regarding health and welfare plans if (1) a non-union contractor provides those benefits already and if less than the union benefits, the contractor should pay the employee the difference; (2) if the pension plan or healthcare fund is less than 70 percent funded based upon the most recent 5500 filings, the non-union contractor may pay the difference directly to employees; or (3) if a contractor would incur a pension withdrawal liability that exceeds the payments they are to make during the contract, exclude them from becoming a party to it and pay the employees instead.

Response: Non-union contractors may negotiate the recommended alternatives with the union that is party to the PLA.

Comment: Some respondents suggested there were other methods to ensure projects are completed on time and that there is no evidence that PLAs improve performance. Another respondent suggested that a series of alternative requirements would achieve the Government's goals such as: requiring contractors to reach agreements with private sector hiring agencies to meet workforce needs; requiring contractors to reach ''labor compensation agreements'' for the project; requiring contracts to use all non-union labor; or requiring contracts to have ''dispute resolution agreements.''

Response: The respondent's proposed alternatives would be inconsistent with the E.O., which reflects the President's judgment that PLAs are often effective in preventing special challenges to efficient and timely procurement related to large-scale construction contracts. This judgment is consistent with published research showing the benefits of PLAs and the long history of PLA use in the private and public sector. Federal agencies have used PLAs on large-scale Federal construction projects, dating back to the use of PLAs on Tennessee Valley Authority projects in the 1930s. PLAs can provide many advantages, including: eliminating risks of labor disruptions during the construction period; access to reliable skilled labor through union hiring halls and additional procedures to meet workforce needs in a timely fashion; and uniform work rules promoting efficiency. Dep't of Labor, Implementation of Project Labor Agreements in Federal Construction Projects: An Evaluation (2011). Research has shown that there are advantages and potential drawbacks of PLAs, but supports the conclusion that PLAs can advance the Government's interest in efficient Federal contracting.

Many of the alternatives proposed by the respondent (such as a Federal Government requirement that contractors use non-union labor, requiring agreements with staffing agencies rather than union hiring halls to fill time-sensitive needs for limited skilled craft labor, or requiring contractors to reach ''labor compensation agreements'') are relatively untested and unstudied. Without additional research, there is no way to determine whether the respondent's proposed alternatives would provide benefits that exceed the benefits provided by this final rule. PLAs provide many demonstrated, mutually-reinforcing benefits to the Federal Government's ability to achieve its goals in large construction projects. The final rule is preferable to alternatives that, whether individually or together, only seek to achieve a subset of the goals provided by PLAs.

Comment: A respondent asserted that the Government's interests in economy and efficiency would be best served by pausing the proposed rule, gathering and analyzing data to justify a reasonable threshold for requiring PLAs, and then revising any proposed rule.

Response: The E.O. reflects the judgment that a presumption in favor of PLAs on projects with an estimated cost of $35 million or more would promote efficient Federal contracting. The final rule provides for a case-by-case analysis to determine whether an exception to the general PLA requirement is authorized, including where application of the requirement would not promote economy and efficiency. As a result, it is unnecessary to pause the publication of the final rule.

Comment: Some respondents requested that regulations and guidance afford states and localities maximum regulatory flexibility, free from anti-competitive and costly pro-PLA policies, in order to deliver more value to taxpayers and create opportunities for all, including small businesses.

Response: The final rule applies to FAR-based contracts awarded by the Federal Government. The rule does not apply to grants or contracts awarded by states or localities.

Comment: A respondent urged the Council to implement regulations that include the best trade workers in the region to participate in Federal construction projects. Some respondents suggested maintaining the current policy established by E.O. 13502, which was issued in 2009 and authorized Federal agencies to require PLAs for large-scale construction projects on a case-by-case basis, considering factors like geographical location, construction market conditions, and the availability of skilled labor. One respondent asserted that the reliance interests of current contractors had not been adequately considered in adopting the change in policy under E.O. 14063. By contrast, some respondents argued that the current policy has led to an underutilization of PLAs and that the proposed rule, if finalized, would better advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. Another respondent argued that E.O. 13502 has not achieved its goals because, under the current policy, some agencies do not sufficiently consider the benefits of adopting PLAs.

Response: Neither the E.O. nor the final rule prevent the best trade workers in the region from participating in any Federal construction project. Section 10 of the E.O. provides that, upon the effective date of this final rule, E.O. 13502 is revoked. The final rule reflects the language in section 1 of the E.O. which states that large-scale construction projects pose special challenges to the efficient and timely procurement for the Federal Government. Additionally, the increased use of PLAs can help address those challenges. The E.O. provides that expanding the use of PLAs will help prevent costly labor disputes that delay Federal construction projects, ensure a reliable stream of skilled labor, and promote coordination across multiple employers and unions.

While current policy permits agencies to use PLAs on construction projects, PLAs have only been used on a small number of Federal projects. According to data collected by OMB, under current policy approximately 2,000 contracts were eligible for a PLA between 2009 and 2021, but PLAs were only required 12 times. This E.O. now requires the use of PLAs in connection with large scale construction projects unless an exception applies to promote economy and efficiency in Federal procurement. This is expected to expand the use of PLAs by Federal agencies and help agencies achieve construction goals

more effectively in the context of the nationwide skilled labor shortage in the construction industry.

While the respondent asserted that contractors have reliance interests in ''the principle of government neutrality in procurement,'' they did not explain why the prior policy generated legally cognizable reliance interests. The respondent did not specify what actions they may have taken in reliance on the prior policy under E.O. 13502 that they would not have taken if they had known the policy would change.

E.O. 14063 and the final rule apply prospectively and do not apply to or affect existing contracts already entered into by contractors. Both the E.O. and the rule apply only to new solicitations that are entered into on or after the effective date of this final rule. (See FAR 1.108(d) Application of FAR changes to solicitations and contracts.) Contractors will be able to decide whether or not to bid on contracts covered by the rule and to adjust their bidding strategy if necessary in response to any PLA requirement in the solicitation. Accordingly, while the Councils must implement the new requirements of the E.O. and do not have the discretion to depart from the mandate of the order, any reliance interests are outweighed by the benefits of this final rule.

8. Exclusion of Professional Engineering Services/Brooks Act

Comment: Several respondents expressed concern that the rule may be construed to require employees of professional engineering firms that perform various architectural and engineering professional services to become a party to a PLA. The respondents requested the rule exclude architectural and engineering services because such services are separate and distinct from construction services as recognized in 40 U.S.C. chapter 11, the Brooks Architect Engineer Act.

Response: Section 3 of the E.O. that applies the PLA requirement to contractors or subcontractors ''engaged in construction on the project'' excludes professional architecture and engineering services that are covered by the Brooks Architect Engineer Act. Given the distinction in FAR part 36 between construction and architect engineer contracts, architect engineer contracts issued under FAR subpart 36.6 are not covered by this rule.

9. Laws Associated With Rulemaking

Comment: Some respondents expressed concerns that the proposed rule fails to estimate the additional costs imposed on the public or the Government and claims that the lack of more comprehensive cost estimates violates the Administrative Procedure Act (APA). Some respondents asserted the proposed rule violates the arbitrary and capricious standards of the APA.

Response: The procedural rulemaking requirements of the APA do not apply to matters relating to public property, loans, grants, benefits, or contracts (see 5 U.S.C. 553(a)). This rulemaking is instead governed by 41 U.S.C. 1707, the OFPP Act. The proposed rule requested input from the public in response to the burden estimates, and the recommendations provided by the public have been considered in developing the final rule.

Comment: A respondent challenged the sufficiency of the legal authority used in the preamble for the proposed rule, 40 U.S.C. 121(c), 10 U.S.C. chapter 137, and 51 U.S.C. 20113. The respondent claimed that as a result, the proposed rule does not comply with 5 U.S.C. 553(b)(2). The respondent claimed a statutory provision authorizing an agency head to engage in rulemaking does not give the agency the power to adopt a particular regulation.

Response: The APA (5 U.S.C. 553) does not apply to this rulemaking. The legal authority for the Federal Acquisition Regulations System is 40 U.S.C. 121(c), 10 U.S.C. chapter 4, and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016), and 51 U.S.C. 20113 because Congress has specified that those are the authorities under which DoD, GSA, and NASA ''shall jointly issue and maintain'' the FAR (41 U.S.C. 1303(a)(1)).

Comment: A respondent stated that the rule exceeds the authority of the executive branch under the Federal Property and Administrative Services Act, Federal procurement and labor laws, and the major questions doctrine. Another respondent stated that these requirements should not be extended to other projects without an act of Congress.

Response: While DoD, GSA, and NASA do not believe that this rulemaking implicates major questions principles, the E.O. and this final rule are a proper exercise of the executive branch's authority under the Federal Property and Administrative Services Act of 1949 (the Act) in any event. The Act authorizes the President ''to prescribe policies and directives that the President considers necessary to carry out'' the Act, as long as those policies are ''consistent'' with the Act (40 U.S.C. 121(a)). The E.O. and this final rule ''carry out'' and are ''consistent'' with the Act, including, for example, its provisions directing GSA to ''prescribe policies and methods for executive agencies regarding the procurement and supply of personal property and nonpersonal services and related functions'' (40 U.S.C. 501(b)(2)(A)); its requirements to ''implement the [congressional] policy'' that agencies ''achieve, on average, 90 percent of the cost, performance, and schedule goals established for major acquisition programs of the agency'' (41 U.S.C. 3103(a), (c)); its direction that agencies award contracts promptly to responsible sources whose proposals are most advantageous to the Federal Government, considering only cost or price and the other factors including in the solicitation (41 U.S.C. 3703; see 40 U.S.C. 111); and its stated objective of providing ''the Federal Government with an economical and efficient system'' for procurement activities, including ''[p]rocuring and supplying property and nonpersonal services'' (40 U.S.C. 101). Additionally, support for this rule is provided under the Act by provisions authorizing GSA to ''prescribe policies and methods for executive agencies regarding the procurement and supply of personal property and nonpersonal services and related functions (40 U.S.C. 501(b)(2)(A); see also 40 U.S.C. 121(c); 41 U.S.C. 1303).

The E.O. is also consistent with the longstanding, early, and consistent interpretation of the Procurement Act by several Presidents. The E.O. and rule reflect a decades-long tradition of executive orders across multiple Administrations that have invoked the Act to ''establish[ ] the policy of the Government with regard to the use of PLAs in Federal and federally funded construction contracts.'' *See Bldg. & Const. Trades Dept., AFL–CIO* v. *Allbaugh,* 295 F.3d 28, 30 (D.C. Cir. 2002). For example, E.O. 13302 (2001) provided that agencies could neither require nor prohibit the use of a PLA and was upheld on appeal by the D.C. Circuit. Presidents have also exercised their authority to prohibit agencies from using PLAs, see E.O. 12818 (1992), to revoke that prohibition, see E.O. 12836 (1993), and to encourage the use of PLAs, see E.O. 13502 (2009). ''[L]ongstanding practice'' is a strong indication that the E.O. as implemented in this final rule, like earlier applications of the President's authority, ''falls within the authorities that Congress has conferred upon him.'' *See, e.g., Biden* v. *Missouri,* 142 S. Ct. 647, 652 (2022).

Comment: A respondent claimed the rule violates the Congressional Review Act because the rule will cost more than $100 million and asserted that the proposed rule incorrectly stated that

this is not a major rule under 5 U.S.C. 804. Another asserted the rule is subject to the Congressional Review Act, and questions why the rule is subject to E.O. 12866 but is not a major rule.

Response: The Congressional Review Act requires submission of all interim and final rules, regardless of dollar value, to each House of the Congress and to the Comptroller General of the United States, as provided in section VI of the proposed rule (87 FR 51044). This final rule will be submitted in accordance with the Congressional Review Act. The determination of whether a rule is a major rule is made by the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA) (see Section VI of this preamble). OIRA also makes the determination whether or not a rule meets the threshold at section 3(f) of E.O. 12866.

Comment: A respondent asserted that the rule violates the Regulatory Flexibility Act because the FAR Council failed to consider the proposed rule's deleterious effect on small businesses that are deprived of business because they refuse to enter, or cannot enter, a PLA.

Response: The rule complies with the Regulatory Flexibility Act. The proposed rule examined the impact of the proposed rule on small businesses, small governmental jurisdictions, and small organizations. The rule solicited comments from the public pertaining to the estimated burden which was used to inform the final rule. The rule allows all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to a CBA.

10. Exceptions

Comment: Some respondents recommended that the final rule should insert ''Federal'' before statute and law to ensure state laws are not used to bypass PLA requirements.

Response: The final rule adopts this change because state and local statutes and regulations cannot regulate Federal procurement. *See United States* v. *Georgia Pub. Serv. Comm'n,* 371 U.S. 285, 292 (1963).

Comment: A respondent asserted that PLAs make several of the exceptions provided in the E.O. unnecessary. For example, the respondent recommended deleting the exception for a PLA not achieving economy and efficiency because economy and efficiency has been improved with PLAs on large industrial projects with many contractors and subcontractors. The respondent also asserted that the exception for reduction in competition is also unnecessary.

Response: The final rule implements the exceptions provided in Section 5 of the E.O.

Comment: Some respondents recommended that the rule require agencies to post approved exemptions to public websites before the solicitation date and allow a limited time to request reconsideration of the exemption decision before the solicitation is issued.

Response: The final rule implements section 6 of the E.O., which requires agencies to publish data and descriptions of the waivers granted on a centralized public website by the solicitation date to the extent permitted by law and consistent with national security and executive branch confidentiality interests.

Comment: A respondent was concerned that the one-trade exception will be misapplied.

Response: The contracting workforce will be provided training to ensure accurate application of the regulations in accordance with section 9 of the E.O, including 22.504(d)(1)(i)(B).

Comment: Some respondents recommended that the exceptions be very narrow and only utilized after a transparent decision-making process. A respondent was concerned that senior procurement executives will simply check a box to avoid a PLA.

Response: Exceptions will only be authorized in accordance with the direction in section 5 of the executive order.

Comment: A respondent stated that the proposed rule does not contain an exception for when inclusion of a PLA demand would impede economy and efficiency; a PLA could well have such an effect without triggering any of the clauses of the proposed exceptions. For example, agencies could choose a PLA bid that is twice as expensive as an otherwise similar bid that does not include a PLA. An exception from the PLA mandate should apply if it can be demonstrated that the mandate would increase construction costs by a substantial amount, for example by 15 percent or more. The respondent recommended additional exceptions: (1) if one or more contractors cannot obtain a stable workforce, (2) if contractors show that a PLA would increase their price by 5 percent or more and that not using a PLA would not negatively impact quality, timeliness, and safety, (3) if all contractors can sign the agreement that meet 2 terms of the PLA mandate, including the non-strike and procedures for disputes, and (4) if requiring a PLA reduces the number of qualifying bids below a certain threshold that would signal a lack of competition.

Response: The E.O. and final rule include several exceptions at FAR 22.504(d) that could be used to address the respondent's concerns. In addition to the exception specifically for economy and efficiency, market research will be used to determine whether a PLA would reduce competition to such a degree that it would not allow for a fair and reasonable price.

Comment: Some respondents requested the urgent and compelling limitation reflect that requiring a PLA on the project would result in serious injury, financial or other, to the Government.

Response: Agencies may grant an exception based upon a specific written explanation as provided under Section 5 of the E.O., including any exception based on unusual and compelling urgency.

Comment: A respondent requested that agencies find it inappropriate to characterize a project as short-term if data concerning the completion rates of similar Federal projects in terms of construction type (*e.g.,* work on GSA-managed buildings) and competing activities in the vicinity demonstrate that such projects are not generally completed in the calendar year in which the project commences.

Response: Each project is evaluated on a case-by-case basis to determine if the project duration or lack of operational complexity would qualify for an exception under section 5 of the E.O.

Comment: A respondent was concerned that the language omits key details of the E.O. with regard to potential exceptions, rendering them so broad that contracting officers can continue to disregard this guideline.

Response: The rule implements the exceptions provided in the E.O. The rule provides additional explanations to ensure agencies apply an exception appropriately.

Comment: A respondent requested the senior official referenced in section 5 of the E.O. to be the agency head and not the senior procurement executive.

Response: FAR 2.101 identifies the senior procurement executive as the responsible official for management direction of the acquisition system in an executive agency (41 U.S.C. 1702(c)).

Comment: A respondent expressed concerns that the lack of agency experience with PLAs will cause contractors to price additional risk into projects with PLAs.

Response: Agencies will receive training on the use of PLAs in accordance with section 9 of the E.O.

Comment: A respondent supported the requirement that exceptions must be granted by the solicitation date as opposed to after a solicitation has been issued with a PLA requirement. The respondent also wanted the FAR to expressly state that a PLA cannot be required after a solicitation has been issued.

Response: The rule requires agencies to grant an exception prior to the issuance of the solicitation (see 22.504(d)(3)) in accordance with section 5 of the E.O.

11. Definitions

Comment: A respondent recommended that the rule add a geographical definition of market because construction workers are mobile.

Response: Contracting officers will determine the applicable market based upon the project requirements.

Comment: A respondent recommended that the FAR clearly provide that whether the union with which a PLA has a membership or affiliation in a building trade construction council cannot be considered in bidding or the acceptance of bids on a PLA covered by E.O. 14063 or the proposed FAR rule.

Response: A union does not need to have membership or affiliation in a building trade construction council to become a party to a PLA when required for a construction project. Regardless of whether a PLA is required at the time of proposal submittal, award or postaward, all contractors working on the project are required to become a party to the PLA. However, the E.O. does require that the PLA be with a ''labor organization,'' which is defined as one in which ''building and construction employees are members, as described in 29 U.S.C. 158(f).''

Comment: A respondent requested removal of proposed text at FAR 22.504(c), which prevented agencies from requiring contractors and subcontractors to enter into a PLA with a particular labor organization when there were multiple labor organizations representing the same trade, because it is redundant, and the respondent recommended using the E.O. language. Another respondent stated that by its very nature, a PLA is an agreement through which the contractor requires subcontractors to enter into an agreement with a particular labor organization. By signing the PLA, the subcontractors enter into an agreement with all the signatories to the agreement, not with any particular labor organization.

Response: The final rule text has been revised to adopt this recommendation at FAR 22.504(c) with conforming changes in FAR solicitation provision 52.222–33, Notice of Requirement for Project Labor Agreement and FAR contract clause 52.222–34, Project Labor Agreement. See section II, paragraph A of the preamble.

Comment: A respondent supported the final rule's alignment of the definition of the term ''labor organization'' in the rule with the discussion of PLAs in section 8(f) of the NLRA, which defines PLAs (pre-hire agreements) as agreements with ''a labor organization of which building and construction employees are members.'' See 29 U.S.C. 158(f). The respondent, however, suggested that the final rule definition of ''labor organization'' should also require that the labor organization ''itself, its parent, or parent's affiliates establish, maintain, or participate in a registered apprenticeship program in the construction industry.'' The respondent stated that this language reinforces the registered apprenticeship programs that are regulated by DOL or a state apprenticeship program. Another respondent recommended that the rule revise the definition of labor organization to delete the word ''building'' so that it reads a labor organization ''of which construction employees are members'' instead of ''of which building and construction employees are members.''

Response: The rule implements the definition provided in the E.O., which is consistent with the description of PLAs in section 8(f) of the NLRA.

Comment: A respondent expressed support for the proposed rule's inclusion of the term ''structures'' in the rule's definition of ''construction,'' as consistent with the language of the E.O. and the FAR generally. Another respondent recommended replacing the E.O. definition of construction with language from the coverage provisions of the Davis-Bacon Act (40 U.S.C. 3142(a)) because the scope of those coverage provisions is widely accepted and understood. The respondent stated that the new definition in the E.O. increases opportunities for ambiguity.

Response: The final rule implements the definition provided in the E.O. The scope of coverage of Federal construction projects under the E.O. and the Davis-Bacon Act are not identical, and there may be work that is not covered under the Davis-Bacon Act that is covered under the E.O. Agencies ultimately must make independent determinations under the E.O. of whether a contract is for ''construction'' or whether a subcontractor is ''engaged in construction'' such that they are required to be a party to a PLA.

12. Market Research

Comment: A respondent recommended that labor organizations be consulted when applying the market exception because they can provide information on available contractors, workers, etc. The respondent also suggested adding ''Construction labor organizations that have geographical jurisdiction where the project is to be located shall be consulted on current market conditions, including, but not limited to, the availability of contractors and labor, potential bidders and the degree of unlawful employment practices.'' Additional respondents recommended that agencies confer with union and non-union contractor associations and labor unions during market research to determine whether certain exceptions apply.

Response: The E.O. requires contracting officers to perform an inclusive market analysis. The FAR currently requires agencies to conduct market research in FAR part 10 and, specific to construction, in part 36.

Agencies may use various tools to examine market conditions described in FAR part 10. Agencies generally confer with interested parties using sources sought notices and advance notices for construction contracts (see FAR 36.211 and 36.213–2). These notices are primarily published on the Government-wide point of entry (GPE) at *www.sam.gov,* which is accessible from a computer or mobile device connected to the internet. Also, agencies may be required by statute to publicize contract opportunities to increase competition, broaden industry participation in meeting Government requirements, and to assist small business concerns in obtaining contracts and subcontracts (see 5.002 and FAR subparts 5.1 and 5.2).

The GPE is available to the public, including union and non-union contractor associations and labor unions, through the internet without having to register as a potential offeror. It is also used to reach as many interested parties as practicable and offers extensive search functionality which allows the user to identify Governmentwide business opportunities at all phases. Those interested in participating in market research for construction projects can simply select ''sources sought'' under notice type and proceed to filter on additional factors such as organization or place of

performance. The user may then respond directly to the contracting officer conducting market research.

Comment: A respondent did not support language requiring a contracting officer to ascertain interest and availability of union and non-union contractors during market research surveys. The respondent suggested that it would be inappropriate to analyze whether contractors are union or non-union given that the E.O. allows contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements. The respondent stated that surveys taken as part of market research have been used to undermine the process of fairly ascertaining overall contractor interest. As a result, the respondent urged that contractor interest include all contractors with no requirement for a certain segment of the industry to be included in the responses. Some respondents asserted agency efforts for market research on PLAs have been flawed because standard methods of publicizing contract opportunities, such as Fedbizopps, only reach contractors seeking work opportunities and the contracting community and not unions. Further, historically, many of the market survey questions about PLAs were not aimed at the particular market but asked generic questions about general attributes of PLAs. Documentation regarding the consideration of a PLA was nothing more than checking a box. Another respondent expressed concern that an examination of contractors' ''interest'' in working under a PLA will not yield reliable information about whether there will be sufficient competition. The respondent claimed that non-union contractors consistently assert in responses to market research that they have no ''interest'' in participating in projects conducted under PLAs and that they will not bid for such work; however, when actually presented with the opportunity to work on a large public works project, non-union contractors step forward.

Response: The language in FAR 36.104(c)(2) referencing the availability of both union and non-union contractors is not intended to suggest that only union contractors can or will bid on projects where a PLA is required. Rather, it is intended to assist with implementing the E.O.'s requirement that an exception be based on an ''inclusive'' market analysis. Contractors may bid on projects subject to this final rule regardless of whether they are otherwise party to CBAs, and available evidence suggests that non-union contractors do bid on projects with PLAs.

The goal of market research in the context of the E.O. and this final rule is to determine whether requiring a PLA would substantially reduce the number of potential offerors to such a degree that the Government could not meet its requirements at a fair and reasonable price. While the language of FAR 36.104(c)(2) seeks information about contractor ''interest,'' a potential bidder's claim that they are disinterested in bidding on projects with PLAs, alone, would not necessarily justify the exercise of an exception, in particular where other information suggests that a sufficient number of offers would be received.

Agencies conduct market research using the various tools and techniques in FAR 10.002, inclusive of direct communication with industry via online communication, interchange meetings, or pre-solicitation conferences, as needed and applicable. The final rule provides additional direction at FAR 36.104(c)(2) for projects that may require a PLA.

Use of the GPE at *www.sam.gov* to publish a sources sought notice is the primary method used and allows all interested parties equal access to the Government's market research efforts. All entities interested in contracting with the Government understand that the GPE is the statutory source for dissemination of contracting opportunities, to include notifications or announcements of future opportunities. Union and labor organizations are not precluded from searching and monitoring *www.sam.gov* as all other interested parties do, nor are unions prevented from responding to market research or sources sought notices. Union and labor organization utilization of the GPE at *www.sam.gov* to respond to market research or sources sought notices will help to inform contracting officer's determinations.

Comment: Some respondents recommended that the market research text under 36.104(c)(2) be revised to state that ''Contracting officers conducting market research for Federal construction contracts shall ensure that the procedures at 10.002(b)(1) involve a current and proactive examination of the market conditions in the project area to determine the availability of local, regional and national unions and contractors to participate in a project that requires a PLA. The contracting officer may use market research conducted within 18 months before the award of the construction contract only if the current and proactive examination of market conditions demonstrates that the information is still current, accurate and relevant. Contracting officers may coordinate with agency labor advisors, as appropriate.''

Response: Market research is conducted during acquisition planning to establish the most suitable approach to meeting an agency's needs. The direction at 10.001 and 10.002 currently provide sufficient guidance to contracting officers on the conduct and use of market research to inform a particular procurement. The final rule, at FAR 36.104(c)(2), adds specific direction for contracting officers for use in conjunction with FAR part 10 guidance, when a large-scale construction contract is contemplated.

Comment: A respondent recommended market research and requests for information use a standard set of questions with consistent formatting for contractors to use and to give contractors at least 2 weeks to respond. Another respondent recommended that the rule standardize PLA surveys for interested parties to comment and an automated system to process the inputs.

Response: While the Government understands and appreciates the interest in consistency when conducting market research, it is not possible to create a standard set of questions that will result in sufficient information for every size and type of construction project. Also, while there may be some elements of PLA surveys that can be standardized, the Government believes the uniqueness of each project and other elements like locality does not lend itself to a standardized document.

13. Application to Indefinite Delivery Indefinite Quantity (IDIQ) Contracts

Comment: A respondent asserted that IDIQ contracts are unusual but agrees that the PLA requirement should be associated with the award of a particular order.

Response: Data indicates that IDIQ contracts for multiple projects, regions, and types of construction are more frequently used than definitive contracts Governmentwide. The rule acknowledges that orders are primarily project- and location-specific, making the application of a PLA requirement appropriate at the order level.

Comment: Some respondents requested that the $35 million value should be applied at the IDIQ base contract level, not to individual orders.

Response: IDIQ contracts are often used for multiple, distinct construction projects in varied markets. As a result, there may be differing markets within the scope of the IDIQ, which could make one overarching PLA

inappropriate. Agencies are not precluded from requiring one PLA, but they should do so based upon market research.

14. Burden Estimates

Comment: A respondent asserted that the rule overestimates the costs of negotiating PLAs under the rule because PLAs are standardized in many markets, so they may not need to be negotiated from scratch.

Response: The rule assumes that most PLAs will be negotiated from scratch because PLAs have not been mandated prior to this E.O. Historical data does not support any other assumption.

Comment: A respondent stated the statistical process followed by the Government is generally reasonable but stated that assumptions and outcomes cannot be effectively evaluated. The respondent stated that it would be surprising if the actual totals were an order of magnitude larger than provided in the proposed rule. The respondent supported the Government's assumption that there are 4 bidders. The respondent also believed that the focus on total costs versus additional costs is appropriate. The respondent questioned the 20 percent assumption for small businesses because the Government has historically awarded 15 percent of its contracts to small businesses, which would drop the estimate to 18 to 32 small businesses. The respondent offered that according to *USAspending.gov,* since 2008 9.7 percent of prime construction projects of $35 million or more went to small businesses. The respondent also stated that if the Government had used wage data from the construction industry, it would have reduced estimates.

Response: The rule uses the fiscal years 2019, 2020, and 2021 data from the Federal Procurement Data System (FPDS) to establish the estimates. The impact of the rule has been adjusted to reduce the percentage of large scale construction contracts awarded to small entities to 15 percent.

Comment: Several respondents questioned the number of subcontractors used in the estimated impact of the rule. Respondents recommended using ranges of 8 to 10 or 15 to 20 based upon the size of the project. The increase will likely reflect a greater negative impact on subcontractors and small businesses.

Response: The impact of the rule is revised to account for an increased number of subcontractors for each project subject to the PLA requirements.

Comment: A respondent stated that the cost review should have taken into account that some exceptions may be denied, or it should be clarified that it only considers approved requests.

Response: The rule does not differentiate between the number of exceptions submitted, approved, or denied because the preparation, submittal, and review of an exception would occur regardless of whether an exception was approved or denied.

Comment: A respondent recommended the total estimated costs be defined as ''all estimated costs incurred for completion of the construction project, including, but not be limited to site acquisition, preconstruction environmental work, site preparation, design (including architectural, engineering, and other professional costs), labor costs, construction equipment, construction management, inspection, relocation, and refurbishing.'' The respondent asserted a standard definition would be beneficial to contracting agencies.

Response: Total estimated costs for purposes of this rule are only those associated with the PLA rule definition for construction at 22.502 and 52.222–3. While a construction estimate may include the cost of design for a project for which a design-build contract is contemplated, professional services provided by architecture and engineering firms are not subject to PLA requirements.

Comment: A respondent believed the estimate of the percentage of contracts that will be exempt appears to be a misconception of the mandate. Exemption of up to half the covered projects is clearly inconsistent with a requirement that contracting agencies use PLAs.

Response: The rule takes into account the potential exceptions that are provided in the E.O. DoD, GSA, and NASA have estimated the potential use of the exceptions with the knowledge that the market will influence whether a PLA is in the best interest of the Government.

Comment: Some respondents asserted the rule vastly underestimates the economic impact. Another respondent asserted the cost impact of the rule needs to be adjusted upwards. The respondent asserts that on average an experienced company takes 400 hours to negotiate a PLA, but that estimate does not include the hours needed to draft and revise the PLA, negotiate economic terms, factor economic terms into proposal pricing, obtain legal review, coordinate with prospective subcontractors, or factor in hours spent by other parties to the PLA. The respondent recommended the total hour estimates to negotiate a PLA be increased to at least 500 hours to provide a more reflective cost estimate.

Response: The final rule contains updated burden estimates in response to public comments.

Comment: A respondent expressed concern that the attorney hourly rate is underestimated.

Response: The rule uses Bureau of Labor Statistics (BLS) National Occupational Employment and Wage Estimates for May 2021 as the basis for the legal participants' hourly rates.

15. PLA Submittal

Comment: Several respondents recommended that the final rule require PLAs to be submitted before contract award, eliminating the third option which allows submittal after award. Another respondent recommended that PLAs be submitted before a final contract award so that contracting agencies can confirm bidder eligibility and influence PLA content. Another respondent was concerned that postaward submittals will not ensure that a project will be covered by a PLA.

Response: The final rule permits the submittal of PLAs with an offer, prior to award, or after award. Contracting officers have the discretion to select the most appropriate option for the particular procurement.

Comment: A respondent recommended that paragraph (e) be removed from 52.222–33 and the Alternate 1, and substitute para (b) of Alternate II. Because PLA negotiations take on average 90 days, an offeror would not be able to submit a PLA with its offer. This would favor affiliated companies and disincentivize non-affiliated ones from participation. This would reduce efficiency and Government selection in a fair bidding process. The respondent asserted postaward alternatives in 52.222–33 would better suit and satisfy the reality of the days taken to negotiate PLAs.

Response: The rule allows the contracting officer to determine, based upon market research, when to require the submittal of a PLA. The rule provides options for contracting officers to choose from.

16. Implementation

Comment: A respondent questioned whether the rule would be immediately implemented into all applicable construction contracts or only newly awarded applicable construction contracts.

Response: The final rule will be effective 30 days after publication. OIRA has determined that this rule is not a major rule. According to FAR 1.108(d), Application of FAR changes to

solicitations and contracts, FAR changes apply to solicitations on or after the effective date of the change, unless otherwise specified.

Comment: A respondent questioned how the rule will address different geographical locations within the United States where the construction industry does not use PLAs and where organized labor is less common.

Response: In addition to the market research conducted under FAR part 10, the final rule requires contracting officers to conduct an inclusive market analysis to evaluate whether a PLA requirement for any particular project would advance the Government's interests in accordance with the E.O. This inclusive market analysis must consider the market conditions in the project area and the availability of unions, and unionized and non-unionized contractors.

Comment: A respondent recommended the council evaluate the need for a PLA on a project-by-project basis, prioritize flexibility, provide for standardized solicitations, general waivers, and keep the waiver authority at the current level and NOT raise it to the senior procurement executive.

Response: The rule requires agencies to evaluate the feasibility of a PLA based upon market research and other considerations on a project-by-project basis. Solicitations and contracts for construction are generally standardized using the procedures authorized in FAR part 36, however requirements are specific to the particular project. The rule interprets the senior official referenced in the E.O. to be the Senior Procurement Executive as the responsible official for management direction of the acquisition system (see 2.101).

17. Negotiations

Comment: A respondent was concerned that the rule does not clearly prohibit an agency from engaging in PLA negotiations. The respondent asserted that the PLA should be negotiated solely and directly by contractors with employees working on the PLA project and the labor unions representing workers on the PLA project, as they are the only parties explicitly authorized to enter into a PLA agreement under the NLRA. The respondent also requested that the rule clarify that a PLA may not be unilaterally written by a labor organization or negotiated by parties who will not be employing workers on the project.

Response: PLAs are pre-hire agreements negotiated solely between labor unions and contractors working on a specific project. The Government does not participate nor is it a signatory to the PLA.

18. Out of Scope

Comment: A respondent recommended that the Government invest in workforce development training for the skilled trades at the high school level.

Response: This comment is outside the scope of this rule.

Comment: A respondent recommended formalizing the U.S. Army Corps of Engineer's PLA Survey process for all Federal agencies executing construction.

Response: This comment is outside of the scope of this rule because policy guidance will be developed separately by OMB.

Comment: A respondent requested the Council lessen barriers and increase opportunities for U.S.-owned and-operated construction firms to build with the Federal Government.

Response: This comment is out of scope of the rule.

Comment: A respondent requested the passage by Congress of the Fair and Open Competition Act (H.R. 1284) that would prohibit Federal construction contracts from requiring or prohibiting PLAs.

Response: This comment is out of scope of the rule.

Comment: A respondent assumed that agencies estimated their costs based on contracts that did not use a PLA because 99.4 percent of their projects did not use a PLA. The rule does not specify how agencies must estimate the cost of projects. Consequently, the agencies should either (1) require estimated project costs to be based on fair market costs or (2) apply an exception to bids of $35 million or less, regardless of the agencies initial estimated cost of the project.

Response: The development of independent Government cost estimates for construction contracts is out of scope of this rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items), or for Commercial Services

This rule amends the provision at FAR 52.222–33 and the FAR clause at 52.222–34. However, this rule does not impose any new requirements on contracts at or below the SAT or for commercial products, commercial services, and COTS items. Since the provision and clause apply to large-scale Federal construction contracts, neither would apply to acquisitions at or below the SAT or to acquisitions for commercial products, commercial services, and COTS items.

IV. Expected Impact of the Rule

A PLA is defined as a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f). PLAs are a tool that can be used to provide labor-management stability and ensure compliance with laws and regulations such as those governing safety and health, equal employment opportunity, labor and employment standards, and others. Requiring a PLA means that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a PLA with one or more labor organizations.

Currently, the regulations at FAR subpart 22.5 encourage the use of PLAs for large-scale Federal construction projects, which is defined as projects with a total cost of $25 million or more. According to the data collected by OMB, between the years of 2009 and 2021, there was a total of approximately 2,000 eligible contracts and the requirement for a PLA was used 12 times. Based on the data, on average there are approximately 167 eligible awards annually and approximately one award that includes the PLA requirement.

This rule implements E.O. 14063, Use of Project Labor Agreements for Federal Construction Projects, which requires the use of PLAs in large-scale Federal construction projects unless an exception applies. In accordance with the E.O., the definition of ''large-scale Federal construction projects'' is amended from $25 million or more to $35 million or more. Based on FPDS data from fiscal year 2019 through fiscal year 2021, the average number of construction awards, including orders against IDIQ contracts valued at $35 million or more, were approximately 119 annually. The average value of each award is approximately $114 million.

In accordance with the E.O., this rule provides exceptions to the requirement to use PLAs for large-scale Federal construction projects. Exceptions must be based on at least one of the conditions listed at FAR 22.504(d). These conditions include when the requirement for a PLA would not advance the Federal Government's interests; where market research indicates a substantial reduction in competition to such a degree that adequate competition at a fair and

reasonable price could not be achieved; or where the requirement would be inconsistent with other statutes, regulations, E.O.s, or Presidential memoranda. There is no data on the number of exceptions that may be granted since the mandate and associated exceptions are new. It is possible there may be a higher usage of exceptions in the initial year as industry and the Government work to implement the requirement. Considering the lack of available data on the proposed exceptions, it is estimated that exceptions may be granted for 10 percent to 50 percent of covered contracts; in other words, an estimated 60 to 107 construction contract awards may require PLAs.

The current FAR provision at 52.222–33, Notice of Requirement for Project Labor Agreement, provides a basic provision and 2 alternative provisions from which the contracting officer can select. The provision selected identifies whether all offerors, the apparent successful offeror, or the awardee must provide a copy of the PLA. There is no historical data on the selection of alternatives. Therefore, it is assumed each alternative will apply one third of the time. This implies one third of affected solicitations will require all offerors to provide a PLA, and two thirds of affected solicitations will only require one entity (apparent successful offeror or awardee) to provide a PLA.

To estimate the number of offerors that would be required to provide a PLA, the Government estimates an average of 4 offers would be submitted per award; *i.e.,* an estimated 80 to 144 offerors (20 to 36 awards * 4 offers). Therefore, the total number of estimated entities that would be required to submit PLAs at the prime contract level is 120 to 215 entities (40 to 71 apparent successful offerors or awardees + 80 to 144 offerors). The final rule reduces the estimated percentage of entities assumed to be small entities from 20 to 15 percent in response to public comments and updated analysis of FPDS data. As a result, approximately 18 to 32 small entities and 102 to 183 large entities may be required to submit PLAs.

For the estimated 120 to 215 entities that will be required to have a PLA to submit an offer or perform a contract, generally the entity will negotiate the terms and conditions of the PLA with one or more union(s). It is assumed an entity will require a total of 5 participants, the owner or a senior executive, legal counsel, a project manager, and 1 to 2 labor advisors, depending on the size of the workforce, to support the negotiations. In response to public comments, the final rule revises the scope and estimated hours required for each party involved in the negotiation of a PLA. Public comments indicated that, in addition to the negotiation of a PLA discussed in the proposed rule, entities performed several other requirements necessary to develop and ultimately implement a PLA. Taking those additional tasks into consideration, the final rule increases the estimated hours from 40 to 80 hours to 100 to 200 hours for each party involved in the development, negotiation, and implementation of a PLA between a prime contractor and a union.

According to the Bureau of Labor Statistics (BLS) National Occupational Employment and Wage Estimates for May 2021, the mean hourly wage for General and Operations Managers is $55.41/hour, $71.17 for Lawyers, and $102.41 for Chief Executives. To reflect the variety of labor categories necessary to estimate the impact, a mean hourly rate of $76.33 is used for this calculation. The current BLS factor of 42 percent is applied to the mean wage to account for fringe benefits and an additional 12 percent overhead factor is applied (see Attachment C of OMB Circular A–76 Revised issued May 29, 2003), for a total loaded wage of $121.40/hour ($76.33 * 142 percent * 112 percent).

It is estimated that 1 hour is required by one member of the contractor's workforce to submit the PLA to the Government on behalf of the contractor. Using the BLS wage estimates for Office and Administrative Support Occupations, the mean hourly rate for submitting the PLA is estimated to be $33.21 (20.88 * 142 percent * 112 percent). The total estimated impact for the development, negotiation, submission, and implementation of a PLA in response to a Government contract is $7.28 to $26.10 million (120 to 215 entities *((5 participants * 100 to 200 hours * $121.40) + (1 person * 1 hour * $33.21)). Taking midpoints of each range implies a primary estimate of $16.69 million.

The requirement for a PLA flows down to subcontractors through FAR clause 52.222–34, paragraph (c). There is no data source that identifies the number of subcontractors per contract; however, based upon public comments, the final rule increases the estimated number of subcontractors from 2 to an average of 14 for each contract. As a result, the final rule estimates that the requirements of a PLA will apply to approximately 1,680 to 3,010 subcontractors (120 to 215 * 14).

Subcontractors may, in certain circumstances, participate in discussions with a prospective offeror regarding desired PLA-specific conditions, such as core employee provisions or the opting out of certain union fees, prior to agreeing to perform as a subcontractor for a specific project. While subcontractors do not negotiate the PLA directly with the union, they will ultimately need to review the terms and sign on to the PLA negotiated by the prospective offeror or prime contractor in order to participate on the project. Based upon public comments, the final rule acknowledges that an attorney will most likely participate in any discussions with the prospective offeror and ultimately the review of the negotiated PLA. As a result, the number of participants on behalf of the subcontractor is increased from 2 to 3, the owner, project manager, and an attorney. In addition, the final rule increases the estimated number of hours required for the subcontractor's participants to review and implement the PLA. As a result, the estimated number of hours is increased to 2.5 to 25 hours.

Based upon the previously provided BLS data, a total loaded wage of $121.40 reflects the variety of labor categories necessary to estimate the impact of the proposed rule on subcontractors. The total estimated impact for subcontractors participating in discussions with prospective offerors, reviewing, implementing, and complying with a PLA in response to a government contract is estimated to be $1.53 to $27.41 million (1,680 to 3,010 subcontractors *(3 participants * 2.5 to 25 hours * $121.40)). Taking midpoints of each range implies a primary estimate of $ 14.47 million. The total annual estimated impact for prime contractors and subcontractors to develop, review, negotiate, submit, implement, and comply with a PLA in response to a government contract is estimated to be $8.81 million to $53.51 million.

For the Government, contracting officers will continue to conduct market research and consider factors to support a decision to use, or not to use, PLAs in large-scale construction projects. There will continue to be instances in which the use of PLAs will benefit the Government and others where it is not feasible to use PLAs. This rule establishes new procedures for the contracting officer to request an exception to the requirement to use PLAs. The new procedures require the contracting officer to prepare a written explanation to request an exception and route the request for approval by the senior procurement executive. The act

of preparing and routing an exception request is typically performed by a contract specialist customarily at the GS–12 step 5 level and is estimated to take an average of 2 hours. The hourly rate of $65.77 is based upon the Office of Personnel Management (OPM) Table for the Rest of the United States, effective January 2022, for a GS–12 step 5 employee ($43.10 per hour) plus a 36.25 percent factor to account for fringe benefits in accordance with current OMB memorandum M–08–13 and a 12 percent overhead factor (see Attachment C of OMB Circular A–76 Revised issued May 29, 2003). As stated previously, the estimated number of exception requests per year is between 12 and 60; therefore, the anticipated cost for preparing and routing requests is $1,578 to $7,892 (12 to 60 exceptions * 2 hours * $65.77). Taking midpoints of each range implies a primary estimate of $4,735.

The review of the exception request is expected to be performed at the GS–15 level or higher and may involve more than one level of review prior to approval or rejection. This process is estimated to take approximately 4 hours. The hourly rate of $108.71 is based upon OPM Table for the Rest of the United States, effective January 2022, for a GS–15 step 5 employee ($71.24 per hour) plus the 36.25 percent factor to account for fringe benefits and a 12 percent factor for overhead. The estimated cost for review and approval is between $5,218 to 26,090 (12 to 60 exceptions * 4 hours * $108.71). Taking the midpoint of the range implies a primary estimate of $15,654. The total annual estimated cost to prepare, route, review, and approve requests for exceptions is estimated to be $6,796 to $33,982.

The annual total estimated impact of PLAs to the public and Government is estimated to be $8.87 million to $53.54 million.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 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). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

Pursuant to the Congressional Review Act, DoD, GSA, and NASA will send this rule to each House of the Congress and to the Comptroller General of the United States. The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget has determined that this rule does not meet the definition in 5 U.S.C. 804(2).

VII. Regulatory Flexibility Act

DoD, GSA, and NASA have prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612. The FRFA is summarized as follows:

DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14063, Use of Project Labor Agreements for Federal Construction Projects, dated February 4, 2022, which mandates that Federal Government agencies require the use of project labor agreements (PLAs) for large-scale Federal construction projects (total estimated value of $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.

The objective of the rule is to implement the E.O. 14063 change in policy from discretionary use to requiring the use of PLAs for Federal construction projects valued at $35 million or more, unless an exception applies.

Significant issues raised by the public in response to the IRFA are as follows:

Comment: Numerous respondents expressed concerns about the burden on small entities associated with the use of PLAs. Several respondents indicated that the burden estimates were significantly understated in terms of the number of subcontractors impacted and the hours necessary to negotiate and establish a PLA. The respondents were also concerned that the additional complexity and costs associated with a PLA would create a barrier to entry for small entities.

Response: In response to public comments, the burden estimates are revised for all entities, to include the number of subcontractors and hours required to implement a PLA at both the prime contractor and subcontractor level. Additional analysis of subcontractor data also resulted in an increase in the estimated number of subcontractors assumed to be small entities.

The Office of Management and Budget (OMB) and the Department of Labor (DOL) intend to work with the Small Business Administration (SBA) to determine the best way to help small entities in understanding how to negotiate or participate in a construction project with a PLA.

Comment: Several respondents are concerned that PLAs will create a barrier to entry for many small, minority, and women-owned businesses. The respondents are also concerned that the rule will discourage small businesses from bidding on covered Federal construction contracts and thereby impose obstacles on the use of small business preferences required by Federal agencies in violation of the Small Business Act (15 U.S.C. 637(d)).

Response: The final rule does not change the use of small business preferences in procurements subject to the Small Business Act. PLAs may help small businesses by providing them with a level playing field and access to expanded skilled labor pools, while streamlining project administration and the negotiation of workplace terms and conditions. The E.O. and final rule provides an exception if a PLA requirement would be inconsistent with statutes and regulations. OMB and DOL intend to work with SBA to determine the best way to help small entities in understanding how to negotiate or participate in a construction project with a PLA.

DoD, GSA, and NASA considered the public comments in the development of the final rule; however, no changes were made to the FAR text in response to the comments.

The Chief Counsel for Advocacy of the Small Business Administration submitted comments dated October 18, 2022, in response to the proposed rule published August 19, 2022, implementing Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects.

The following were the Office of Advocacy's chief concerns:

Comment: The Office of Advocacy encouraged the Council to re-evaluate the excessive cost of compliance of this mandatory rule on small entities and encouraged the FAR Council to explore alternatives to this rulemaking as it relates to small entities.

Response: An analysis of the rule's impact on small entities was conducted and updated for the final rule, the results are included in the preamble under section IV, Expected Impact of the Rule. The E.O. requires the use of PLAs on large scale Federal construction projects unless an exception applies. The exceptions in section 5 of the E.O. do not include entity size, therefore there are no alternatives available that would reduce the impact on or exempt small entities from its requirements. However, the E.O. and final rule do provide an exception if a PLA requirement would be considered inconsistent with statutes and regulations.

OMB and DOL intend to work with SBA to determine the best way to help small entities in understanding how to negotiate or participate in a construction project with a PLA.

Comment: The Office of Advocacy encouraged the Council to consider a requirement relieving a small business from having to join a union if it agrees to pay the prevailing wages and other benefits established in union negotiation. The Office of Advocacy also suggested that removal of this mandatory requirement would allow the Federal Government to achieve its objective with the PLA but at less cost to the small business.

Response: Neither the E.O. nor the final rule require any entity, regardless of size, to join a union. Contractors and subcontractors

may negotiate with the union that is party to the PLA to opt out of certain fees, to include when current benefits are equivalent to those provided by the union.

Comment: The Office of Advocacy contended that the mandatory requirement for a PLA means that every contractor on a Federal construction contract, regardless of size, must agree to negotiate or become a party to a PLA with one or more labor organizations. This creates a mandatory flow down requiring all affected small businesses to join a union, regardless of size or dollar value of the subcontract. This flow down will have a detrimental cost impact on those small entities. The rule requires small business subcontractors to comply with the mandatory flow down but does not allow the small business to utilize the contracting agency resources to resolve disputes.

Response: The E.O. requires all contractors and subcontractors to agree to become a party to a PLA to participate on a large scale Federal construction project, unless an exception applies. Neither the E.O. nor the final rule requires any entity, regardless of size, to join a union. Contractors and subcontractors may negotiate terms and conditions with the union on a range of topics to include dispute resolution procedures, fringe benefits, and union dues.

Comment: The Office for Advocacy encouraged modifying the rule to reflect the diminishing cost-benefit to small firms by providing for a threshold contract value for covered subcontractors because additional analysis would show that a small firm that has only a few contracts per year will absorb a higher cost of compliance than a firm with multiple yearly contracts.

Response: The E.O. requires the use of PLAs on large scale Federal construction projects unless an exception applies. The E.O. does not provide a threshold for subcontractor participation, therefore there is no legal authority to provide such a threshold. The E.O. applies the PLA requirements to all contractors and subcontractors, regardless of size.

An analysis of the rule's impact on all entities was conducted and updated for the final rule, and the results are included in the preamble under section IV, Expected Impact of the Rule. Corresponding updates are made to the burden estimates for small entities.

Comment: The Office of Advocacy contends that the rule conflicts with the Administration's goal to reduce economic barriers for small businesses that wish to enter the Federal marketplace as provided in its announcement on December 2, 2021, ''Biden-Harris Administration Announces Reforms to Increase Equity and Level the Playing Field for Underserved Small Business Owners.'' If this rule is finalized, it will place a greater burden on Federal agencies to meet their annual statutorily required small business goals.

Response: To support the administration's goals to increase small entity participation in the Federal marketplace, and in this particular market, OMB and DOL intend to work with SBA to determine the best way to help small entities in understanding how to negotiate or participate in a construction project with a PLA.

Comment: The Office of Advocacy requests that the rule include burden estimates for hiring an additional recordkeeper for each small entity subcontractor, similarly to the additional recordkeeper for small entity prime contractors.

Response: The burden estimates do not provide for the hiring of additional recordkeepers at the prime or subcontractor level, regardless of business size. The rule assumes that each entity will utilize existing employees.

DoD, GSA, and NASA considered the Office of Advocacy comments and conducted a thorough analysis of the authorities provided in the E.O. As a result, no changes were made to the final rule in response to the comments.

This final rule applies the requirement for PLAs to all construction projects valued at $35 million or more, unless an exception applies. However, it does not change the discretionary use of PLAs for projects that do not meet the $35 million threshold. As a result, small entities may be required to negotiate and become a party to a PLA, as a prime or subcontractor.

Data generated from the Federal Procurement Data System for fiscal years 2019, 2020, and 2021 has been used as the basis for estimating the number of unique small entities expected to be affected by the change from discretionary to mandatory use of PLAs for large-scale construction projects. An examination of this data reveals that the Government issued an average of 119 large-scale construction awards annually. Of those 119 awards, an average of 15 percent were awarded to an average of 16 unique small entities annually.

It is estimated that 60 to 107 of the 119 large-scale construction awards will require a PLA. An estimated one third of affected solicitations will require all offerors to provide a PLA, and two thirds of affected solicitations will only require one entity (apparent successful offeror or awardee) to provide a PLA. Therefore, the total number of estimated entities that would be required to submit PLAs at the prime contract level is 120–215 entities (40–71 apparent successful offerors or awardees + 80–144 offerors).

It is estimated, that under the new PLA requirements, the number of small entities impacted by the rule is 15 percent of the 120–215 entities. Therefore, it is estimated that approximately 18–32 small entities will be required to submit a PLA.

DoD, GSA, and NASA acknowledge there is no data source that identifies the number of subcontractors per contract; however, based upon public comments, the final rule estimates that each of the entities required to submit PLAs may have approximately 14 subcontractors; *i.e.,* 1,680 to 3,010 subcontractors (120 * 14) to (215 * 14). In addition, the final rule increases the percentage of subcontractors estimated to be small entities to 80 percent. As a result, it is estimated that 80 percent or 1,344 to 2,408 of the subcontractors are small entities (1,680 * 0.80) (3,010 * 0.80).

Based upon this updated analysis, the number of small entities that may be required to negotiate or become a party to a PLA is approximately 1,362 to 2,440 annually (18 + 1,344) (32 + 2,408). These numbers may fluctuate based on the use of discretionary PLAs, any exceptions granted to the required use of a PLA, or whether the PLA is required for all offerors, the apparent successful offeror, or the awardee.

When a PLA is required, the successful offerors are required to maintain the PLA in a current state throughout the life of the contract. Each of the estimated 18 to 32 small entities awarded prime contracts may require 1 recordkeeper to maintain a PLA through the life of the contracts.

There are no alternative approaches that are consistent with the stated objectives of the executive order.

Interested parties may obtain a copy of the FRFA from the Regulatory Secretariat Division. The Regulatory Secretariat Division has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Severability

If any provision of this rule, or the application of such provision to any person or circumstance, is stayed or held to be invalid, the remainder of this rule and its application to any other person or circumstance shall not be affected thereby. If this rule or E.O. 14063 is stayed or held invalid in its entirety, DoD, GSA, and NASA intend that provisions of the FAR implementing E.O. 13502 as those provisions existed prior to issuance of this final rule (*i.e.,* subpart 22.5, and sections 52.222–33 and –34) would remain in effect.

IX. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501–3521) applies to the information collection described in this rule. Changes to the FAR resulted in an increase to the paperwork burden previously approved under Office of Management and Budget (OMB) Control Number 9000–0066, Certain Federal Acquisition Regulation Part 22 Labor Requirements.

List of Subjects in 48 CFR Parts 1, 7, 22, 36, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 7, 22, 36, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 7, 22, 36, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by:
■ a. Removing the entry for FAR segment ''22.5''; and
■ b. Adding in numerical order entries for ''52.222–33'' and ''52.222–34''.

The additions read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
52.222–33	9000–0066
52.222–34	9000–0066
* * * * *	

* * * * *

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.103 by revising paragraph (x) to read as follows:

7.103 Agency-head responsibilities.

* * * * *

(x) Ensuring that agency planners use project labor agreements when required (see subpart 22.5 and 36.104).

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 4. Revise section 22.501 to read as follows:

22.501 Scope of subpart.

This subpart prescribes policies and procedures to implement Executive Order 14063, Use of Project Labor Agreements for Federal Construction Projects, dated February 4, 2022 (3 CFR, 2023 Comp., pp 335–338).

■ 5. Amend section 22.502 by revising the definitions of ''Construction'', ''Labor organization'', and ''Large-scale construction project'' to read as follows:

22.502 Definitions.

* * * * *

Construction means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

Labor organization means a labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members.

Large-scale construction project means a Federal 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.

* * * * *

■ 6. Revise section 22.503 to read as follows.

22.503 Policy.

(a) Executive Order (E.O.) 14063, Use of Project Labor Agreements for Federal Construction Projects, requires agencies to use project labor agreements in large-scale construction projects to promote economy and efficiency in the administration and completion of Federal construction projects.

(b) When awarding a contract in connection with a large-scale construction project (see 22.502), agencies shall require use of project labor agreements for contractors and subcontractors engaged in construction on the project, unless an exception at 22.504(d) applies.

(c) An agency may require the use of a project labor agreement on projects where the total cost to the Federal Government is less than that for a large-scale construction project, if appropriate.

(1) An agency may, if appropriate, require that every contractor and subcontractor engaged in construction on the project agree, for that project, to negotiate or become a party to a project labor agreement with one or more labor organizations if the agency decides that the use of project labor agreements will—

(i) Advance the Federal Government's interest in achieving economy and efficiency in Federal procurement, producing labor-management stability, and ensuring compliance with laws and regulations governing safety and health, equal employment opportunity, labor and employment standards, and other matters; and

(ii) Be consistent with law.

(2) Agencies may consider the following factors in deciding whether the use of a project labor agreement is appropriate for a construction project where the total cost to the Federal Government is less than that for a large-scale construction project:

(i) The project will require multiple construction contractors and/or subcontractors employing workers in multiple crafts or trades.

(ii) There is a shortage of skilled labor in the region in which the construction project will be sited.

(iii) Completion of the project will require an extended period of time.

(iv) Project labor agreements have been used on comparable projects undertaken by Federal, State, municipal, or private entities in the geographic area of the project.

(v) A project labor agreement will promote the agency's long term program interests, such as facilitating the training of a skilled workforce to meet the agency's future construction needs.

(vi) Any other factors that the agency decides are appropriate.

(d) For indefinite-delivery indefinite-quantity (IDIQ) contracts the use of a project labor agreement may be required on an order-by-order basis rather than for the entire contract. For an order at or above $35 million an agency shall require the use of a project labor agreement unless an exception applies. See 22.504(d)(3) and 22.505(b)(3).

■ 7. Amend section 22.504 by—
■ a. Removing from paragraph (b) introductory text the words ''The project'' and adding the words ''A project'' in their place;
■ b. Revising paragraph (c); and
■ c. Adding paragraph (d).

The revision and addition read as follows.

22.504 General requirements for project labor agreements.

* * * * *

(c) *Labor organizations.* An agency may not require contractors or subcontractors to enter into a project labor agreement with any particular labor organization.

(d) *Exceptions to project labor agreement requirements*—(1) *Exception.* The senior procurement executive may grant an exception from the requirements at 22.503(b), providing a specific written explanation of why at least one of the following conditions exists with respect to the particular contract:

(i) Requiring a project labor agreement on the project would not advance the Federal Government's interests in achieving economy and efficiency in Federal procurement. The exception shall be based on one or more of the following factors:

(A) The project is of short duration and lacks operational complexity.

(B) The project will involve only one craft or trade.

(C) The project will involve specialized construction work that is available from only a limited number of contractors or subcontractors.

(D) The agency's need for the project is of such an unusual and compelling urgency that a project labor agreement would be impracticable.

(ii) Market research indicates that requiring a project labor agreement on the project would substantially reduce the number of potential offerors to such

a degree that adequate competition at a fair and reasonable price could not be achieved. (See 10.002(b)(1) and 36.104). A likely reduction in the number of potential offerors is not, by itself, sufficient to except a contract from coverage under this authority unless it is coupled with the finding that the reduction would not allow for adequate competition at a fair and reasonable price.

(iii) Requiring a project labor agreement on the project would otherwise be inconsistent with Federal statutes, regulations, Executive orders, or Presidential memoranda.

(2) *Considerations.* When determining whether the exception in paragraph (d)(1)(ii) of this section applies, contracting officers shall consider current market conditions and the extent to which price fluctuations may be attributable to factors other than the requirement for a project labor agreement (*e.g.,* costs of labor or materials, supply chain costs). Agencies may rely on price analysis conducted on recent competitive proposals for construction projects of a similar size and scope.

(3) *Timing of the exception*—(i) *Contracts other than IDIQ contracts.* The exception must be granted for a particular contract by the solicitation date.

(ii) *IDIQ contracts.* An exception shall be granted prior to the solicitation date if the basis for the exception cited would apply to all orders. Otherwise, exceptions shall be granted for each order by the time of the notice of the intent to place an order (*e.g.,* 16.505(b)(1)).

■ 8. Revise section 22.505 to read as follows.

22.505 Solicitation provision and contract clause.

When a project labor agreement is used for a construction project, the contracting officer shall—

(a)(1) Insert the provision at 52.222–33, Notice of Requirement for Project Labor Agreement, in solicitations containing the clause 52.222–34, Project Labor Agreement.

(2) Use the provision with its Alternate I if the agency will require the submission of a project labor agreement from only the apparent successful offeror, prior to contract award.

(3) Use the provision with its Alternate II if an agency allows submission of a project labor agreement after contract award except when Alternate III is used.

(4) Use the provision with its Alternate III when Alternate II of 52.222–34 is used.

(b)(1) Insert the clause at 52.222–34, Project Labor Agreement, in solicitations and contracts associated with the construction project.

(2) Use the clause with its Alternate I if an agency allows submission of the project labor agreement after contract award except when Alternate II is used.

(3) Use the clause with its Alternate II in IDIQ contracts when the agency will have project labor agreements negotiated on an order-by-order basis and anticipates one or more orders may not use a project labor agreement.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 9. Amend section 36.104 by adding paragraph (c) to read as follows:

36.104 Policy.

* * * * *

(c)(1) Agencies shall require the use of a project labor agreement for Federal construction projects with a total estimated construction cost at or above $35 million, unless an exception applies (see subpart 22.5).

(2) Contracting officers conducting market research for Federal construction contracts, valued at or above the threshold in paragraph (c)(1) of this section, shall ensure that the procedures at 10.002(b)(1) involve a current and proactive examination of the market conditions in the project area to determine national, regional, and local entity interest in participating on a project that requires a project labor agreement, and to understand the availability of unions, and unionized and non-unionized contractors. Contracting officers may coordinate with agency labor advisors, as appropriate.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Amend section 52.222–33 by—
■ a. Revising the date of the provision;
■ b. Revising paragraphs (a) and (b);
■ c. Removing from paragraph (c) introductory text ''Consistent with applicable law, the project'' and adding ''The project'' in its place;
■ d. Removing from paragraph (c)(1) ''offeror and all'' and adding ''Offeror and'' in its place;
■ e. Removing from paragraph (c)(2) ''offeror'' and adding ''Offeror'' in its place;
■ f. Removing from paragraph (d) ''this contract'' and adding ''the resulting contract'' in its place;
■ g. Removing from paragraph (e) ''offeror'' and adding ''Offeror'' in its place;
■ h. In Alternate I:
■ i. Revising the date;
■ ii. Removing from the introductory text ''22.505(a)(1)'' and ''clause'' and adding ''22.505(a)(2)'' and ''provision'' in their places, respectively; and
■ iii. Revising paragraph (b);
■ i. In Alternate II:
■ i. Revising the date;
■ ii. Removing from the introductory text ''22.505(a)(2)'' and ''clause'' and adding ''22.505(a)(3)'' and ''provision'' in their places, respectively; and
■ iii. Revising paragraph (b); and
■ j. Adding Alternate III.

The revisions and addition read as follows:

52.222–33 Notice of Requirement for Project Labor Agreement.

* * * * *

Notice of Requirement for Project Labor Agreement (Jan 2024).

(a) *Definitions.* As used in this provision, the following terms are defined in clause 52.222–34, Project Labor Agreement, of this solicitation ''construction,'' ''labor organization,'' ''large-scale construction project,'' and ''project labor agreement.''

(b) Offerors shall—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the resulting construction contract; and

(2) Require its subcontractors to become a party to the resulting project labor agreement.

* * * * *

Alternate I (Jan 2024) * * *

(b) The apparent successful offeror shall—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the resulting construction contract; and

(2) Require its subcontractors to become a party to the resulting project labor agreement.

* * * * *

Alternate II (Jan 2024) * * *

(b) If awarded the contract, the Offeror shall—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the resulting construction contract; and

(2) Require its subcontractors to become a party to the resulting project labor agreement.

Alternate III (Jan 2024). As prescribed in 22.505(a)(4), substitute the following paragraph (b) in lieu of paragraphs (b) through (e) of the basic provision:

(b)(1) If awarded the contract, the Offeror may be required by the agency to negotiate or become a party to a project labor agreement with one or more labor organizations for the term of

the order. The Contracting Officer will require that an executed copy of the project labor agreement be submitted to the agency—

(i) With the order offer;

(ii) Prior to award of the order; or

(iii) After award of the order.

(2) The Offeror shall require its subcontractors to become a party to the resulting project labor agreement for the term of the order.

■ 11. Amend section 52.222–34 by—

■ a. Revising the date of the clause;

■ b. Adding in alphabetical order definitions for ''Construction'' and ''Large-scale construction project'' and revising the definition ''Labor organization'' in paragraph (a);

■ c. Removing from paragraph (b) ''this contract in accordance with solicitation provision 52.222–33, Notice of Requirement for Project Labor Agreement'' and adding ''the contract'' in its place;

■ d. Removing from paragraph (c) ''all subcontracts'' and adding ''subcontracts'' in its place;

■ e. In Alternate I:

■ i. Revising the date and paragraph (b);

■ ii. Removing from paragraph (c) introductory text ''Consistent with applicable law, the project'' and adding ''The project'' in its place;

■ iii. Removing from paragraph (c)(1) ''and all'' and adding ''and'' in its place;

■ iv. Removing from paragraph (c)(4) ''the project'' and adding ''the term of the project'' in its place; and

■ v. Removing from paragraph (f) ''clause in all subcontracts'' and adding ''clause in subcontracts'' in its place; and

■ f. Adding Alternate II.

The revisions and additions read as follows:

52.222–34 Project Labor Agreement.

* * * * *

Project Labor Agreement (Jan 2024)

(a) * * *

Construction means construction, reconstruction, rehabilitation, modernization, alteration, conversion, extension, repair, or improvement of buildings, structures, highways, or other real property.

Labor organization means a labor organization as defined in 29 U.S.C. 152(5) of which building and construction employees are members.

Large-scale construction project means a Federal construction project within the United States for which the total estimated cost of the construction contract(s) to the Federal Government is $35 million or more.

* * * * *

Alternate I (Jan 2024) * * *

(b) The Contractor shall—

(1) Negotiate or become a party to a project labor agreement with one or more labor organizations for the term of this construction contract; and

(2) Submit an executed copy of the project labor agreement to the Contracting Officer as required in the solicitation.

* * * * *

Alternate II (Jan 2024). As prescribed in 22.505(b)(3), substitute the following paragraphs (b) through (f) for paragraphs (b) through (f) of the basic clause:

(b) When notified by the agency (*e.g.,* by the notice of intent to place an order under 16.505(b)(1)) that this order will use a project labor agreement, the Contractor shall negotiate or become a party to a project labor agreement with one or more labor organizations for the term of the order. The Contracting Officer shall require that an executed copy of the project labor agreement be submitted to the agency—

(1) With the order offer;

(2) Prior to award of the order; or

(3) After award of the order.

(c) The project labor agreement reached pursuant to this clause shall—

(1) Bind the Contractor and subcontractors engaged in construction on the construction project to comply with the project labor agreement;

(2) Allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

(3) Contain guarantees against strikes, lockouts, and similar job disruptions;

(4) Set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

(5) Provide other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and

(6) Fully conform to all statutes, regulations, Executive orders, and agency requirements.

(d) Any project labor agreement reached pursuant to this clause does not change the terms of this contract or provide for any price adjustment by the Government.

(e) The Contractor shall maintain in a current status throughout the life of the order any project labor agreement entered into pursuant to this clause.

(f) *Subcontracts.* For each order that uses a project labor agreement, the Contractor shall—

(1) Require subcontractors engaged in construction on the construction project to agree to any project labor agreement negotiated by the prime contractor pursuant to this clause; and

(2) Include the substance of paragraphs (d) through (f) of this clause in subcontracts with subcontractors engaged in construction on the construction project.

[FR Doc. 2023–27736 Filed 12–21–23; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2023–0051, Sequence No. 7]

Federal Acquisition Regulation; Federal Acquisition Circular 2024–02; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide (SECG).

SUMMARY: This document is issued under the joint authority of DoD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2024–02, which amends the Federal Acquisition Regulation (FAR). Interested parties may obtain further information regarding this rule by referring to FAC 2024–02, which precedes this document.

DATES: December 22, 2023.

ADDRESSES: The FAC, including the SECG, is available at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact the analyst whose name appears in the table below. Please cite FAC 2024–02 and the FAR Case number. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared.

RULES LISTED IN FAC 2024–02

Subject	FAR case	Analyst
* Use of Project Labor Agreements for for Federal Construction Projects	2022–003	Bowman.

SUPPLEMENTARY INFORMATION: A summary for the FAR rule follows. For the actual revisions and/or amendments made by this FAR rule, refer to the specific subject set forth in the document preceding this summary. FAC 2024–02 amends the FAR as follows:

Use of Project Labor Agreements for Federal Construction Projects (FAR Case 2022–003)

This final rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 14063, Use of Project Labor Agreements for Federal Construction Projects. E.O. 14063 expands the definition of ''construction,'' raises the threshold for a large-scale construction project from $25 million to $35 million and establishes a series of exceptions to the PLA requirements. Additionally, the E.O. mandates that Federal Government agencies require the use of project labor agreements (PLAs) for large-scale Federal construction projects, where the total estimated cost of the construction contract to the Government is $35 million or more, unless an exception applies. The final rule is not expected to have a significant economic impact on a substantial number of small entities participating on a project that requires a PLA because the E.O. limits the requirement for mandatory PLAs to projects exceeding $35 million, unless an exception applies.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2023–27737 Filed 12–21–23; 8:45 am]

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Part III

Department of the Treasury

Financial Crimes Enforcement Network

31 CFR Part 1010

Beneficial Ownership Information Access and Safeguards; Final Rule

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506–AB59

Beneficial Ownership Information Access and Safeguards

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final rule.

SUMMARY: FinCEN is promulgating regulations regarding access by authorized recipients to beneficial ownership information (BOI) that will be reported to FinCEN pursuant to section 6403 of the Corporate Transparency Act (CTA), enacted into law as part of the Anti-Money Laundering Act of 2020 (AML Act), which is itself part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA). The regulations implement the strict protocols required by the CTA to protect sensitive personally identifiable information (PII) reported to FinCEN and establish the circumstances in which specified recipients have access to BOI, along with data protection protocols and oversight mechanisms applicable to each recipient category. The disclosure of BOI to authorized recipients in accordance with appropriate protocols and oversight will help law enforcement and national security agencies prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity, as well as protect national security.

DATES: These rules are effective February 20, 2024.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

This final rule implements the beneficial ownership information (BOI) access and safeguard provisions in the Corporate Transparency Act (CTA).[1] The rule balances the statutory requirement to create a database of BOI that is highly useful to authorized BOI recipients, with the requirement to safeguard BOI from unauthorized use. This final rule reflects FinCEN's understanding of the critical need for the highest standard of security and confidentiality protocols to maintain confidence in the U.S. Government's ability to protect sensitive information while achieving the objective of the CTA noted above—establishing a database of BOI that will be highly useful in combatting illicit finance and the abuse of shell and front companies by criminals, corrupt officials, and other bad actors.

Specifically, this final rule implements the provisions in the CTA, codified at 31 U.S.C. 5336(c), that authorize certain recipients to receive disclosures of identifying information associated with reporting companies, their beneficial owners, and their company applicants (together, BOI). The CTA requires reporting companies to report BOI to FinCEN pursuant to 31 U.S.C. 5336(b). This rule reflects FinCEN's careful consideration of public comments, including those received in response to (1) an advance notice of proposed rulemaking (ANPRM)[2] on the implementation of the CTA, (2) an NPRM regarding BOI reporting requirements (Reporting NPRM),[3] and (3) an NPRM regarding BOI access and safeguards (Access NPRM).[4]

As Congress explained in the CTA, ''malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States.''[5] Access by authorized recipients to BOI reported under the CTA would significantly aid efforts to protect U.S. national security and safeguard the U.S. financial system from such illicit use. It would impede illicit actors' ability to use legal entities to conceal proceeds from criminal acts that undermine U.S. national security and foreign policy interests, such as corruption, human trafficking, drug and arms trafficking, and terrorist financing. BOI can also add critical data to financial analyses in activities the CTA contemplates, including tax investigations. It can also provide essential information to the intelligence and national security professionals who work to prevent terrorists, proliferators, and those who seek to undermine our democratic institutions or threaten other core U.S. interests from raising, hiding, or moving money in the United States through anonymous shell or front companies.[6]

The United States currently does not have a centralized or complete store of information about who owns and operates legal entities within the United States. The beneficial ownership data available to law enforcement and national security agencies are generally limited to certain commercial databases and the information collected by financial institutions on legal entity accounts pursuant to their Customer Due Diligence (CDD) or broader Customer Identification Program (CIP) obligations, some of which has been included in Suspicious Activity Reports (SARs) or provided to law enforcement in response to judicial process.[7] As set out in detail in the Notice of Proposed Rulemaking regarding BOI reporting requirements[8] and the BOI reporting final rule,[9] U.S. law enforcement officials and the Financial Action Task Force (FATF),[10] among others, have for years noted how the lack of timely access to accurate and adequate BOI by law enforcement and other authorized

[1] The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020 (AML Act), which includes the CTA. Section 6403 of the CTA, among other things, amends the Bank Secrecy Act (BSA) by adding a new section 5336, Beneficial Ownership Information Reporting Requirements, to Subchapter II of Chapter 53 of Title 31, United States Code.

[2] 86 FR 17557 (Apr. 5, 2021).

[3] 86 FR 69920 (Dec. 8, 2021).

[4] 87 FR 77404 (Dec. 16, 2022).

[5] CTA, section 6402(3).

[6] A front company generates legitimate business proceeds to commingle with illicit earnings. *See* U.S. Department of the Treasury, *National Money Laundering Risk Assessment* (2018), p. 29, available at *https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf.*

[7] *See, e.g.,* 31 CFR 1010.230. Even then, any BOI a financial institution collects is not systematically reported to any central repository.

[8] *Supra* note 3, 86 FR at 69923–69924.

[9] 87 FR 59498, 59506 (Sept. 30, 2022).

[10] The FATF, of which the United States is a founding member, is an international, inter-governmental task force whose purpose is the development and promotion of international standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of weapons proliferation, and other related threats to the integrity of the international financial system. The FATF assesses over 200 jurisdictions against its minimum standards for beneficial ownership transparency. Among other things, it has established standards on transparency and beneficial ownership of legal persons, to deter and prevent the misuse of corporate vehicles. *See* FATF Recommendation 24, Transparency and Beneficial Ownership of Legal Persons, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (updated Oct. 2020), available at *https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html;* FATF Guidance, Transparency and Beneficial Ownership, Part III (Oct. 2014), available at *https://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf.*

recipients remained a significant gap in the United States' anti-money laundering/countering the financing of terrorism (AML/CFT) and countering the financing of proliferation (CFP) framework. Broadly, and critically, BOI can identify linkages between potential illicit actors and opaque business entities, including shell companies. Furthermore, comparing BOI reported pursuant to the CTA against data collected under the Bank Secrecy Act (BSA) and other relevant government data is expected to significantly further efforts to identify illicit actors and combat their financial activities.

At the same time, however, FinCEN recognizes that BOI is sensitive information. This final rule reflects FinCEN's commitment to creating a highly useful database for authorized BOI recipients while protecting this sensitive information from unauthorized disclosure. To this end, the final rule aims to ensure that: (1) only authorized recipients have access to BOI; (2) authorized recipients use that BOI only for purposes permitted by the CTA; and (3) authorized recipients re-disclose BOI only in ways that balance protection of the security and confidentiality of the BOI with furtherance of the CTA's objective of making BOI available to a range of users for purposes specified in the CTA. The final rule also provides a robust framework to ensure that BOI reported to FinCEN, and received by authorized recipients, is subject to strict cybersecurity controls, confidentiality protections and restrictions, and robust audit and oversight measures. Coincident with the protocols described in this final rule, FinCEN continues to work to develop a secure, nonpublic database in which to store BOI, using rigorous information security methods and controls typically used in the Federal government to protect nonclassified yet sensitive information systems at the highest security level. Against this backdrop and consistent with the CTA, FinCEN will permit certain Federal, State,[11] local, and Tribal officials, as well as foreign officials acting through a Federal agency, to obtain BOI for use in furtherance of statutorily authorized activities such as those related to national security, intelligence, and law enforcement. Financial institutions with customer due diligence requirements under applicable law will have access to BOI to facilitate compliance with those requirements, as will the Federal functional regulators or other appropriate regulatory agencies that supervise or assess those financial institutions' compliance with such requirements.

II. Background

A. Access to Beneficial Ownership Information

For more than two decades, the U.S. government has been raising awareness about the misuse of legal entities by criminal actors for illicit ends.[12] Recently, Secretary of the Treasury Janet L. Yellen affirmed that:

> ''The United States has a unique obligation to tackle corruption. Corrupt actors from around the world continually attempt to exploit the vulnerabilities in the U.S. framework—for countering money laundering, terrorist financing, and other forms of illicit finance. . . . Just like legitimate investors, corrupt actors move their money through the United States to take advantage of the world's largest and most dynamic economy. They incorporate companies to benefit from our strong legal system, buy assets like real estate, and invest in our deep and liquid markets. . . . Unmasking shell corporations is the single most significant thing we can do to make our financial system inhospitable to corrupt actors. . . . The beneficial ownership database will deter dirty money from entering the U.S.—and give law enforcement and other partners the tools they need to follow the money when it does.'' [13]

The Department of the Treasury (Treasury) has previously observed in its 2020 National Strategy for Combating Terrorist and other Illicit Financing (the 2020 Illicit Financing Strategy) that ''[m]isuse of legal entities to hide a criminal beneficial owner or illegal source of funds continues to be a common, if not the dominant, feature of illicit finance schemes, especially those involving money laundering, predicate offences, tax evasion, and proliferation financing. . . .'' [14] The 2020 Illicit Financing Strategy further noted a Treasury finding that, between 2016 and 2019, legal entities were used in a substantial proportion of adjudicated Internal Revenue Service (IRS) cases to perpetrate tax evasion and fraud.[15] In a separate report, the Drug Enforcement Administration highlighted that drug trafficking organizations frequently use shell and front companies to commingle illicit drug proceeds with legitimate front company revenue to launder the illicit drug proceeds.[16]

As Treasury stressed in its 2022 Illicit Financing Strategy, law enforcement's lack of access to uniform BOI hinders its ability to swiftly investigate those entities created and used to hide ownership for illicit purposes.[17] Consequently, authorized recipients' access to BOI reported under the CTA will significantly aid efforts to protect U.S. national security; safeguard the U.S. financial system; and support U.S. foreign policy and other interests by providing a tool to counter corruption, human smuggling, drug and arms trafficking, terrorist financing, and other criminal acts. BOI can also add critical data to financial analyses in activities the CTA contemplates, including tax investigations. BOI can also provide essential information to the intelligence and national security professionals who work to prevent terrorists, proliferators, and those who seek to undermine our democratic institutions or threaten other core U.S. interests from raising, hiding, or moving money in the United States through anonymous shell or front companies.

Entity formation and registration in the United States happen at the state and Tribal levels. Although state- and Tribal-level entity formation laws vary, most jurisdictions do not require the party forming an entity to identify its individual beneficial owners at or after the time of formation. Additionally, the vast majority of states require little to no contact information or other information about an entity's officers or others who

[11] FinCEN will interpret the term ''State'' consistent with the definition of that term in the final Beneficial Ownership Information Reporting Requirements rule at 87 FR 59498 (Sep. 30, 2022) (which defines the term ''State'' to mean ''any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.'').

[12] *See* 87 FR 59501–59503 (Sept. 30, 2022).

[13] U.S. Department of the Treasury (Treasury), ''*Remarks by Secretary Janet L. Yellen on Anti-Corruption as a Cornerstone of a Fair, Accountable, and Democratic Economy at the Summit for Democracy*,'' (Mar. 28, 2023), available at *https://home.treasury.gov/news/press-releases/jy1371.*

[14] Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (2020), p. 13, available at *https://home.treasury.gov/system/files/136/National-Strategy-to-Counter-Illicit-Financev2.pdf.* The 2022 National Strategy for Combating Terrorist and Other Illicit Financing noted that ''[t]he passage of the CTA was a critical step forward in closing a long-standing gap and strengthening the U.S. AML/CFT regime'' and that ''[a]ddressing the gap in collection at the time of entity formation is the most important AML/CFT regulatory action for the U.S. government.'' Treasury, *National Strategy for Combating Terrorist and Other Illicit Financing* (May 2022), p. 8, available at *https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf* (''2022 Illicit Financing Strategy'').

[15] *Id.* at 14.

[16] Drug Enforcement Administration, *2020 Drug Enforcement Administration National Drug Threat Assessment* (''DEA 2020 NDTA'') (2020), pp. 87–88, available at *https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf.*

[17] *See* Treasury, *2022 Illicit Financing Strategy, supra* note 3, p. 12.

control it.[18] Furthermore, although many financial institutions are required to collect certain beneficial ownership information pursuant to FinCEN's 2016 Customer Due Diligence Rule (2016 CDD Rule),[19] and broader Customer Identification Program (CIP) obligations,[20] that information is not systematically reported to a central repository.

Identifying individual beneficial owners of legal entities in the United States therefore is often a significant challenge for law enforcement,[21] and it represents a significant weakness in the United States' AML/CFT and CFP frameworks, as Treasury [22] and the FATF [23] have noted for some time. Currently, obtaining BOI through grand jury subpoenas and other means can involve considerable effort. Grand jury subpoenas, for example, require an underlying grand jury investigation into a possible violation of law. Furthermore, the law enforcement officer or investigator must work with a prosecutor's office, such as a U.S. Attorney's Office, to open a grand jury investigation, obtain the grand jury subpoena, and issue it on behalf of the grand jury. The investigator also needs to determine who should receive the subpoena and coordinate service, which creates additional complications in cases involving complicated corporate structuring. Sometimes this work is all for naught because the investigation involves an entity formed or registered in a jurisdiction that does not require BOI for formation or registration.

FinCEN's existing regulatory tools help, but they provide only partial solutions. The 2016 CDD Rule, for example, requires that certain types of U.S. financial institutions identify and verify the beneficial owners of legal entity customers at the time of account opening.[24] The information financial institutions must collect under the 2016 CDD Rule, however, is generally neither comprehensive nor reported to the U.S. government (nor to State, local, or Tribal governments), except when filed in suspicious activity reports (SARs) or in response to judicial process. Moreover, the 2016 CDD Rule applies only to legal entities that open accounts at certain U.S. financial institutions. Other FinCEN authorities—geographic targeting orders [25] and the so-called ''311 measures'' (*i.e.,* special measures imposed on foreign jurisdictions, foreign financial institutions, or international transactions of primary money laundering concern) [26]—offer temporary and targeted tools. Neither provides law enforcement the ability to reliably, efficiently, and consistently identify new entities for investigation or follow investigatory leads.

This Final Rule will help to fill in these gaps while creating a framework to keep BOI secure and confidential.

B. The CTA

The CTA is part of the AML Act, which is a part of the 2021 NDAA. The CTA added a new section, 31 U.S.C. 5336, to the BSA to enhance beneficial ownership transparency while minimizing the burden on the regulated community.[27] This new section requires certain types of domestic and foreign entities, called ''reporting companies,'' to submit BOI to FinCEN.[28] Specifically, reporting companies must submit to FinCEN, for each beneficial owner and each individual who files an application to form a domestic entity or register a foreign entity to do business in the United States (the ''company applicant''), four pieces of information: the individual's full legal name, date of birth, current residential or business street address, and either a unique identifying number from an acceptable identification document (*e.g.,* a passport) or the individual's ''FinCEN identifier.'' [29]

The CTA establishes that BOI is ''sensitive information.'' [30] The statute treats it as such by limiting its access and use to specified parties for particular purposes.[31] In particular, Congress authorized FinCEN to disclose BOI only to a statutorily defined group of governmental authorities and financial institutions, and only in defined circumstances. The CTA further provides that the Secretary of the Treasury (Secretary) must ''maintain [BOI] in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information systems at the highest security level.'' [32] As discussed in detail in section II.E, FinCEN is currently building the secure information technology (IT) system into which reporting companies will submit, and from which authorized recipients will generally obtain, BOI.

In addition to setting out requirements and restrictions related to BOI reporting and access, the CTA requires that FinCEN revise the 2016 CDD Rule within one year of the BOI reporting requirements taking effect. In particular, the CTA directs FinCEN to revise the 2016 CDD Rule to: (1) bring it into conformity with the AML Act as a whole, including the CTA; (2) account for financial institutions' access to BOI

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[18] *See* CTA, section 6402(2) (''[M]ost or all States do not require information about the beneficial owners of corporations, limited liability companies, or other similar entities formed under the laws of the State''); U.S. Government Accountability Office, *Company Formations: Minimal Ownership Information Is Collected and Available* (Apr. 2006), available at *https://www.gao.gov/assets/gao-06-376.pdf; see also, e.g.,* The National Association of Secretaries of State (NASS), *NASS Summary of Information Collected by States* (Jun. 2019), available at *https://www.nass.org/sites/default/files/company%20formation/nass-business-entity-info-collected-june2019.pdf.*

[19] Final Rule, *Customer Due Diligence Requirements for Financial Institutions,* 81 FR 29398–29402 (May 11, 2016); 31 CFR 1010.230.

[20] *See e.g.,* 31 CFR 1020.220.

[21] In 2019, for example, Steven M. D'Antuono, Acting Deputy Assistant Director of the FBI's Criminal Investigative Division testified before Congress that ''[t]he process for the production of [beneficial ownership] records can be lengthy, anywhere from a few weeks to many years, and . . . can be extended drastically when it is necessary to obtain information from other countries . . . . [I]f an investigator obtains the ownership records, either from a domestic or foreign entity, the investigator may discover that the owner of the identified corporate entity is an additional corporate entity, necessitating the same process for the newly discovered corporate entity. Many professional launderers and others involved in illicit finance intentionally layer ownership and financial transactions in order to reduce transparency of transactions. As it stands, it is a facially effective way to delay an investigation.'' D'Antuono further acknowledged that these challenges may be even greater for State, local, and Tribal law enforcement agencies that may not have the same resources as their Federal counterparts to undertake long and costly investigations to identify beneficial owners. D'Antuono noted that requiring the disclosure of BOI by legal entities and the creation of a central BOI repository available to law enforcement and regulators could address these challenges. Federal Bureau of Investigation (FBI), *Testimony of Steven M. D'Antuono, Section Chief, Criminal Investigative Division, ''Combatting Illicit Financing by Anonymous Shell Companies''* (May 21, 2019), available at *https://www.fbi.gov/news/testimony/combating-illicit-financing-by-anonymous-shell-companies.*

[22] Treasury, *Treasury Announces Key Regulations and Legislation to Counter Money Laundering and Corruption, Combat Tax Evasion,* May 5, 2016, available at *https://home.treasury.gov/news/press-releases/jl0451.*

[23] *See* FATF Recommendation 24, Transparency and Beneficial Ownership of Legal Persons, The FATF Recommendations: International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation (updated Oct. 2020), available at *https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html.*

[24] 31 CFR 1010.230(b)(1).

[25] 31 U.S.C. 5326(a); 31 CFR 1010.370.

[26] 31 U.S.C. 5318A, as added by section 311 of the USA PATRIOT Act (Pub. L. 107–56).

[27] CTA, section 6403.

[28] 31 U.S.C. 5336(b)(1), (2). The CTA generally exempts from the reporting requirements banks and other entities that are already subject to significant regulatory regimes meant to expose their beneficial owners, among other purposes. *See id.* at 5336(a)(11)(B).

[29] *Id.* at 5336(b)(2).

[30] CTA, section 6402(6).

[31] *Id.*

[32] CTA, section 6402(7)(A). While the statutory language seems to include a typographical error that refers to another provision (not related to BOI), it also seems clear that the object of protection in this case is BOI.

reported to FinCEN ''in order to confirm the beneficial ownership information provided directly to the financial institutions'' for AML/CFT and customer due diligence purposes; and (3) reduce unnecessary or duplicative burdens on financial institutions and legal entity customers.[33] In carrying out these provisions, the CTA further requires FinCEN to rescind paragraphs (b) through (j) of 31 CFR 1010.230.[34]

FinCEN began implementing the CTA by publishing an ANPRM on April 5, 2021.[35] The ANPRM sought input on five open-ended categories of questions, including questions on clarifying key CTA definitions and on how FinCEN should implement CTA provisions governing FinCEN's maintenance and disclosure of BOI subject to appropriate access protocols. In response to the ANPRM, FinCEN received and considered 220 comments from parties that included businesses, civil society organizations, trade associations, law firms, secretaries of state and other state officials, Indian Tribes, members of Congress, and private citizens.

FinCEN next published the Reporting NPRM on December 8, 2021.[36] The Reporting NPRM described Treasury's efforts to address the lack of transparency in the ownership of certain legal entities, and proposed regulations specifying what BOI must be reported to FinCEN pursuant to CTA requirements, by whom, and when. These regulations also proposed processes for obtaining, updating, and using FinCEN identifiers. The Reporting NPRM included a 60-day comment period, which closed on February 7, 2022. FinCEN received over 240 comments on the Reporting NPRM.

After considering those comments, FinCEN published a final rule implementing the CTA's BOI reporting requirements on September 30, 2022 (Reporting Rule).[37] The Reporting Rule takes effect on January 1, 2024, and is the first of three rulemakings required by the CTA. Under the Reporting Rule, reporting companies in existence before the effective date will have until January 1, 2025, to report.[38] The Reporting Rule also provided that reporting companies created or registered to do business on or after January 1, 2024 would need to submit BOI to FinCEN within 30 days of receiving notice of a company's creation or registration.[39] However, on November 30, 2023, FinCEN published a final rule to extend the timeframe for reporting companies created or registered on or after January 1, 2024, and before January 1, 2025, to submit their initial BOI reports to FinCEN. Under this amendment to the Reporting Rule, reporting companies created or registered on or after January 1, 2024, and before January 1, 2025, will have 90 days to submit their initial BOI reports, instead of 30 days. Reporting companies formed on or after January 1, 2025, will continue to be required to submit their initial BOI reports within 30 days.

The Reporting Rule also reserved for further consideration certain provisions concerning the use of FinCEN identifiers for entities.

FinCEN next published the Access NPRM regarding the CTA's BOI access and safeguard provisions on December 16, 2022.[40] The proposed regulations reflected information gleaned from over 30 outreach sessions with representatives from Federal agencies, state courts, state and local prosecutors' offices, Tribal governments, financial institutions, financial self-regulatory organizations (SROs), and government offices that had established beneficial ownership databases, as well as from comments to the prior CTA-related publications. The Access NPRM also included proposed amendments to the reporting regulations that would finalize the remaining Reporting Rule provisions concerning the use of FinCEN identifiers for entities. The comment period for the Access NPRM closed on February 14, 2023.

This final rule adopts, with modifications, the proposed regulations in the Access NPRM and is the second rulemaking required by the CTA. These final access and safeguard regulations (''Access Rule'') aim to ensure that: (1) only authorized recipients have access to BOI; (2) authorized recipients use that access only for purposes permitted by the CTA; and (3) authorized recipients only re-disclose BOI in ways that balance protecting its security and confidentiality with the CTA objective of making BOI available to a range of users for authorized purposes. The regulations also provide a robust framework to ensure that BOI reported to FinCEN, and received by authorized recipients, is subject to strict cybersecurity controls, confidentiality protections and restrictions, and robust audit and oversight measures.

FinCEN will implement the CTA requirement to revise the 2016 CDD Rule through a future rulemaking process. That process will provide the public with an opportunity to comment on the effect of the final provisions of the BOI reporting and access rules on financial institutions' customer due diligence obligations.

Finally, the CTA requires the Inspector General of the Department of the Treasury to provide public contact information to receive external comments or complaints regarding the BOI notification and collection process or regarding the accuracy, completeness, or timeliness of such information.[41] Treasury's Office of Inspector General (''Treasury OIG'') has established the following email inbox to receive such comments or complaints: *CorporateTransparency@oig.treas.gov.*

C. The Access NPRM

As noted above in section II.B, FinCEN published the Access NPRM on December 16, 2022. The NPRM had a 60-day comment period that closed on February 14, 2023. FinCEN received over 80 comments. The NPRM described who would be authorized to access BOI reported to FinCEN, how those parties could use the information, and how they would be required to safeguard it.

The proposed regulations would amend 31 CFR 1010.950(a) to clarify that the disclosure of BOI would be governed by proposed 31 CFR 1010.955, rather than 31 CFR 1010.950(a), which governs disclosure of other BSA information. The CTA specifies disclosure rules applicable to BOI that are distinct from BSA provisions authorizing disclosure of other BSA information.[42]

The Access NPRM proposed to incorporate the CTA's general prohibition on the disclosure of BOI by individual recipients to others unless authorized to do so under the statute or its implementing regulations, with certain clarifications regarding the applicability and duration of that prohibition. The proposed regulations would authorize the disclosure and use of BOI to facilitate the purposes of the CTA, with FinCEN further proposing to retain the authority to permit in writing the re-disclosure of BOI in other circumstances.

The proposed regulations included provisions that would address a range of

[33] CTA, section 6403(d)(1)(A)–(C).

[34] CTA, section 6403(d)(1)–(2). The CTA orders the rescission of paragraphs (b) through (j) directly (''the Secretary of the Treasury shall rescind paragraphs (b) through (j)'') and orders the retention of paragraph (a) by a negative rule of construction (''nothing in this section may be construed to authorize the Secretary of the Treasury to repeal . . . [31 CFR] 1010.230(a)[.]''). The statute also provides a list of considerations to take into account when revising the 2016 CDD Rule. *See generally* CTA, section 6403(d)(3).

[35] 86 FR 17557 (Apr. 5, 2021).

[36] 86 FR 69920 (Dec. 8, 2021).

[37] 87 FR 59498 (Sept. 30, 2022).

[38] Reporting Rule, 31 CFR 1010.380(a)(1)(i)-(ii).

[39] *Id.* at 1010.380(a)(iii).

[40] 87 FR 77404 (Dec. 16, 2022).

[41] *See* 31 U.S.C. 5336(h)(4).

[42] *See* 31 U.S.C. 5336(c)(2), (5).

administrative matters, *e.g.,* circumstances under which FinCEN could decline to provide requested BOI or debar or suspend an authorized recipient, and would incorporate CTA provisions that impose civil and criminal penalties for knowingly disclosing or knowingly using BOI in ways that were not authorized by the CTA. The proposed rule also would reinforce the security and confidentiality requirements of the CTA by making clear the range of actions that could constitute unauthorized disclosure and use.

Finally, the Access NPRM made a new proposal regarding the use of FinCEN identifiers for entities, which was initially addressed in the Reporting NPRM and then deferred in the Final Reporting Rule. Specifically, the proposed regulations would clarify that a reporting company would be permitted to report the FinCEN identifier of an intermediate entity (*i.e.,* an entity through which an individual beneficial owner exercises substantial control or owns ownership interests in a reporting company) in lieu of a beneficial owner's PII only when three criteria are met. Taken together, these requirements sought to avoid the use of FinCEN identifiers to obscure beneficial ownership in a reporting company when the entity's ownership structure involves multiple beneficial owners and intermediate entities. FinCEN published a final rule to implement these provisions regarding the use of FinCEN identifiers for entities on November 8, 2023.[43]

The Access NPRM, however, primarily focused on the scope of and requirements for access to and protection of BOI reported to FinCEN. The following subsections outline how the proposed regulations would apply to five categories of authorized recipients for which the CTA prescribes specific requirements with respect to access to and use of BOI.

i. Domestic Agencies

The first category of BOI recipients authorized by the CTA consists of (1) Federal agencies engaged in national security, intelligence, or law enforcement activity if the requested BOI is for use in furtherance of such activity;[44] and (2) State, local, and Tribal law enforcement agencies if ''a court of competent jurisdiction'' authorizes the law enforcement agency to seek the information in a criminal or civil investigation.[45] Federal agency access to BOI would be contingent on the *type of activity* an agency engages in. In contrast, State, local, and Tribal access would be contingent on two conditions; (1) whether the recipient is a law enforcement agency, *i.e.,* the *type of agency;* and (2) whether a State, local, or Tribal law enforcement agency receives authorization from a court of competent jurisdiction to request BOI from FinCEN.

The Access NPRM proposed definitions for ''national security,'' ''intelligence,'' and ''law enforcement'' activities in a manner consistent with the CTA. In particular, the Access NPRM proposed that ''law enforcement'' include both criminal *and* civil investigations and actions, including actions to impose civil penalties, civil forfeiture actions, and civil enforcement through administrative proceedings. For access by State, local and Tribal law enforcement, the Access NPRM proposed to define ''court of competent jurisdiction'' as any court with jurisdiction over the criminal or civil investigation for which the State, local, or Tribal law enforcement agency requested BOI. The Access NPRM further proposed that the requisite court authorization would have to be in the form of a court order, with the understanding that the term ''order'' could encompass many authorization types issued by a range of court officers (*i.e.,* individuals empowered to exercise a court's authority and issue authorizations on its behalf, excluding individual attorneys). The NPRM specifically sought feedback on the scope of this definition.

The proposed regulations would also require all Federal agencies engaged in national security, intelligence, or law enforcement activity to provide a brief justification for each search for BOI in the FinCEN IT system and certify compliance with the applicable regulatory requirements. State, local, and Tribal law enforcement agencies would also have had to provide a brief justification for each search for BOI and submit copies of their court orders for FinCEN review. Upon meeting these requirements, both Federal agencies engaged in national security, intelligence, or law enforcement activity and State, local, and Tribal law enforcement agencies would have the ability to conduct searches for BOI in the beneficial ownership IT system (the ''BO IT system'') relevant to their investigation. The BO IT system would provide these users with both a reporting company's BOI at the time of the request as well as any previously submitted BOI.

Furthermore, the Access NPRM proposed that Federal agencies engaged in a national security, intelligence, or law enforcement activity, as well as State, local, and Tribal law enforcement agencies, would be authorized to disclose BOI obtained directly from FinCEN to courts of competent jurisdiction or parties to a civil or criminal proceeding. This authorization would only apply to civil or criminal proceedings involving U.S. Federal, State, local, and Tribal laws. In the preamble to the Access NPRM, FinCEN explained that it envisioned agencies relying on this provision when, for example, a prosecutor would need to provide a criminal defendant with BOI in discovery or use it as evidence in a court proceeding or trial.[46]

The CTA prescribes a number of security and confidentiality requirements that the Secretary must impose on requesting Federal, State, local, and Tribal agencies and their heads. These include requirements for secure storage systems and access policies and procedures; personnel access controls; recordkeeping, reporting, and audit requirements; and written certifications. These requirements affirm the importance of the security and confidentiality protocols and the need for a high degree of accountability for the protection of BOI. The proposed regulations described how each requesting agency, before it could obtain BOI from FinCEN, would be required to enter into a memorandum of understanding (MOU) with FinCEN specifying the standards, procedures, and systems that the agency would be required to maintain to protect BOI, including security plans. FinCEN explained in the preamble to the Access NPRM that these requirements are extensive by necessity given the broad search functionality within the BO IT system that would be available to this category of authorized recipients.

ii. Foreign Requesters

The second category consists of foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (''foreign requesters''), provided their requests come through an intermediary Federal agency, meet additional criteria, and are made either (1) under an international treaty, agreement, or convention; or (2) via a request made by law enforcement, judicial, or prosecutorial authorities in a trusted foreign country (when no international treaty, agreement, or convention is available).[47]

[43] 88 FR 76995 (Nov. 8, 2023).

[44] 31 U.S.C. 5336(c)(2)(B)(i)(I).

[45] 31 U.S.C. 5336(c)(2)(B)(i)(II).

[46] *See* CTA, section 6402(5)(D).

[47] *See* 31 U.S.C. 5336(c)(2)(B)(ii).

FinCEN generally did not propose to identify in the Access NPRM any specific Federal agencies that would serve as intermediaries with foreign governments.[48] FinCEN instead indicated that it would work with Federal agencies to identify those that are well positioned to be intermediaries, based on several factors, including: the level of engagement with foreign law enforcement agencies, judges, prosecutors, central authorities, or competent authorities; responsibility under international treaties, agreements, or conventions; and capacity to process requests for BOI while managing risks of unauthorized disclosure. The Access NPRM proposed to permit intermediary Federal agencies to use BOI obtained from FinCEN at the behest of a foreign requester only to facilitate a response to that foreign requester.

With respect to the requirement that a foreign request be made under an ''international treaty, agreement, or convention,'' FinCEN explained that it understood those terms to cover a legally binding agreement governed by international law. FinCEN did not propose to identify specific countries it would treat as ''trusted'' in situations when no international treaty, agreement, or convention applied. The Access NPRM explained that to define ''trusted foreign country'' would have risked arbitrarily excluding foreign requesters with whom sharing BOI might be appropriate in some cases but not others. FinCEN instead proposed to conduct case-by-case assessments in consultation with relevant U.S. government agencies to determine whether to disclose BOI to a foreign requester in a particular instance.

In the Access NPRM, FinCEN explained that it did not expect foreign requesters to have direct access to the BO IT system, but rather that intermediary Federal agencies would perform BOI searches in the system on a foreign requester's behalf. Before acting as intermediaries, Federal agencies would first have to fulfill several requirements, including: (1) ensuring that they have secure systems for BOI storage; (2) entering into MOUs with FinCEN outlining expectations and responsibilities; (3) incorporating the CTA foreign sharing requirements into evaluation criteria with which to review BOI requests from foreign requesters; (4) integrating the evaluation criteria into their existing information-sharing policies and procedures; (5) developing additional security protocols and systems as required under the CTA and this rule; and (6) ensuring that their personnel have sufficient training on BOI security and use requirements and restrictions.

Under the Access NPRM, an intermediary Federal agency would be authorized to submit foreign requests for BOI to FinCEN only after meeting these requirements. Such requests would need to include certain information, including: (1) the names of both the individual within the intermediary Federal agency making the request and the individual affiliated with the foreign requester on whose behalf the request was being made; and (2) either the international treaty, agreement, or convention under which the request was being made, or a statement that no such instrument governs along with an explanation of the information's intended use. Intermediary Federal agencies would also need to certify that a request meets applicable eligibility criteria. After doing so, an intermediary Federal agency could then search for and retrieve requested BOI from the system and respond to the foreign requester in a manner consistent with either the international treaty, agreement, or convention, or the request from the trusted foreign country. Intermediary Federal agencies would be required to maintain records documenting specified elements of each search, both for the agency's own internal auditing and for FinCEN audits as required under the CTA.

Recognizing the importance that all authorized BOI recipients—including foreign requesters—take appropriate steps to keep BOI confidential and secure and to prevent misuse, FinCEN also proposed requiring foreign requesters to handle, disclose, and use BOI consistent with the requirements of the applicable international treaty, agreement, or convention under which it is requested. When no treaty, agreement, or convention applies, the Access NPRM proposed that the head of an intermediary Federal agency, acting on behalf of a foreign requester, or their designee, would need to submit to FinCEN a written explanation of the specific purpose for which the foreign requester is requesting BOI. The intermediary Federal agency in such cases would have also needed to provide FinCEN with a certification that the requested BOI would be: (1) used in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity that is authorized under the laws of the relevant foreign country; (2) only used for the particular purpose or activity for which it was requested; and (3) handled in accordance with specified security and confidentiality requirements. Under the proposed rule, the certification would reflect what the head of the intermediary Federal agency head or their designee understands to be the intended use for the BOI, rather than a guarantee from the intermediary Federal agency that the foreign requester would not use the information for unauthorized purposes. The Access NPRM further specified that FinCEN could request additional information from the requester to support FinCEN's evaluation of whether to disclose BOI to a foreign requester when the request is not pursuant to an international treaty, agreement, or convention.

iii. Financial Institutions With Customer Due Diligence Compliance Obligations Under Applicable Law

The third authorized recipient category under the CTA is financial institutions that use BOI ''to facilitate compliance with customer due diligence requirements under applicable law.'' [49] FinCEN proposed to define the term ''customer due diligence requirements under applicable law'' to mean FinCEN's customer due diligence regulations at 31 CFR 1010.230, which require covered financial institutions to identify and verify beneficial owners of legal entity customers. FinCEN considered other approaches, but concluded that focusing on its 2016 CDD Rule alone would make this access category easier to administer, reduce uncertainty about which financial institutions could access BOI under the proposed rule, and better protect the security and confidentiality of sensitive BOI by limiting the circumstances under which financial institutions could access the information. There also did not appear to be any State, local, or Tribal customer due diligence requirements comparable in substance to FinCEN's 2016 CDD Rule.[50]

The CTA further requires that a reporting company's consent is necessary in order for a financial institution to obtain BOI from FinCEN. FinCEN proposed to make financial institutions responsible for obtaining this consent. That proposal reflected FinCEN's assessment that financial institutions are best positioned to obtain and manage consent through existing

[48] Given its longstanding relationships and relevant experience as the financial intelligence unit of the United States, FinCEN proposed to directly receive, evaluate, and respond to requests for BOI from foreign financial intelligence units.

[49] 31 U.S.C. 5336(c)(2)(B)(iii).

[50] In the Access NPRM, FinCEN specifically asked commenters to identify any Federal, State, local, or Tribal law requirements comparable to the 2016 CDD Rule regarding financial institutions identifying and verifying beneficial owners of legal entity customers. FinCEN received no responses to that request.

processes and by virtue of having direct relationship with reporting companies as customers. Although certain certifications would be required, the Access NPRM did not propose that financial institutions submit proof of a reporting company's consent. FinCEN recognized that it would not have the capacity to review, verify, and store consent forms, and additional FinCEN involvement would create undue delays for the ability of financial institutions to onboard customers. FinCEN also explained that a financial institution's compliance with these requirements would be assessed by Federal functional regulators in the ordinary course during examinations, or by financial SROs during their routine BSA examinations.[51]

FinCEN described in the Access NPRM its plan to establish for financial institutions a more circumscribed BO IT system interface than would be available to most Federal agencies and State, local, and Tribal law enforcement agencies. This would be based on the defined purposes for which financial institutions can use BOI under the CTA and the proposed requirement that they obtain reporting company consent before requesting the information from FinCEN. The interface would require financial institutions to submit identifying information specific to a particular reporting company (for example, the company name and tax identification number). In return, the financial institution would receive an electronic transcript with that reporting company's BOI at the time of the request. The transcript would not include any previously submitted BOI for the reporting company.

Although the CTA does not specifically address the safeguards that financial institutions must implement as a condition for requesting BOI, the CTA authorizes FinCEN to prescribe by regulation any other safeguards determined to be necessary or appropriate to protect the confidentiality of BOI.[52] In exercising this authority, FinCEN proposed a principles-based approach by requiring that financial institutions develop and implement administrative, technical, and physical safeguards reasonably designed to protect BOI as a precondition for receiving the information. The proposed regulations would establish that the security and information handling procedures necessary to comply with section 501 of the Gramm-Leach-Bliley Act (Gramm-Leach-Bliley)[53] and related regulations to protect nonpublic customer personal information, if applied to BOI under the control of the financial institution, would satisfy this requirement. Financial institutions not subject to regulations issued pursuant to section 501 of Gramm-Leach-Bliley would be held to these same substantive standards under the proposed rules.

Subject to certain conditions, the Access NPRM proposed to authorize financial institutions to share BOI that they obtained from FinCEN for use in fulfilling customer due diligence obligations with: (1) their Federal functional regulators, (2) qualifying SROs, or (3) any other appropriate regulatory agency. FinCEN proposed this authorization for the sake of efficiency and to more easily provide regulators with a complete picture of how financial institutions are obtaining and using BOI for customer due diligence compliance, thereby supporting the aims and purposes of the CTA, as well as helping them detect compliance failures.

iv. Regulatory Agencies

The fourth category of authorized recipient under the proposed regulations is Federal functional regulators and other appropriate regulatory agencies that (1) are authorized to assess, supervise, enforce, or otherwise determine financial institution compliance with customer due diligence requirements under applicable law; (2) use BOI solely to conduct an assessment, supervision, or authorized investigation or activity under 31 U.S.C. 5336(c)(2)(C)(i); and (3) enter into an agreement with FinCEN describing appropriate protocols for obtaining BOI.

The proposed regulations also incorporated the CTA's limitation on the scope of access by these agencies. The CTA states that BOI that FinCEN discloses to financial institutions should ''*also* be available to [their qualifying regulators].''[54] The Access NPRM therefore proposed to allow only qualifying regulators to obtain from FinCEN BOI that financial institutions that they supervise for customer due diligence compliance had already obtained under the CTA and its implementing regulations. Obtaining BOI from FinCEN would require Federal functional regulators and other appropriate regulatory agencies to certify to FinCEN when requesting BOI that the agency (1) is authorized by law to assess, supervise, enforce, or otherwise determine the relevant financial institution's compliance with customer due diligence requirements under applicable law, and (2) would use the information solely for that activity.

FinCEN made clear in the Access NPRM that it did not believe this customer due diligence-specific authorization was the exclusive means through which one of these regulators could obtain BOI. The access provision for Federal agencies engaged in national security, intelligence, or law enforcement activities focuses on activity categories, not agency types. To the extent that a Federal functional regulator, like the Securities and Exchange Commission (SEC), engages in civil law enforcement activities, agency officers, employees, contractors, and agents responsible for those activities could obtain BOI under the access provision for Federal law enforcement activity. The same principle applies to other agencies with both supervisory responsibility and authority to engage in other covered activity, including, potentially, State, local, and Tribal law enforcement agencies.

In the Access NPRM, FinCEN clarified that it would adopt its existing regulatory definition of ''Federal functional regulators'' to minimize the risk of confusion.[55] FinCEN did not propose to define ''other appropriate regulatory agencies,'' because it assessed that the requirement that an agency be authorized by law to supervise financial institutions for customer due diligence compliance sufficiently circumscribed the category.

In the Access NPRM, FinCEN considered whether SROs registered with or designated by a Federal functional regulator pursuant to Federal statute[56] (''qualifying SROs'') should qualify as ''other appropriate regulatory agencies.'' These organizations—like the Financial Industry Regulatory Authority (FINRA) or the National Futures Association (NFA)—are not traditionally

[51] The CTA requirements financial institutions must satisfy to qualify for BOI disclosure from FinCEN are part of the BSA, a statute enacted in pertinent part in Chapter X of the Code of Federal Regulations. FinCEN has delegated its authority to examine financial institutions for compliance with Chapter X to the Federal functional regulators. *See* 31 CFR 1010.810. Separately, the FBAs have their own authority to examine the financial institutions that they supervise for compliance with the BSA. *See* 12 U.S.C. 1786(q)(2), 1818(s)(2).

[52] 31 U.S.C. 5336(c)(3)(K).

[53] Public Law 106–102, 113 Stat. 1338, 1436–37 (1999).

[54] 31 U.S.C. 5336(c)(2)(C) (emphasis added).

[55] Under this definition, the six Federal functional regulators that supervise financial institutions with customer due diligence obligations are the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the SEC, and the Commodity Futures Trading Commission (CFTC). *See* 31 CFR 1010.100(r).

[56] *See, e.g.,* 7 U.S.C. 21; 15 U.S.C. 78o–3.

understood to be agencies of the U.S. government,[57] but they do exercise self-regulatory authority within the framework of Federal law, and work under the supervision of Federal functional regulators to assess, supervise, and enforce financial institution compliance with, among other things, customer due diligence requirements.[58] These qualifying SROs also are subject to extensive oversight by Federal agencies.[59]

FinCEN believed that qualifying SROs fulfill a critical role in overseeing participants in the financial services sector which justified their limited and derivative access to BOI: Without this level of access, qualifying SROs would not be able to effectively evaluate a financial institution's customer due diligence compliance. The CTA provides FinCEN broad discretion to specify the conditions under which authorized recipients of BOI may re-disclose that information to others. Consequently, the Access NPRM proposed to permit both financial institutions and Federal functional regulators to re-disclose to qualifying SROs any BOI they obtained from FinCEN for use in complying with customer due diligence requirements under applicable law. A qualifying SRO would (1) need to satisfy the same three conditions applicable to Federal functional regulators and other appropriate regulatory agencies, and (2) be permitted to use the information for the limited purpose of examining compliance with applicable customer due diligence obligations.

The Access NPRM further proposed that Federal functional regulators would also be permitted to disclose BOI to DOJ for purposes of making a referral to DOJ or for use in litigation related to the activity for which the requesting agency requested the information.

v. Department of the Treasury Access

The CTA includes separate, Treasury-specific provisions for accessing BOI, tying the access to a Treasury officer's or employee's official duties requiring BOI inspection or disclosure,[60] including for tax administration purposes.[61] Proposed 31 CFR 1010.955(b)(5) tracked these authorizations, and provided that Treasury officers and employees may receive BOI where their official duties require such access, or for tax administration, consistent with procedures and safeguards established by the Director of FinCEN. The proposed regulations also clarified the term ''tax administration purposes'' by adding a reference to the definition of ''tax administration'' in the Internal Revenue Code.[62]

The Access NPRM explained that FinCEN envisioned Treasury components having broad search functionality comparable to that of Federal agencies engaged in national security, intelligence, or law enforcement activity. This would include using BOI for enforcement actions, intelligence and analytical purposes, sanctions-related investigations, and identifying property blocked pursuant to sanctions, as well as for activities unique to Treasury, such as for tax administration and administration of the BOI framework, including audits, enforcement, and oversight. As with other Federal agencies requesting BOI for their own use, Treasury would also be permitted to disclose BOI for purposes of making a referral to DOJ or for use in litigation related to the activity for which Treasury officers, employees, contractors, or agents requested the information.

The Access NPRM further explained that FinCEN expected to work with other Treasury components to establish internal policies and procedures governing Treasury access to BOI. FinCEN noted that it anticipated that the security and confidentiality protocols in those policies and procedures would include elements of the protocols described in proposed 31 CFR 1010.955(d)(1) as applicable to Treasury activities and organization. Furthermore, officers and employees identified as having duties potentially requiring access to BOI would receive training on, among other topics, determining when their duties require access to BOI, what they can do with the information, and how to handle and safeguard it. Their activities would also be subject to audit.

D. CTA Implementation Efforts

i. Beneficial Ownership IT System

The CTA directs the Secretary to maintain BOI ''in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information security systems at the highest security level . . . .'' [63] FinCEN is implementing this requirement by developing a secure BO IT system to receive, store, and maintain BOI. Consistent with the CTA's requirement [64] and FinCEN's recognition that BOI is sensitive information warranting stringent security, the system will be cloud-based and will meet the highest Federal Information Security Management Act (FISMA) [65] level (FISMA High).[66] A FISMA High rating indicates that losing the confidentiality, integrity, or availability of information within a system would have a severe or catastrophic adverse effect on the organization maintaining the system, including on organizational assets or individuals.[67] The rating carries with it a requirement to implement certain baseline controls to protect the relevant information.[68] System functionality will vary by recipient category consistent with statutory requirements, limitations on BOI disclosure, and FinCEN's objective of minimizing access to the data as much as practicable to minimize the risk of unauthorized disclosure. The target date for the system to begin accepting BOI reports is January 1, 2024, the same day on which the Reporting Rule takes effect.

ii. Additional CTA Implementation Efforts

In addition to continuing development of the BO IT system, FinCEN is working across several other CTA implementation efforts. First, it is working intensively to develop guidance and other educational materials to ensure that small businesses have the information they need to comply and that reporting beneficial ownership information is as streamlined and straightforward as possible. On March 24, 2023, for example, FinCEN published its first set

[57] *See, e.g., In re William H. Murphy & Co.,* SEC Release No. 34–90759, 2020 WL 7496228, *17 (Dec. 21, 2020) (explaining that FINRA ''is not a part of the government or otherwise a [S]tate actor'' to which constitutional requirements apply).

[58] *See, e.g.,* FINRA Rule 3310(f); NFA Compliance Rule 2–9(c)(5).

[59] *See, e.g., Scottsdale Cap. Advisors Corp.* v. *FINRA,* 844 F.3d 414, 418 (4th Cir. 2016) (''Before any FINRA rule goes into effect, the SEC must approve the rule and specifically determine that it is consistent with the purposes of the Exchange Act. The SEC may also amend any existing rule to ensure it comports with the purposes and requirements of the Exchange Act.'' (citations omitted); *Birkelbach* v. *SEC,* 751 F.3d 472, 475 (7th Cir. 2014) (''A [FINRA] member can appeal the disposition of a FINRA disciplinary proceeding to the SEC, which performs a *de novo* review of the record and issues a decision of its own.'').

[60] *See* 31 U.S.C. 5336(c)(5)(A).

[61] *See* 31 U.S.C. 5336(c)(5)(B).

[62] 26 U.S.C. 6103(b)(4).

[63] CTA, section 6402(7).

[64] 31 U.S.C. 5336(c)(8).

[65] 44 U.S.C. 3541 *et seq.*

[66] *See* U.S. Department of Commerce, *Federal Information Processing Standards Publication: Standards for Security Categorization of Federal Information and Information Systems* (''FIPS Pub 199'') (Feb. 2004), available at *https://nvlpubs.nist.gov/nistpubs/fips/nist.fips.199.pdf.*

[67] *Id.* at 3.

[68] *Id.*

of guidance materials to aid the public, and in particular the small business community, in understanding the BOI reporting requirements taking effect on January 1, 2024.[69] That guidance, available on FinCEN's website, includes Frequently Asked Questions (FAQs), guidance on BOI filing dates, and informational videos.[70] FinCEN published a Small Entity Compliance Guide on September 18, 2023, as well as additional guidance to address more complex topics around BOI reporting. FinCEN is also developing the infrastructure to respond to queries, conduct audit and oversight, and provide partner agencies and financial institutions with access to BOI.

FinCEN is particularly focused on providing helpful customer service to reporting companies in the first year and beyond as they file their BOI. FinCEN currently fields approximately 13,000 inquiries a year through its Regulatory Support Section, and approximately 70,000 external technical inquiries a year through the IT Systems Helpdesk. FinCEN has estimated that there will be approximately 32 million reporting companies in Year 1 of the reporting requirement and approximately 5 million new reporting companies each year thereafter.[71] Given the expected increase in incoming inquiries, FinCEN is working to stand up a dedicated beneficial ownership contact center to respond to inquiries about the beneficial ownership reporting requirements, and to provide assistance to users encountering technical issues with the BO IT system. FinCEN expects the contact center to begin operations prior to January 1, 2024.

FinCEN is also working to establish internal policies and procedures governing Treasury officer and employee access to BOI, as well as to draft and negotiate MOUs for access to BOI and related materials. In keeping with protocols described in this final rule, Federal, State, local and Tribal agencies outside of Treasury will be required to enter into MOUs with FinCEN specifying the standards, procedures, and systems they will be required to maintain to protect BOI. Agency MOUs will, among other things, memorialize and implement requirements regarding reports and certifications, periodic training of individual recipients of BOI, personnel access restrictions, re-disclosure limitations, and access to audit and oversight mechanisms. MOUs will also include security plans covering topics related to personnel security (*e.g.,* eligibility limitations, screening standards, and certification and notification requirements); physical security (*i.e.,* system connections and use, conditions of access, and data maintenance); computer security (*i.e.,* use and access policies, standards related to passwords, transmission, storage, and encryption); and inspections and compliance. Agencies will be able to rely on existing databases and related IT infrastructure to satisfy the requirement to ''establish and maintain'' secure systems in which to store BOI where those systems have appropriate security and confidentiality protocols, and FinCEN will engage with recipient agencies on these protocols during the MOU development process.

iii. Administration of Access to BOI

For any given user agency, the administrative steps described in the preceding section will need to be completed *before* authorized users obtain access to the BO IT system. These steps will require resources to complete. Every Federal, State, local, and tribal user agency will need to enter into an MOU with FinCEN for access to the BO IT system and put in place the policies and procedures required under the final Access Rule and the MOU. FinCEN will also need to establish BO IT system individual user accounts for all personnel who are authorized to access the system at agencies and financial institutions.

To smoothly manage the draw on resources that this process will demand, FinCEN will take a phased approach to providing access to the BO IT system. The first stage will be a pilot program for a handful of key Federal agency users starting in 2024, as required MOUs and policies and procedures are completed. The second stage will extend access to Treasury Department offices and certain Federal agencies engaged in law enforcement and national security activities that already have Bank Secrecy Act MOUs (*e.g.,* FBI, IRS–CI, HSI, DEA, Federal banking agencies (FBAs)). Subsequent stages will extend access to additional Federal agencies engaged in law enforcement, national security, and intelligence activities, as well as key State, local, and Tribal law enforcement partners; to additional State, local, and Tribal law enforcement partners; in connection with foreign government requests; and finally, to financial institutions and their supervisors.

FinCEN believes that starting with a small pilot program of users in 2024 will help test the system and ensure that any issues can be addressed before expanding access to other users. Making access more broadly available in the four subsequent stages outlined above will help ensure the orderly onboarding of authorized users and will space out the timing of the annual audits of agency users that FinCEN is required to conduct under the CTA. Additionally, there is a good reason for FinCEN's sequencing of access, making financial institutions and their supervisors the last category of users that will receive access to the BO IT system: FinCEN expects that the timing of their access will roughly coincide with the upcoming revision of FinCEN's 2016 CDD Rule. This will allow financial institutions to enjoy certain administrative efficiencies by bundling system and compliance changes. FinCEN anticipates providing additional information on the timing and details regarding this phased implementation approach in early 2024.

E. Comments Received

In response to the NPRM, FinCEN received over 80 comments. Submissions came from a broad array of individuals and organizations, including members of Congress, the financial industry and related trade associations, groups representing small business interests, corporate transparency advocacy groups, law enforcement representatives, regulatory associations, legal associations, and other interested groups and individuals.

In general, many commenters expressed support for the proposed regulations. These commenters agreed that the proposed regulations were a significant step forward in improving the ability of law enforcement and national security agencies to identify illicit actors hiding behind anonymous shell and front companies. One of the commenters stated that the proposed regulations would confer benefits to both the United States and its overseas partners and bring the United States in line with emerging global practices relating to beneficial ownership information reporting. These commenters viewed the proposed regulations as being consistent with the statutory text. They supported the approach taken to provide access to BOI to authorized recipients and were encouraged by the proposed limitations and security provisions to protect the BOI and prevent unauthorized disclosure. These commenters were

[69] FinCEN, *FinCEN Issues Initial Beneficial Ownership Information Reporting Guidance* (Mar. 24, 2023), available at *https://www.fincen.gov/news/news-releases/fincen-issues-initial-beneficial-ownership-information-reporting-guidance.*

[70] FinCEN, Beneficial Ownership Information Reporting, available at *https://www.fincen.gov/boi.*

[71] 87 FR 59498, 59549 (Sept. 30, 2022).

particularly supportive of the proposed regulations with respect to U.S. Federal agencies' access to the BOI database. Supportive commenters agreed that U.S. Federal agencies accessing the database for law enforcement, intelligence, and national security purposes should have broad access, and that foreign requesters should be able to request BOI for similar purposes.

Other commenters expressed general opposition to the proposed regulations, arguing that the proposed regulations deviate from the CTA and congressional intent. These commenters argued that the proposed regulations, if finalized without significant changes, would impose unnecessary requirements, limitations, and burdens with respect to certain types of access. Commenters also argued that the proposed regulations would be too costly and burdensome for small businesses. In particular, commenters expressed concern over the access provisions relating to State, local, and Tribal law enforcement authorities and financial institutions. Some commenters stated that certain requirements for law enforcement access to BOI, such as the requirement to submit ''a copy of a court order'' and ''written justification'' in proposed 31 CFR 1010.955(d)(1)(ii)(B)(*2*), would create undue barriers for State, local and Tribal law enforcement and contradict the statutory text. Other commenters argued that the proposed restrictions on access by financial institutions and their regulators would significantly limit the utility of the database. These commenters argued that proposed regulations interpreted ''customer due diligence requirements under applicable law'' in 31 U.S.C. 5336(c)(2)(B)(iii) too narrowly and objected to the requirement that individuals with access to BOI be located in the United States (31 CFR 1010.955(c)(2)(ii)). These commenters suggested that FinCEN adopt a broader approach to financial institutions' access to BOI and asked for clarification on a number of related provisions, including, for example, expectations around customer consent, database usage, and discrepancy reporting. One commenter suggested that FinCEN withdraw the proposed regulations and engage with the financial services industry and small businesses to develop a new proposal to better achieve the objectives of the CTA and the AML Act.

Many commenters, regardless of their overarching views, suggested specific modifications to the proposed regulations to enhance clarity, refine policy expectations, ensure technical accuracy, and improve implementation more broadly. Commenters sought clarification on specific definitions, use cases, technical requirements and processes, and database functionality, among other things. Several commenters advocated for providing certain additional categories of users access to BOI, while others shared views on the sensitivity of BOI. Several commenters emphasized their view that BOI needed to be verified and suggested ways to improve the quality of the database.

Commenters also shared views on future revisions to the 2016 CDD Rule, highlighting the ways in which they anticipated the proposed regulations with respect to access would interact with the 2016 CDD Rule. Among other things, these commenters expressed concerns about potential inconsistencies between BOI in the database and the customer information that financial institutions maintain pursuant to customer due diligence obligations. Many of these commenters urged FinCEN to address these concerns before 2016 CDD Rule revisions are finalized; some suggested that these concerns be addressed as part of the final Access Rule. Several commenters expressed frustration over the sequencing of the CTA rulemakings, stating, for example, that it is difficult to provide meaningful comments on the proposed regulations given uncertainties about revisions to the 2016 CDD Rule.

Commenters shared views on the proposed regulations on FinCEN identifiers for reporting companies. While some commenters were supportive of FinCEN's approach, others found the proposal complex and confusing. Whether or not generally supportive, commenters suggested specific modifications to the proposal and asked for clarification on the availability of the information underlying FinCEN identifiers. One commenter expressed generalized concern about the availability of FinCEN identifiers and their potential misuse.

FinCEN also received comments on topics not directly related to the proposed regulations. Some of these comments focused on elements of the Reporting Rule, *e.g.,* information to be reported, company applicants, enforcement mechanism, and the proposed BOI report form. Others identified typographical errors, offered specific recommendations with respect to MSBs and mutual funds, and urged FinCEN to take steps to prevent the creation of fraudulent FinCEN websites. One commenter suggested that FinCEN should be designated as part of the intelligence community, while another suggested that Congress should repeal the USA PATRIOT Act. Finally, one commenter highlighted that some individuals may feel discouraged from submitting comments on proposed regulations if their views do not align with those of their employer.

FinCEN carefully reviewed and considered each comment submitted. Many specific proposals will be discussed in more detail in section III below. FinCEN's analysis and approach has been guided by the statutory text, including the statutory obligations to disclose BOI to authorized users for specified purposes while following strict security and confidentiality protocols and minimizing burdens on stakeholders.

In implementing this final rule, FinCEN took into account the many comments and suggestions intended to clarify and refine the scope of the rule and to reduce burdens on authorized users to the greatest extent practicable. FinCEN further notes that implementation of the final rule will require additional engagement with stakeholders to ensure a clear understanding of the rule's requirements, including through additional guidance, FAQs, and help lines. FinCEN intends to work within Treasury and with interagency partners to inform these specific efforts and the broader implementation of this final rule.

III. Discussion of Final Rule

This final rule builds on the Access NPRM and is the next step after the Reporting Rule in FinCEN's implementation of the CTA. The final rule aims to ensure that: (1) only authorized recipients have access to BOI; (2) authorized recipients use that access only for purposes permitted by the CTA; and (3) authorized recipients only re-disclose BOI in ways that balance protecting its security and confidentiality with the CTA objective of making BOI available to users for a range of authorized purposes. The regulations also provide a robust framework to ensure that BOI reported to FinCEN, and received by authorized recipients, is subject to strict cybersecurity controls, confidentiality protections and restrictions, and robust audit and oversight measures.

FinCEN is adopting the proposed rule largely as proposed, but with certain modifications that are responsive to comments received and intended to reduce barriers to the effective use of BOI, while maintaining appropriate protections for the information. Among other things, the final rule broadens the purposes for which financial institutions may use BOI, and

streamlines the requirements for State, local, and Tribal law enforcement access to BOI. FinCEN believes that these changes will help to ensure that the database is highly useful to relevant stakeholders who are authorized to access BOI. FinCEN has made certain other clarifying and technical revisions throughout the rule. We discuss specific comments, modifications, revisions, and the shape of the final rule section by section here.

We discuss the elements of the final rule under seven headings: (A) availability of information—general; (B) prohibition on disclosure; (C) disclosure of information by FinCEN; (D) use of information; (E) security and confidentiality requirements; (F) administration of requests for information reported pursuant to 31 CFR 1010.380; and (G) violations. In addition, this section discusses general implementation efforts as they apply to the development of the IT system.

A. Availability of Information—General

Proposed Rule. FinCEN proposed to amend 31 CFR 1010.950(a) to clarify that the disclosure of BOI would not be governed by § 1010.950(a) but instead by proposed 31 CFR 1010.955.

Comments Received. FinCEN did not receive comments on this proposal.

Final Rule. The final rule adopts the amendments to 31 CFR 1010.950(a) as proposed. The amendments clarify that the disclosure of BOI is governed by a new provision, 31 CFR 1010.955, rather than 31 CFR 1010.950(a). Section 1010.950(a) governs disclosure of other BSA information by Treasury and states that ''[t]he Secretary may within his discretion disclose information reported under this chapter for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section.'' In contrast, the CTA authorizes FinCEN to disclose BOI only in limited and specified circumstances.[72] As these CTA provisions are separate and distinct from provisions authorizing disclosure of other BSA information, distinct regulatory treatment is warranted.[73]

B. Prohibition on Disclosure

Proposed Rule. Proposed 31 CFR 1010.955(a) would implement the broad prohibition in the CTA on the disclosure of information reported to FinCEN pursuant to 31 CFR 1010.380, except as authorized under the proposed rule. Specifically, the CTA provides that, except as authorized by 31 U.S.C. 5336(c) and the protocols promulgated thereunder, BOI reported to FinCEN by reporting companies is confidential and shall not be disclosed by (1) an officer or employee of the United States, (2) an officer or employee of any State, local, or Tribal agency, or (3) an officer or employee of any financial institution or regulatory agency receiving information under this subsection of the CTA.[74] The proposed rule adopted this broad prohibition on disclosure but extended it in two ways. First, it extended the prohibition to any of the officers or employees described in (1) through (3) above regardless of whether they continue to serve in the position through which they were authorized to receive BOI. Second, it extended the prohibition on disclosure to any individual who receives BOI as a contractor or agent of the United States; as a contractor or agent of a State, local, or Tribal agency; or as a member of the board of directors, contractor, or agent of a financial institution.

Comments Received. One commenter supported the proposed extension of the prohibition on disclosure of BOI to contractors or agents of the United States and State, local or Tribal law enforcement agencies, and to contractors, agents, and directors of financial institutions. The commenter noted that this extension furthers the purpose of the CTA and would close potential loopholes around prohibited disclosures of BOI. Several commenters requested greater clarity on the prohibition on disclosure or further extension of the prohibition to additional individuals. One commenter opposed extending the prohibition to agents, contractors, and, in the case of financial institutions, directors, arguing that the existing prohibition in the statute was already overly protective of BOI. One commenter did not believe that the proposed rule adequately clarifies that the prohibition on disclosure covers individuals who receive BOI even after they leave the position in which they were authorized to receive the BOI. This commenter suggested that the rule should include language that explicitly addresses this scenario. This commenter also asked that the prohibition on disclosure explicitly extend to an officer, employee, contactor, or agent of foreign law enforcement agencies, foreign law enforcement agencies, foreign judges, foreign prosecutors, or other foreign authorities. Another commenter suggested adding a provision to prohibit disclosure by attorneys or parties who may receive BOI in the context of a civil or criminal proceeding. Another commenter suggested extending access requirements (which would include the prohibition on disclosure of BOI) to any individual under contract or under the remit of an entity authorized to access BOI (non-employee agents), such as consultants, auditors, and third-party service providers.

Final Rule. The final rule adopts 31 CFR 1010.955(a) as proposed. FinCEN believes that the proposed rule, including the extension of the disclosure prohibition to certain specified individuals, is necessary to fully carry out the CTA's intent to protect sensitive BOI and prevent unauthorized disclosure of this information. FinCEN proposed these extensions pursuant to 31 U.S.C. 5336(c)(3)(K), which provides that ''the Secretary of the Treasury shall establish by regulation protocols described in [31 U.S.C. 5336(2)(A)] that . . . provide such other safeguards which the Secretary determines (and which the Secretary prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the beneficial ownership information.'' Further, after considering the comments to this provision, FinCEN has concluded that this provision is sufficiently clear, in terms of the prohibition on disclosure applying to those individuals who leave a position in which they were previously authorized to receive BOI. The proposed rule stated that, except as authorized, BOI is confidential and ''shall not be disclosed by any individual who receives such information as'' an officer, employee, contractor, agent, or director. This prohibition means that individuals who *receive* BOI when acting in these specified roles cannot disclose BOI (except as authorized in the rule) regardless of whether they continue in or leave these roles.

FinCEN has also determined not to add language extending the prohibition on disclosure to an officer, employee, contactor, or agent of foreign law enforcement agencies, foreign law enforcement agencies, foreign judges, foreign prosecutors, or other foreign authorities. FinCEN believes there are existing mechanisms in place under the CTA that would appropriately protect BOI in these circumstances. For example, in the context of foreign access to BOI through a request made under an international treaty, agreement, or convention, the handling and use of BOI would be governed by the disclosure and use provisions of the relevant international treaty, agreement, or

[72] *See* 31 U.S.C. 5336(c)(2), (5).

[73] *See, e.g.,* 31 U.S.C. 5319.

[74] *See* 31 U.S.C. 5336(c)(2)(A).

convention.[75] As for trusted foreign countries, the CTA explicitly limits the use of BOI ''for any purpose other than the authorized investigation or national security or intelligence activity'' [76] and proposed 31 CFR 1010.955(c)(2)(ix) (now renumbered as 31 CFR 1010.955(c)(2)(x)) provided that ''any information disclosed by FinCEN under paragraph (b) of this section shall not be further disclosed to any other person for any purpose without the prior written consent of FinCEN, or as authorized by applicable protocols or guidance that FinCEN may issue.'' In the event of improper disclosure of BOI by a trusted foreign country, FinCEN would consider all available remedies including FinCEN's authority to reject a request for BOI or suspend a requesting party's access to such information.[77]

FinCEN has also decided not to specifically extend the prohibition on disclosure to parties in a civil and criminal proceeding because it views this scenario as being covered by the regulations, specifically by the provision prohibiting redisclosure without the prior consent of FinCEN.[78] FinCEN will consider, however, whether to issue guidance or FAQs to further address issues relating to public disclosure of BOI in civil or criminal proceedings. With respect to the commenter suggesting that FinCEN add language to specify that individuals under contract or under the remit of an entity authorized to access BOI (including consultants, auditors, and third-party service providers) are covered by the prohibition on disclosure, FinCEN believes that proposed 31 CFR 1010.955(a) sufficiently covers these individuals as contractors or agents.

C. Disclosure of Information by FinCEN

As discussed in the proposed rule, the CTA authorizes FinCEN to disclose BOI to five categories of recipients. The first category consists of recipients in Federal, State, local and Tribal government agencies.[79] Within this category, FinCEN may disclose BOI to Federal agencies engaged in national security, intelligence, or law enforcement activity if the requested BOI is for use in furtherance of such activity.[80] FinCEN may also disclose BOI to State, local, and Tribal law enforcement agencies if ''a court of competent jurisdiction'' has authorized the law enforcement agency to seek the information in a criminal or civil investigation.[81]

The second category consists of foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (''foreign requesters''), provided their requests come through an intermediary Federal agency, meet certain additional criteria, and are made either (1) under an international treaty, agreement, or convention, or (2) via a request made by law enforcement, judicial, or prosecutorial authorities in a trusted foreign country (when no international treaty, agreement, or convention is available).[82]

The third authorized recipient category are financial institutions using BOI to facilitate compliance with customer due diligence requirements under applicable law, provided the financial institution requesting the BOI has the relevant reporting company's consent for such disclosure.[83]

The fourth category is Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with customer due diligence requirements.[84] These agencies may access the BOI information that financial institutions they supervise received from FinCEN.

The fifth and final category of authorized BOI recipients is the Treasury itself, for which the CTA provides access to BOI tied to an officer or employee's official duties requiring BOI inspection or disclosure, including for tax administration.[85]

i. Disclosure to Federal Agencies for Use in Furtherance of National Security, Intelligence, or Law Enforcement Activity

a. Definition of National Security Activity

Proposed Rule. Proposed 31 CFR 1010.955(b)(1)(i) specified that national security activity includes activity pertaining to the national defense or foreign relations of the United States, as well as activity to protect against threats to the safety and security of the United States.

Comments Received. Commenters generally provided broad support for the definition of national security activity in proposed 31 CFR 1010.955(b)(1)(i), stating that the activity-based approach is reasonable, clear, and adequately justified. Some commenters expressed the view that the definition should not be further delimited or narrowed, as this may impede the intent of the CTA. One recommended that FinCEN clarify that the proposed definition is not meant to limit Congress's language identifying specific national security threats in the CTA's Sense-of-Congress provision.[86] Another commenter suggested adding a reference in the preamble to the illicit finance strategy, as defined in the 2021 Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest. One commenter urged FinCEN to include the words ''threats to'' before ''national defense or foreign relations,'' and two commenters suggested substituting the word ''means'' for ''includes'' to clarify that the definition is finite. In particular, one of those two commenters noted that replacing ''includes'' with ''means'' would be consistent with the statute cited in support of the proposed regulation, 8 U.S.C. 1189(d)(2), which provides that national security ''means'' the national defense, foreign relations, or economic interests of the United States.

Final Rule. The final rule largely adopts the proposed rule, but substitutes ''means'' for ''includes'' in definition in the final rule. FinCEN agrees that changing ''includes'' to ''means'' will provide additional clarity while still retaining the approach described by the proposed rule that draws, in large part, from 8 U.S.C. 1189(d)(2). Section 1189(d)(2) defines ''national security'' for purposes of designating foreign terrorist organizations (FTOs) that threaten U.S. national security. As stated in the proposed rule, FinCEN believes this definition is appropriate for several reasons. First, the FTO statute covers a broad range of national security threats to the United States, including those with an economic dimension. That scope is consonant with the CTA's goal to combat national security threats that are financial in nature, such as money laundering, terrorist financing, counterfeiting, fraud, and foreign corruption.[87] Second, the FTO statute arises in a related context insofar as it involves efforts to hinder illicit actors' economic activities. FinCEN does not intend this definition to exclude any national security threats that Congress identified in the CTA. FinCEN also notes that it will determine whether an agency's activities are ''national security activities'' that qualify the agency for

[75] *See* 31 U.S.C. 5336(c)(2)(B)(ii)(I)(aa).

[76] 31 U.S.C. 5336(c)(2)(B)(ii)(II)(bb).

[77] *See* proposed 31 CFR 1010.955(e)(3).

[78] 31 CFR 1010.955(c)(2)(ix).

[79] 31 U.S.C. 5336(c)(2)(B) and 31 U.S.C. 5336(c)(5).

[80] 31 U.S.C. 5336(c)(2)(B)(i)(I).

[81] 31 U.S.C. 5336(c)(2)(B)(i)(II).

[82] 31 U.S.C. 5336(c)(2)(B)(ii).

[83] 31 U.S.C. 5336(c)(2)(B)(iii).

[84] 31 U.S.C. 5336(c)(2)(B)(iv).

[85] 31 U.S.C. 5336(c)(5).

[86] *See* CTA, section 6402(3).

[87] *See* CTA, section 6402(3)–(6).

access to BOI during the process to establish a MOU governing access between the agency and FinCEN. Some undertakings, such as vetting potential recipients of foreign assistance and procurement contract awards, might constitute ''national security activities'' depending on the particular facts and circumstances, and therefore may be evaluated as part of that process. FinCEN declines to incorporate into the final rule reference to specific strategies to counter corruption or other types of specific national security threats. Acts of foreign corruption are specifically mentioned in the CTA as acts that harm the national security interests of the United States, and as discussed above, are already contemplated by the final rule. Referencing specific strategy documents is therefore unnecessary and could cause confusion.

b. Definition of Intelligence Activity

Proposed Rule. Proposed 31 CFR 1010.955(b)(1)(ii) defines intelligence activity to include ''all activities conducted by elements of the United States Intelligence Community that are authorized pursuant to Executive Order 12333 (''E.O. 12333''), as amended, or any succeeding executive order.''

Comments Received. A number of commenters supported the proposed rule's definition of ''intelligence activity,'' and noted the approach taken by FinCEN is reasonable. Some commenters expressed that the definition should not be further delimited or narrowed, as this may impede the intent of the CTA. Three commenters suggested that the use of the word ''includes'' was too broad, and it should be replaced with ''means'' to clarify that the definition is finite. One commenter argued that ''includes'' implies that the proposed rule might allow sharing BOI under the intelligence activity provisions of 31 U.S.C. 5336, outside of the authorization provided by E.O. 12333. This commenter also argued that the definition of ''intelligence activity'' in proposed 31 CFR 1010.955(b)(1)(ii) conflicts with proposed 31 CFR 1010.955(b)(3)(i), which refers to disclosures of BOI by FinCEN to an intermediary Federal agency for transmission to a foreign agency for assistance in intelligence activity authorized under the laws of a foreign country. The commenter suggested that FinCEN should revise § 1010.955(b)(1)(ii) to read ''(ii) intelligence activity, when used in this section in reference to an activity of the United States, means all activities that elements of the United States intelligence community are authorized to conduct pursuant to E.O. 12333, as amended, or any successor [E]xecutive order.'' A different commenter recommended that FinCEN make clear that E.O. 12333's limitation on the use of United States person information by the Intelligence Community would not constrain use of BOI, if the use was otherwise permitted by the CTA. One commenter, while concurring with the proposed rule as sensible and workable, suggested it should include a reference to the 2021 U.S. Strategy on Countering Corruption and its calls for increasing intelligence activity on corrupt actors and bolstering information sharing between the Intelligence Community and law enforcement.

Final Rule. The final rule adopts the proposed rule with two clarifying edits. First, FinCEN adopts the recommendation to substitute ''means'' for ''includes'' within the definition, in order to clarify that ''intelligence activity'' covers only those activities conducted by elements of the United States Intelligence Community that are authorized pursuant to E.O. 12333, as amended, or any succeeding executive order. Second, FinCEN agrees that the definition of ''intelligence activity'' in proposed 31 CFR 1010.955(b)(1)(ii) was incompatible with the authorization for sharing of BOI with foreign requesters in proposed 31 CFR 1010.955(b)(3)(i), as it proposed to define intelligence activities throughout the rule exclusively by reference to U.S. legal authorities. The final rule corrects this mistake by inserting new 31 CFR 1010.955(b)(3)(iv), a definition of the term ''intelligence activity authorized under the laws of a foreign country'' that clearly relates such activity to foreign legal authorities that establish what constitute legally acceptable intelligence activities under the laws of another country, as E.O. 12333 does for U.S. law.[88]

FinCEN does not believe that additional clarifications are necessary regarding the scope of access to BOI by Federal agencies engaged in intelligence activity, to the extent the activity relates to United States persons. E.O. 12333 sets out the scope of authorized activity and, among other things, provides that agencies shall, consistent with the provisions of the Order, prepare and provide intelligence in a manner that ''allows the full and free exchange of information, consistent with applicable law and presidential guidance.'' Internal procedures established pursuant to the Order further govern the handling of information relating to U.S. persons. Finally, FinCEN declines to incorporate into the final rule reference to specific strategies to counter corruption or other national security threats, while noting that acts of foreign corruption are specifically mentioned in the CTA as acts that harm the national security interests of the United States.

c. Definition of Law Enforcement Activity

Proposed Rule. Proposed 31 CFR 1010.955(b)(1)(iii) defined ''law enforcement activity'' to include ''investigative and enforcement activities relating to civil or criminal violations of law.'' The proposed rule specified that such activity does not include routine supervision or examination of a financial institution by a Federal regulatory agency with authority described in 31 CFR 1010.955(b)(4)(ii)(A). The inclusion of both investigation and enforcement as ''law enforcement activity'' was based on FinCEN's view that it is consistent with the CTA to authorize Federal agencies to access BOI at all stages of the law enforcement process.

Comments Received. Commenters generally agreed with the definition in 31 CFR 1010.955(b)(1)(iii), stating that the proposed rule is reasonable and workable. One commenter emphasized the need for law enforcement to have access to BOI during all stages of criminal or civil investigations. Two commenters suggested that the use of the word ''includes'' was too broad, and it should be replaced with ''means'' to clarify that the definition is finite. Some commenters expressed that the definition should not be further delimited or narrowed, as this may impede the intent of the CTA. One commenter concurred with the exclusion of routine supervision and examination by Federal regulator agencies, as these activities are covered by a separate section of the CTA, and the proposed rule also recognizes that Federal functional regulators engage in law enforcement activities that will enable them to request BOI. However, two commenters took an opposite view, arguing that the proposed rule should be modified either at 31 CFR 1010.955(b)(1) or 31 CFR 1010.955(b)(1)(iii) to explicitly include disclosure to Federal regulatory agencies for law enforcement purposes as a disclosure governed by 1010.955(b)(1). Another commenter supported the broad definition of law enforcement activity but sought an explicit extension of the definition to State, local, and Tribal authorities, as

[88] FinCEN has addressed an analogous drafting problem in proposed 31 CFR 1010.955(b)(1)(i) with reference to the term ''national security activity'' by defining the term ''national security activity authorized under the laws of a foreign country'' in new 31 CFR 1010.955(b)(3)(iii).

well as the inclusion of specific exemplar criminal violations related to taxes, wages, theft, forgery, insurance fraud, and human trafficking.

Final Rule. The final rule adopts the proposed rule with the exception of one clarifying edit. Specifically, FinCEN adopts the recommendation to substitute ''means'' for ''includes'' within the definition to further clarify the definition, while retaining the approach from the proposed rule. FinCEN also notes that it will determine whether an agency's activities are ''law enforcement activities'' qualifying it for access to BOI during the process to establish a MOU between the agency and FinCEN governing such access. FinCEN declines to incorporate into the final rule reference to specific criminal violations, as this is redundant considering the existing language regarding civil or criminal violations of law.

Regarding the role of Federal regulatory agencies, FinCEN does not believe that a change to the proposed language is warranted. As stated in the proposed rule, the access provision for Federal agencies engaged in national security, intelligence, or law enforcement activities focuses on activity categories, not agency types. To the extent a Federal functional regulator engages in civil law enforcement activities, those activities would be covered by the law enforcement access provision.

ii. Disclosure to State, local, and Tribal Law Enforcement Agencies for Use in Criminal or Civil Investigations

a. A Court of Competent Jurisdiction

Proposed Rule. The CTA permits FinCEN to disclose BOI upon receipt of a request, through appropriate protocols, ''from a State, local, or Tribal law enforcement agency, if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation.'' [89] Proposed 31 CFR 1010.955(b)(2) implements this provision and would allow FinCEN to disclose BOI to a State, local, or Tribal law enforcement agency that requests this information if a court of competent jurisdiction has authorized the agency's request for the BOI for use in a criminal or civil investigation. Proposed 31 CFR 1010.955(b)(2)(i) further provided that a court of competent jurisdiction is ''any court'' with jurisdiction over the criminal or civil investigation for which a State, local, or Tribal agency requests BOI.

Comments Received. Commenters were generally supportive of the definition of the phrase ''court of competent jurisdiction'' in proposed 31 CFR 1010.955(b)(2)(i). These commenters noted that the proposed definition is flexible enough to encompass a wide variety of courts and will facilitate the ability of State, local, or Tribal law enforcement agencies to seek court authorization for the purpose of requesting BOI from FinCEN. Several commenters requested that FinCEN explicitly include administrative courts and adjudicatory bodies such as boards and commissions. One commenter noted that state and local governments allow civil law enforcement proceedings to occur in hearings before adjudicators that are independent of law enforcement, such as administrative law judges. Some commenters also recommended that ''court of competent jurisdiction'' should explicitly account for jurisdiction over an investigation or a ''case'' because BOI may be relevant to both.

Final Rule. The final rule adopts 31 CFR 1010.955(b)(2)(i) as proposed. FinCEN agrees with the commenters who thought the level of clarity provided by this provision is sufficient to encompass the various types of courts and adjudicatory bodies that exist in State, local, and Tribal jurisdictions, including those which some commenters suggested that FinCEN explicitly reference. The reference in this provision to ''any court'' that has jurisdiction over an investigation provides broad and, in FinCEN's view, sufficiently clear applicability. As such, FinCEN believes it is unnecessary to list specific types of adjudicatory bodies that would qualify as a court of competent jurisdiction. Further, in response to the comments that requested that FinCEN clarify that a court of competent jurisdiction includes an adjudicative body with jurisdiction over both investigations and ''cases'' (understood as ongoing civil or criminal court proceedings), FinCEN has followed the formulation in the CTA, which uses the term ''criminal or civil investigation.'' [90] However, FinCEN does not believe that this clause excludes State, local, or Tribal agencies from seeking a request for BOI as part of an ongoing ''case,'' whether that be a civil proceeding or a criminal prosecution following an initial investigation.

b. State, Local, or Tribal Law Enforcement Agencies

Proposed Rule. Proposed 31 CFR 1010.955(b)(2)(ii) defined a ''State, local, or Tribal law enforcement agency'' as ''an agency of a State, local, or Tribal government that is authorized by law to engage in the investigation or enforcement of civil or criminal violations of law.'' The proposed rule defined this term in a manner similar to the proposed definition of ''law enforcement activity'' for Federal agencies to ensure consistency regardless of whether law enforcement activity occurs at the Federal, State, local, or Tribal, level.

Comments Received. Several commenters argued that FinCEN should clarify in the final rule that State, local, and Tribal law enforcement agencies include various types of administrative and regulatory bodies covering a range of subject areas such as labor and employment, contracting, tax, unemployment insurance, and workers' compensation, among others. One commenter recommended that FinCEN amend 31 CFR 1010.955(b)(2)(ii) to state that a State, local or Tribal law enforcement agency is one that is authorized by law to investigate or enforce civil, criminal, ''or administrative'' violations of law. Some commenters noted that many State, local, and Tribal regulatory agencies also have law enforcement functions insofar as they have the authority to both issue regulations and enforce compliance with regulations. One of these commenters believed that proposed 31 CFR 1010.955(b)(2)(ii) already covers these regulatory agencies. Finally, one commenter suggested that FinCEN clarify that local enforcement agencies include non-Federal agencies within the government of the District of Columbia.

Final Rule. FinCEN is adopting 31 CFR 1010.955(b)(2)(ii) as proposed. FinCEN believes that this provision is adequately clear and sufficiently flexible to encompass the many varieties of State, local, and Tribal law enforcement agencies that engage in the investigation or enforcement of civil or criminal violations of law, including regulatory violations. As a result, it is not necessary, in FinCEN's view, to specifically list examples of State, local, and Tribal law enforcement agencies, as some commenters requested. Furthermore, in response to the commenter's request that the final rule explicitly include non-Federal agencies within the District of Columbia, FinCEN believes this is unnecessary because the

[89] 31 U.S.C. 5336(c)(2)(B)(i)(II).

[90] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

definition of ''State'' in the CTA includes the District of Columbia.[91]

c. Court Authorization and Written Certification

Proposed Rule. The CTA provides that FinCEN may disclose BOI to a State, local, or Tribal law enforcement agency ''if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil investigation.'' [92] Proposed 31 CFR 1010.955(b)(2) would implement this provision of the CTA by allowing FinCEN to disclose BOI to a State, local, or Tribal law enforcement agency that requests this information if a court of competent jurisdiction authorizes the agency's request for the BOI for use in a criminal or civil investigation. FinCEN did not propose to identify every kind of court authorization that would satisfy the CTA, and it did not propose to specify which officers of a court may provide authorization. That is because FinCEN recognized that State, local, and Tribal practices are likely to be varied with respect to how law enforcement agencies may be authorized by a court to seek information in connection with an investigation or prosecution.

In addition, the proposed rule included safeguards designed to protect the confidentiality of BOI and ensure it is not misused. These requirements were also meant to ensure that FinCEN could properly audit requests for BOI from State, local, and Tribal law enforcement agencies, consistent with the CTA's audit requirements.[93] As a result, proposed 31 CFR 1010.955(d)(1)(ii)(B)(*2*) required that when a State, local, or Tribal law enforcement agency requests BOI from FinCEN, the head of such an agency or their designee would have to submit to FinCEN, ''in the form and manner as FinCEN shall prescribe:'' (i) a copy of a court order from a court of competent jurisdiction authorizing the agency to seek the BOI in a criminal or civil investigation, and (ii) a written justification explaining why the request for BOI is relevant to the civil or criminal investigation. The proposed rule further explained that after FinCEN reviewed the relevant authorization for sufficiency and approved the request, an agency could then conduct searches using multiple search fields consistent in scope with the court authorization and subject to audit by FinCEN.[94] Thus, the court order and written justification requirements in the proposed rule were meant to serve multiple purposes—*i.e.,* to ensure that a court of competent jurisdiction has authorized an agency's request for the BOI, protect the security of confidential BOI, and enable FinCEN to conduct required audits of searches by State, local, or Tribal law enforcement agencies.

These requirements were proposed alongside other security and confidentiality requirements applicable to all domestic government requesters of BOI. For example, the proposed rule explained that Federal agency users of FinCEN's BOI database would be required to submit brief justifications to FinCEN for their searches, explaining how their searches further a particular qualifying activity, and these justifications would be subject to oversight and audit by FinCEN. Additionally, the proposed rule required a Federal, State, local, or Tribal agency requesting BOI to minimize to the greatest practicable extent the scope of BOI it seeks, consistent with the agency's purpose in requesting BOI.

Comments Received. Commenters generally opposed the requirements in proposed 31 CFR 1010.955(d)(1)(ii)(B)(*2*)(*i*) that the head of a State, local, or Tribal law enforcement agency, or their designee, must obtain and submit a copy of a court order to FinCEN authorizing the agency to seek BOI in a criminal or civil investigation. Commenters opposed the court order requirements for two broad reasons: they argued that, first, these requirements conflict with the plain language of the CTA as well as with congressional intent; and second, these requirements would create burdens on State, local, and Tribal agencies that would impede their ability to access BOI in a timely manner, which would be contrary to the goals of the CTA. In general, commenters encouraged FinCEN to take a more flexible approach in specifying the manner in which a court authorizes a request for BOI, which court personnel can provide that authorization, and at what stage in an investigation or proceeding agencies may seek the BOI from FinCEN. In sum, these commenters argued that the final rule should adopt the broader concept of court authorization from the CTA.

Commenters also generally opposed for largely the same reasons the requirement in proposed 31 CFR 1010.955(d)(1)(ii)(B)(*2*)(*i*) that the agency head must also submit a written justification to FinCEN explaining the relevance of the BOI for the investigation. Specifically, some commenters noted that the CTA does not contain such a requirement, expressed concerns that this requirement would unduly delay requests by agencies for BOI, and highlighted the challenges involved in FinCEN reviewing each justification provided by an agency that requests BOI.

In the first category of objections to the court order requirement, several commenters argued that the proposed rule conflicts with the plain language of the CTA which does not require a court order for State, local, or Tribal law enforcement agencies seeking access to BOI. Instead, these commenters pointed out that the CTA uses the general concept of court authorization, which could also include other kinds of authorization. Commenters also cited the legislative history of the CTA in arguing that Congress intended to create a less formal and more flexible process. These commenters noted that Congress had considered and rejected a narrower concept than court authorization when debating the CTA's provision concerning State, local, and Tribal law enforcement agency access to BOI.

In the second category of objections to the proposed court order requirement, commenters argued that a court order requirement would place unnecessary burdens on State, local, and Tribal law enforcement agencies as well as the courts involved because of the need to take additional efforts to obtain a court order. These burdens would be exacerbated because these agencies often face greater resource constraints compared to their Federal counterparts. The result would be delays in investigations. One commenter noted that the requirement could give some courts the impression that formal pleadings, evidence-based standards, or a hearing is necessary to authorize a request for BOI.

Furthermore, commenters argued that a court order requirement would effectively restrict agencies to working only with a narrow category of court officers, most likely a judge, rather than ''any officer of such court'' as the CTA permits. These commenters also argued that, as a result, the court order requirement conflicts with the CTA. One commenter recommended that the final rule should clearly state that a court officer includes any individual who exercises court authority, including a judge, magistrate, clerk, bailiff, sheriff, prosecutor, clerk assistant, or other personnel that the court designates to authorize a request for BOI. A few commenters argued that since an attorney is commonly considered a ''court officer,'' and many jurisdictions allow attorneys to issue subpoenas,

[91] 31 U.S.C. 5336(a)(12); *see also supra* note 5.

[92] *See* 31 U.S.C. 5336(c)(2)(B)(i)(II).

[93] *See* 31 U.S.C. 5336(c)(3)(J).

[94] 87 FR at 77409–10.

attorneys should be able to authorize a request for BOI. However, one commenter disagreed with this view, arguing that only court personnel should be allowed to authorize an agency's request for BOI. In addition, one commenter requested that FinCEN provide guidance to court officials who are involved in authorizing an agency's request for BOI, setting forth the proper procedures for reviewing these requests as well as potentially providing an authorization form for agencies and courts to use. Commenters also recommended that FinCEN provide flexibility in how the court order was reported to FinCEN.

Several commenters also highlighted the need for flexibility regarding when in the course of a civil or criminal investigation courts may authorize a State, local, or Tribal law enforcement agency to seek BOI. For example, some commenters requested that FinCEN clarify in the final rule that a grand jury subpoena qualifies as court authorization under the CTA. Some commenters also argued that the final rule should provide more clarity regarding how prosecutors can draft grand jury subpoenas to ensure that they would satisfy the court authorization requirement. Commenters also requested that the final rule clarify that courts should be permitted to authorize BOI requests throughout the full life cycle of an investigation, including after the initiation of a civil or criminal proceeding.

As for the written justification requirement in the proposed rule, commenters argued that it could limit the ability of State, local, and Tribal law enforcement agencies to access BOI, and commenters noted that there is no such requirement in the text of the CTA. Several commenters argued that the written justification requirement would create a double review process in which these agencies would first have to obtain approval from a court for their request for BOI, and then they would need to gain a second level of approval from FinCEN. According to these commenters, FinCEN would compare the written justification to the court order, and based on its review, could reject the court's decision to authorize an agency's request for BOI. Some commenters argued that such case-by-case review of justifications by FinCEN would overwhelm FinCEN's resources and cause significant delays in the ability of State, local, and Tribal law enforcement agencies to access BOI.[95] The result, according to several commenters, is that the written justification requirement would undermine the CTA's policy goal that the database be ''highly useful'' to law enforcement.[96]

Finally, some commenters focused on alternative approaches to State, local, and Tribal law enforcement access to BOI. One commenter argued that the final rule should require that State, local, and Tribal law enforcement agencies obtain a grand jury subpoena in order to request BOI, and this commenter also supported the written justification requirement. One commenter raised concerns about whether courts could adequately protect the privacy of BOI and argued that a separate government agency should be responsible for managing BOI access requests on behalf of State, local, and Tribal agencies. Further, one commenter noted that the CTA itself had imposed stricter requirements on State, local, and Tribal agencies than it imposed upon their Federal counterparts since the CTA imposed a court authorization requirement on the former agencies. This commenter believed that statutory changes would be necessary to remove the court authorization requirement in order to make it simpler for State, local, and Tribal agencies to access the BOI database.

Final Rule. The final rule adopts the requirements for State, local, and Tribal law enforcement agencies' access to BOI in proposed 31 CFR 1010.955(b)(2) without change. However, FinCEN was persuaded by comments that were critical of the requirements in proposed 31 CFR 1010.955(d)(1)(ii)(B)(*2*) that State, local, and Tribal law enforcement agencies submit a copy of a court order and written justification for FinCEN review prior to searching for BOI. Accordingly, FinCEN has made several changes to that provision in the final rule. These revisions are intended to streamline State, local, and Tribal law enforcement agency access to BOI and reduce burdens on these agencies and courts as well as on FinCEN, while at the same time maintaining robust confidentiality and security requirements for these agencies and FinCEN oversight and audit of these requests.

First, § 1010.955(d)(1)(ii)(B)(*2*)(*i*) will no longer require that these agencies obtain a specific form of court authorization, such as a court order. Instead, the final rule requires only that State, local, and Tribal law enforcement agencies obtain ''court authorization'' to seek BOI from FinCEN as part of a civil or criminal investigation. As the preamble to the proposed rule noted, FinCEN requested comment on the various types of relevant court authorization that exist at the State, local, and Tribal level, and requested that commenters explain what role courts or court officers play in authorizing evidence-gathering activities, what existing practices involve court authorization, and the extent to which new court processes could be developed and integrated into existing practices to satisfy the CTA's authorization requirement. FinCEN also requested comment on the need for access to BOI at different stages of an investigation, as well as the privacy interests that may be implicated by such access. In requesting comment on these topics, FinCEN sought greater clarity on the various mechanisms in which courts might satisfy the CTA standard of ''court authorization.'' The comments that FinCEN received provided greater clarity on how State, local, and Tribal law enforcement agencies could satisfy the CTA's court authorization requirement while also meeting FinCEN's obligations under the CTA to protect the confidentiality of BOI and prevent potential misuse, including by being able to audit requests by agencies for BOI.

FinCEN agrees that requiring State, local, and Tribal law enforcement agencies to obtain a court order may create unnecessary burdens. FinCEN further agrees that the statutory language concerning court authorization would maintain sufficient flexibility and facilitate access to BOI by State, local, and Tribal law enforcement agencies while still protecting against unauthorized use or disclosure. FinCEN intends the final rule to provide enough flexibility so that a variety of court officers—such as a judge, clerk of the court, or magistrate—could provide authorization at appropriate stages of the investigation process. FinCEN may issue guidance or FAQs on this subject in the future if needed, including, for example, on how the court authorization requirement would apply to grand jury proceedings. Such guidance may also further address questions about court personnel, stages of the investigation, court procedures

[95] Commenters made several other arguments against the written justification requirement. For example, another commenter argued that it would be inappropriate for FinCEN to require ''justification'' from State, local, or Tribal law enforcement agencies because the CTA only required ''certifications'' from Federal agency heads; that FinCEN does not have the required subject matter expertise to evaluate justifications; and that the term ''justification'' implied a level of persuasiveness that would be required in the written statements that State, local, or Tribal law enforcement agencies provide when they request BOI.

[96] *See* CTA, section 6402(8)(C).

for reviewing requests for BOI, and other topics concerning court authorization in the context of specific factual circumstances.

However, FinCEN agrees with those commenters who argued that being an attorney, by itself, is not sufficient to empower an individual to grant the required court authorization under the CTA. As discussed in the proposed rule, FinCEN does not believe the CTA, which includes numerous provisions limiting who may access BOI, permits any individual with a license to practice law to authorize the disclosure of BOI, even if they are sometimes referred to as ''officers of the court'' in other contexts. FinCEN further does not agree with the commenter that suggested that a separate government agency, apart from a court of competent jurisdiction, should handle BOI requests from State, local, or Tribal law enforcement agencies. The CTA is clear that these agencies must seek court authorization in order to request BOI from FinCEN, and FinCEN believes that the security and confidentiality requirements reflected in the final rule will be sufficient to protect against unauthorized use or disclosure.

Second, rather than *submit* a copy of the authorization (such as a copy of a court order) to FinCEN, § 1010.955(d)(1)(ii)(B)(*2*) now only requires that State, local, and Tribal law enforcement agencies (1) *certify* that they have received authorization to seek BOI from a court of competent jurisdiction and that the BOI is relevant to a civil or criminal investigation, and (2) provide a description of the information the court has authorized the agency to seek.[97] FinCEN is persuaded by comments stating that the requirement in the proposed rule would have set more stringent requirements for State, local, and Tribal law enforcement agencies than would apply to their Federal counterparts. FinCEN is further persuaded by comments that FinCEN should instead allow these agencies to certify that they have obtained appropriate authorization from a court of competent jurisdiction.

FinCEN does not intend to look behind these certifications to assess the sufficiency of a court's authorization at the time a request is submitted. Instead, the final rule clearly reflects FinCEN's role in auditing requesting agencies' BOI requests, which requires a process to ensure that a request for BOI by a State, local, or Tribal law enforcement agency remains within the terms of the court authorization. FinCEN believes that the certification requirement, along with the requirement to provide a description of the information the court has authorized the agency to seek, will provide FinCEN with a sufficiently robust means to effectively conduct oversight and audit of such access.

Third, in response to commenters' concerns, the final rule eliminates the written justification requirement in proposed 31 CFR 1010.955(d)(1)(ii)(B)(*2*)(*ii*). Moreover, after considering commenters' concerns about potential delays associated with a case-by-case review of written justifications from these agencies in connection with BOI requests, and taking into account available resources, FinCEN has determined that, as a policy matter, it will not conduct individual reviews of each request for BOI by State, local, or Tribal law enforcement agencies when they are submitted. Rather, consistent with requirements of the CTA, FinCEN will conduct robust audit and oversight of State, local, and Tribal law enforcement agency searches for BOI to ensure that BOI is requested for authorized purposes by authorized recipients. Finally, by adopting the broad notion of court authorization that the CTA uses, FinCEN is also choosing not to further specify in the rule the particular stages of an investigation during which courts could authorize a request for BOI by State, local, or Tribal agencies.

iii. Disclosure for Use in Furtherance of Foreign National Security, Intelligence, or Law Enforcement Activity

a. General

Proposed Rule. Proposed 31 CFR 1010.955(b)(3) authorized FinCEN to disclose BOI to foreign requesters when certain criteria were satisfied. The criteria were that the foreign request for BOI must (1) come to FinCEN through an intermediary Federal agency; (2) be for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, authorized under the laws of the foreign country; and (3) either be made under an international treaty, agreement, or convention, or, when no such instrument was available, be an official request by a law enforcement, judicial, or prosecutorial authority of a trusted foreign country.

Comments Received. A few commenters supported both foreign requester access to BOI and the threshold requirements for that access. Another commenter stated that the proposed rule should specify timelines for processing and responding to foreign requests. One commenter stated that BOI should not be shared with foreign requesters at all.

Final Rule. FinCEN adopts the proposed rule without changes. The final rule is consistent with the letter, spirit, and purposes of the CTA by permitting foreign requesters to obtain BOI for, and use it in, the full range of activities contemplated by 31 U.S.C. 5336(c)(2)(B)(ii) (*i.e.,* law enforcement, national security, and intelligence activities). The rule also resolves ambiguities arising from inconsistent statutory language. Specifically, one part of the CTA's foreign access provision appears to require a request to arise from a foreign ''investigation or prosecution,'' [98] while another appears to allow a foreign requester to use BOI to further any ''authorized investigation or national security or intelligence activity.'' [99] The final rule resolves this discrepancy by clarifying that authorized national security and intelligence activities, as well as law enforcement investigations or prosecutions, could be a basis for a BOI request.

FinCEN declines to specify timelines for processing and responding to foreign requests. At this juncture, FinCEN does not have sufficient data to support a prediction about the average amount of time it will take to issue a response to a foreign request. Average response times for requests from foreign countries when no international treaty, agreement, or convention applies are particularly hard to predict. These may often require highly fact-intensive assessments of both the requester and the request, require broad analysis of U.S. interests and priorities, and involve consultation with other relevant U.S. government agencies. Such assessments could take a matter of days or significantly longer. While sharing under international treaties, conventions, or agreements might follow more predictable timelines, unforeseeable procedural, legal, or inter-governmental impediments hurdles could create delays. FinCEN commits to processing requests as quickly as practicable with available resources rather than establish deadlines based on limited data.

b. Intermediary Federal Agency

Proposed Rule. Proposed 31 CFR 1010.955(b)(3) authorized FinCEN to disclose BOI to foreign requesters when certain criteria were satisfied. One criterion identified by the CTA and the proposed regulation was that requests for BOI must come to FinCEN through an intermediary Federal agency.

[97] FinCEN will specify the precise method of certification at a later date.

[98] 31 U.S.C. 5336(c)(2)(B)(ii)(I).

[99] 31 U.S.C. 5336(c)(2)(B)(ii)(II)(bb).

The CTA did not identify particular intermediary Federal agencies, and FinCEN did not propose to identify any by regulation. FinCEN instead stated its intention to work with Federal agencies to identify agencies suited to serving as intermediaries between FinCEN and foreign requesters. For example, one indicator of potential suitability identified by FinCEN in the Access NPRM was a Federal agency having regular engagement and familiarity with foreign law enforcement agencies, judges, prosecutors, central authorities, or competent authorities on matters related to law enforcement, national security, or intelligence activity. Other factors would include whether a prospective intermediary Federal agency has established policies, procedures, and communication channels for sharing information with those foreign parties, and whether the prospective intermediary Federal agency represents the U.S. government in relevant international treaties, agreements, or conventions; other factors include the expected number of requests that the agency could receive, and the ability of the agency to efficiently process requests while managing risks of unauthorized disclosure.

In the Access NPRM, FinCEN stated that it would work with potential intermediary Federal agencies to: (1) ensure that they have secure systems for BOI storage; (2) enter into MOUs outlining expectations and responsibilities; (3) translate the CTA foreign sharing requirements into evaluation criteria against which intermediary Federal agencies could review requests from foreign requesters; (4) integrate the evaluation criteria into the intermediary Federal agencies' existing information-sharing policies and procedures; (5) develop additional security protocols and systems as required under the CTA and its implementing regulations; and (6) ensure that intermediary Federal agency personnel have sufficient training on applicable requirements under the CTA and its implementing regulations. Under the proposal, FinCEN would exercise oversight and audit functions to ensure that intermediary Federal agencies adhere to requirements and take appropriate measures to mitigate the risk of foreign requesters abusing the information.

Given its longstanding relationships and relevant experience as the financial intelligence unit (FIU) of the United States, FinCEN proposed to directly receive, evaluate, and respond to requests for BOI from foreign FIUs.

Comments Received. One commenter expressed surprise that the proposed rule did not include examples of intermediary Federal agencies, while another commenter supported the potential for any Federal agency to become an intermediary Federal agency. There were varying perspectives on the proposal that FinCEN should act as an intermediary Federal agency for BOI requests from foreign FIUs. One commenter stated that foreign requesters might funnel all requests for BOI through their FIUs if FinCEN served as an intermediary Federal agency for foreign FIU requests, which would significantly increase FinCEN's workload. That commenter also said that exchanges through FIUs were not admissible in court. In contrast, one commenter indicated that FinCEN's role should be broadened to include receiving, reviewing, and evaluating all foreign requests, not just those from foreign FIUs. Another commenter asked FinCEN to clarify that, when reviewing and responding to requests for BOI from foreign FIUs, FinCEN would adhere to the proposed requirements applicable to other intermediary Federal agencies.

Final Rule. FinCEN adopts the proposed rule without any changes. FinCEN is still in the early stages of working to identify intermediary Federal agencies, and therefore is not in a position to list those agencies in a regulation. FinCEN can anticipate several Federal agencies that likely could serve as intermediary Federal agencies given that (1) the rule contemplates FinCEN taking indirect requests for BOI from foreign requesters; (2) requests will be for assistance in law enforcement investigations or prosecutions, or for a national security or intelligence activity, authorized under the laws of the relevant foreign country; and (3) many requests for BOI will come under international treaties, agreements, and conventions. Federal agencies that are likely to meet these criteria include the U.S. Departments of State and Justice, the Federal Bureau of Investigation, U.S. Customs and Border Protection, the IRS, and member agencies of the Intelligence Community. This list only provides examples of Federal agencies whose activities seem to align with the functions of an intermediary Federal agency and is not intended to create expectations regarding possible intermediary Federal agencies.

FinCEN itself will very likely act as the intermediary Federal agency for requests for BOI from foreign FIUs. As the FIU for the United States, FinCEN already has policies and procedures for, and extensive experience in, sharing information related to national security, intelligence, and law enforcement activities with foreign FIUs through the Egmont Group. Accordingly, FinCEN could leverage existing processes and relationships to fulfill the requirements of the CTA and its implementing regulations.

FinCEN does not expect that foreign requesters will funnel all requests for BOI through their FIUs and overwhelm FinCEN. The rule permits foreign FIUs to request BOI in two scenarios. The first scenario is when two conditions apply: (1) the request is for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, authorized under the laws of the foreign country, and (2) a governing international treaty, agreement, or convention identifies the foreign FIU as the central or competent authority in the matter or otherwise dictates that the foreign FIU should request BOI from FinCEN. The second scenario in which a foreign FIU may request BOI is when there is no international treaty, agreement, or convention available. In this scenario, the foreign FIU may request BOI from FinCEN when (1) the request is for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, authorized under the laws of the foreign country, and (2) the FIU qualifies as a law enforcement (*i.e.,* authorized by law to engage in the investigation or enforcement of civil or criminal violations of law), judicial, or prosecutorial authority of a trusted foreign country. Both scenarios involve multiple requirements that a foreign FIU must satisfy to request BOI from FinCEN and are unlikely to result in a large number of potential requests from foreign FIUs.

On the question of BOI admissibility, FinCEN does not agree with the claim by one commenter that information exchanges through FIUs necessarily render the disclosed information inadmissible in courts around the world with enough frequency to warrant concern. Furthermore, if information exchanges between FIUs do render information inadmissible in some foreign courts, the CTA and this final rule provide means other than FIU exchanges by which foreign requesters may obtain BOI, namely through foreign judges, prosecutors, law enforcement agencies, and other central and competent authorities.[100] FinCEN is confident that foreign requesters that require admissible BOI, that are

[100] *See* 31 U.S.C. 5336(c)(2)(B)(ii); 31 CFR 1010.955(b)(3).

authorized to receive BOI under the terms set forth in the CTA and this final rule, and that satisfy all applicable criteria for BOI disclosure will be able to obtain the information they need in an admissible form through an intermediary Federal agency.

Nonetheless, FinCEN believes it should act as an intermediary Federal agency for BOI requests from foreign FIUs. Receiving, reviewing, and responding to requests for BOI from all foreign requesters would not be feasible, given FinCEN's resource limitations.

c. Foreign Central or Competent Authority

Proposed Rule. Proposed 31 CFR 1010.955(b)(3) authorized FinCEN to disclose BOI to foreign requesters when certain criteria were satisfied. The CTA did not define central or competent authorities, and so FinCEN proposed to make clear that ''[a] relevant 'foreign central authority or foreign competent authority' would be the agency identified *in* an international treaty, agreement, or convention under which a foreign request is made'' (emphasis added.) This decision was based on FinCEN's understanding that ''foreign central authority'' and ''foreign competent authority'' are terms of art typically defined within the context of a particular agreement. FinCEN's goal was to remove any ambiguity around the terms without unduly excluding appropriate foreign requesters from access to BOI.

Comments Received. One commenter pointed to the FATF and the Egmont Group as potential means of identifying foreign central and competent authorities. Specifically, the commenter stated that, because the United States is a member of both organizations, either body's method of designating foreign central or competent authorities (with appropriate safeguards) should allow an agency designated through that method to qualify as a foreign central or competent authority for the purposes of the CTA.

Another commenter stated that requiring foreign central and competent authorities to be identified as such in a governing international treaty, agreement, or convention was overly restrictive. The commenter's concern stems from the word ''in.'' To support its position, the commenter points to the Hague Convention for Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters and the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters. The commenter states that both agreements provide for the use of a central authority for the receipt of requests for service or evidence by requiring a contracting state to designate a central authority and organize the central authority in accordance with its own law. Requiring designation of that central authority upfront in the treaty itself, the commenter claims, would remove some level of flexibility, and would require cumbersome treaty amendment processes were a party to change the specified central authority.

As an alternative, this same commenter suggested looking to the service provisions of the Foreign Sovereign Immunities Act, and in particular 28 U.S.C. 1608, to allow for largely undefined ''special arrangements'' to govern BOI disclosure through agencies other than central authorities. The commenter again pointed to the difficulty of changing treaties to reflect new central authorities, and viewed ''special arrangements'' as possibly providing ''an approach to better manage the foreign access provisions of the CTA on a case-by-case basis.''

Final Rule. FinCEN adopts the proposed rule, but with a clarification about its meaning.

In the course of drafting the Access NPRM, FinCEN conducted extensive outreach to the Department of State, the Department of Justice, and other Federal agencies that participate in international affairs on behalf of the United States. As a result, Treasury understands that ''central authority'' and ''competent authority'' are referents that may be reliant on international treaties, agreements, and conventions for context and meaning. If an institution derives its status as a central and competent authority pursuant to an international treaty, agreement, or convention, then by definition requiring foreign central and competent authorities to be identified as such under governing international treaties, agreements, or conventions is not overly restrictive. In contrast, FATF and the Egmont Group are not international bodies established by treaty, agreement, or convention, nor do they issue, implement, or administer any of the international treaties, agreements, or conventions that make an institution a central or competent authority. That said, information from both bodies could be useful in determining whether foreign countries are ''trusted'' in situations when no international treaty, agreement, or convention is available.

When such an agreement is available, a commenter makes a reasonable point that the instrument might not specifically identify particular central or competent authorities, but might instead direct contracting states to identify them through other means. The Hague conventions, which the commenter points to as examples, are instructive. As the commenter notes, both conventions require contracting states to identify central authorities to administer convention obligations, but do not themselves identify specific institutions of any particular governments as central authorities. That work is left to implementing statutes and regulations in contracting states. FinCEN understands that this is a common arrangement in international agreements. Consequently, for purposes of 31 CFR 1010.955(b)(3), a foreign central or competent authority may be identified as such either directly by a governing treaty, agreement, or convention, or by the statutes, regulations, or other legal means by which the relevant foreign requester country has implemented the agreement.

With this clarification, FinCEN sees no need to resort to ''special arrangements'' under 28 U.S.C. 1608 of the Foreign Sovereign Immunities Act to disclose BOI to foreign requesters. The CTA is clear about which foreign requesters may obtain BOI from FinCEN, as well as the criteria they must satisfy and the general process they must follow to obtain it. The resulting framework reflects the requirements of the CTA but remains flexible enough to accomplish the stated aims and purposes of the CTA without need for supplemental measures.

d. Trusted Foreign Country

Proposed Rule. Proposed 31 CFR 1010.955(b)(3)(ii)(B) authorized FinCEN to disclose BOI in response to official requests by law enforcement, judicial, or prosecutorial authorities of ''trusted'' foreign countries when other criteria are satisfied. The other criteria were that the request for BOI must (1) come to FinCEN through an intermediary Federal agency; and (2) be for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, authorized under the laws of the foreign country. In keeping with the CTA, the ''trusted foreign country'' requirement would come into play when there is no international treaty, agreement, or convention available under which the relevant foreign country could make the request.

The CTA does not provide criteria for determining whether a particular foreign country is ''trusted,'' leaving FinCEN with flexibility to make the determination. FinCEN considered identifying particular countries or groups of countries as ''trusted'' for the

purposes of receiving BOI, but determined that such a restrictive approach could arbitrarily exclude foreign requesters with whom sharing BOI might be appropriate in some cases but not others. FinCEN proposed in the Access NPRM to instead consult with relevant U.S. government agencies on a case-by-case basis to determine whether to disclose BOI to foreign requesters when no international treaty, agreement, or convention applies. In making these determinations, FinCEN and the consulting agencies would consider U.S. priorities and interests, as well as the ability of a foreign requester to maintain the security and confidentiality of requested BOI.

Comments Received. Commenters generally wanted to know either which foreign countries would be ''trusted'' or the criteria by which FinCEN would identify trusted foreign countries. One commenter wanted a searchable list of trusted foreign countries. Multiple commenters suggested that FinCEN publicly define its trust criteria, with some arguing that a non-transparent case-by-case determination process could yield unjustifiably disparate treatment. One commenter suggested either defining ''trusted'' or dropping the term entirely and relying solely on treaties, agreements, and conventions. Another commenter noted a FinCEN definition would promote consistency of access.

A few commenters argued that FinCEN should not have sole discretion to determine which countries are trusted, as such decisions have implications for national security and foreign relations. One commenter supported FinCEN's decision not to develop a prior list of trusted foreign countries because such a list would inevitably change over time. That same commenter further argued, however, that FinCEN should define the ''relevant U.S. government agencies'' with which it would consult to make trust determinations as including the Departments of State and Justice, and should announce that, at a minimum, FinCEN will treat members of NATO, the EU, and the G7 group of nations as trusted foreign countries absent special circumstances. Another commenter stated that FinCEN had taken a sensible approach regarding the trusted foreign country requirements, but might consider giving advance notice to countries that would explicitly not be trusted.

Final Rule. FinCEN adopts the proposed rule with limited clarifications. FinCEN agrees with the commenter that the rule would benefit from identifying particular agencies with which FinCEN is likely to consult when no international treaty, agreement, or convention applies to a foreign request for BOI and FinCEN needs to determine whether the country at issue is ''trusted.'' FinCEN is therefore specifying in the rule that, in determining whether a request is from a ''trusted foreign country,'' FinCEN will make such determination with the concurrence of the Department of State, and in consultation with the Department of Justice or other agencies as necessary and appropriate. Specifying that FinCEN will seek the Department of State's concurrence on these determinations reflects the Department of State's central role in conducting U.S. foreign policy and foreign relations. FinCEN has also explicitly identified the Department of Justice to reflect the major role that the Department Justice plays in U.S. relations with other countries in law enforcement, national security, and intelligence activities, and the commensurate likelihood that FinCEN will regularly consult it when making trust determinations. However, identifying these two agencies within the regulation does not mean that FinCEN will only consult them when making trust determinations, or that FinCEN is delegating its authority to make those determinations. Indeed, FinCEN will consult with agencies other than the Departments of State and Justice when appropriate, *e.g.,* when those agencies have relevant equities, expertise, or relationships with foreign governments.

While FinCEN is choosing to clarify the interagency coordination element of its trust determination process, it is not defining ''trusted'' or enumerating criteria it will use to assess requests for BOI when no international treaty, agreement, or convention applies. There are likely too many situations in which providing other countries with BOI might be in the best interest of the United States to reduce that complexity to a single definition or list. That same variability also weighs against preemptively identifying certain countries as either wholly trusted or not. Particular facts and circumstances are relevant to the determination and may result in different outcomes where the same foreign requester is involved. These are dynamic situations to which FinCEN must be able to respond flexibly, in consultation with relevant Federal agencies. At this time, FinCEN believes that it is important to retain appropriate discretion in making determinations regarding ''trusted'' foreign countries in particular circumstances, and declines to adopt restrictive definitions or criteria that could be detrimental to broader U.S. interests.

e. Training

Proposed Rule. Proposed 31 CFR 1010.955(d)(3)(i) required foreign requesters to handle, disclose, and use BOI consistent with the requirements of the applicable treaty, agreement, or convention under which it was requested. 31 CFR 1010.955(d)(3)(ii), meanwhile, applied to situations in which there was no applicable treaty, agreement, or convention, and would have imposed on foreign BOI requesters certain general requirements that the CTA imposes on all requesting agencies.[101] FinCEN believed these measures were necessary to protect the security and confidentiality of BOI provided to foreign requesters.[102] Proposed requirements applicable to foreign requesters when no treaty, agreement, or convention applies included having security standards and procedures, maintaining a secure storage system that complies with the security standards that the foreign requester applies to the most sensitive unclassified information it handles, minimizing the amount of information requested, and restricting personnel access to BOI to persons ''[w]ho have undergone training on the appropriate handling and safeguarding [BOI].'' Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention would not have these requirements under the proposed rule, given that such requesters would be governed by standards and procedures prescribed by the applicable international treaty, agreement, or convention.

Comments Received. Several commenters indicated that FinCEN should revise the requirement that foreign requesters limit access to BOI to persons ''[w]ho have undergone training on the appropriate handling and safeguarding of [BOI].'' One commenter expressed the view that the training requirement was stricter than the one proposed for domestic agencies, under which personnel with access to BOI either had to receive training on its handling and safeguarding or received the information from someone who had undergone such training. Another commenter suggested that FinCEN adopt this domestic agency standard for

[101] In the Access NPRM, FinCEN misnumbered this provision as a duplicate 31 CFR 1010.955(d)(3)(i).

[102] *See* 31 U.S.C. 5336(c)(3)(A), (K).

foreign requesters. Other commenters variously stated that training in this context is superfluous given the other requirements applicable to foreign requesters, that training requirements would exceed reciprocal standards imposed by foreign partners when U.S. government agencies obtained beneficial ownership information from foreign BOI databases, and that FinCEN should define with greater precision the requirements for foreign requester training.

Final Rule. FinCEN adopts the proposed rule with changes. First, FinCEN fixed the typographical error in 31 CFR 1010.955(d)(3)(ii) to reflect the provision's correct numbering. Second, FinCEN has removed the proposed rule's requirement that an individual from an intermediary Federal agency submit personal details when making each request on behalf of a foreign requester. That is because the individual will submit identifying information to FinCEN at the time they create an account to access FinCEN's BO IT system, which will be necessary to make requests on behalf of foreign governments. FinCEN will provide guidance to intermediary Federal agencies at a later time on how users of the BO IT system will set up these accounts.

The third change to the proposed provision pertains to certification requirements in situations involving ''trusted'' foreign countries. FinCEN originally proposed to require each intermediary Federal agency requesting BOI on behalf of a foreign requester under proposed 31 CFR 1010.955(b)(3)(ii)(B) to submit to FinCEN ''[a] written explanation of the specific purpose for which the foreign person is seeking information . . . along with an accompanying certification that the information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country; will be used only for the particular purpose or activity for which it is requested; and will be handled consistent with [applicable security and confidentiality requirements].'' FinCEN is modifying the certification requirement to avoid unintentionally imposing on intermediary Federal agencies a requirement to certify to a foreign requester's future behavior with respect to the BOI obtained, which the agency could not know with certainty. Under the final rule, such agencies must still certify to FinCEN that the information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country. However, the remainder of the original certification has been modified to require only that the intermediary Federal agency certify that the foreign requester has been informed that BOI disclosed to it may only be used for the particular purpose or activity for which it was requested and must be handled consistent with applicable requirements. This modified certification better reflects what an intermediary Federal agency can know and practically control. FinCEN's expectation that foreign requesters will handle BOI in accordance with applicable requirements and protect it to the best of their ability remains unchanged, as does FinCEN's willingness to withhold BOI from requesters that fail to meet that expectation.

FinCEN declines to make additional revisions suggested by comments. The requirement that foreign requesters apply appropriate standards and procedures to protect BOI and limit BOI dissemination to trained individuals is reasonable under the circumstances and unlikely to place undue burden on foreign requesters. It is critical that all authorized BOI recipients–including foreign requesters–take steps to keep BOI confidential and secure and to prevent its misuse given the sensitivity of the personal information to be reported to the BO IT system. The application of BOI security standards and procedures, including the training requirement, effectuates these underlying objectives, including by requiring individual foreign recipients to have knowledge of those requirements. FinCEN also declines to prescribe specific requirements on the structure and content of any training. FinCEN recognizes that standards and procedures will vary by foreign requester to reflect organizational and resource differences. At root, every individual with access to BOI should understand the purposes for which BOI can be used, the persons with whom they can share BOI with and for what purpose, and the manner in which they must secure it.

The differences between the application of BOI security standards and procedures for domestic and foreign requesters reflect legal and practical considerations. First, the CTA specifically prescribes certain standards for domestic agencies that have access to BOI, but not for foreign requesters. Second, the Access NPRM proposed standards and procedures that are tailored to particular circumstances and challenges involving foreign requesters, and are arguably less burdensome that those required of domestic agencies. For example, FinCEN decided not to propose an MOU requirement for foreign requesters because (1) foreign requesters will not have direct access to the BO IT system, and (2) FinCEN anticipates a significantly lower volume of foreign requests in general relative to other stakeholders. In contrast, the MOUs with domestic agencies are appropriate to mitigate the risks inherent in the expected volume and frequency of searches in the BO IT system. FinCEN anticipates that these MOUs will, among other things, memorialize and implement requirements regarding reports and certifications, periodic training of individual recipients of BOI, personnel access restrictions, re-disclosure limitations, and access to audit and oversight mechanisms. The MOUs will also include security plans covering topics related to personnel security (*e.g.,* eligibility limitations, screening standards, certifications and notification requirements); physical security (system connections and use, conditions of access, data maintenance); computer security (use and access policies, standards related to passwords, transmission, storage, and encryption); and inspections and compliance.

Foreign BOI requesters will only receive BOI through intermediary Federal agencies that will themselves be subject to the detailed MOUs described above. Those intermediary Federal agencies will in turn work with foreign requesters either in accordance with applicable international treaties, conventions, or agreements or under standards and protocols that ''trusted'' foreign countries would be required to develop and implement.

FinCEN also decided against the imposition of audit requirements on foreign requesters because of practical considerations. First, for the sharing of BOI governed by international treaties, agreements, or conventions, the relevant treaty, agreement, or convention would govern whether audits would be permissible. If no treaty, agreement, or convention applied, practical challenges would limit FinCEN's ability to conduct audits of a foreign requester's BOI systems and practices. In order to conduct such an audit, FinCEN would need to negotiate appropriate audit mechanisms, likely on a reciprocal basis, given that foreign governments will likely be reluctant to allow FinCEN extensive access to comprehensively audit their secure IT systems and records. FinCEN would also likely need to commit substantial staff and personnel to conduct either remote or

in-person audits in foreign countries. While FinCEN could refrain from sharing BOI with foreign requesters that refuse to be subject to audits, it would likely degrade international cooperation on law enforcement and national security efforts and constrain the United States' ability to combat cross-border illicit finance and criminal activity, including fentanyl trafficking, fraud, and sanctions evasion, among other crimes.

f. Re-Disclosure of BOI in the Context of Foreign Requests

Proposed Rule. The Access NPRM proposed rules that effectuated the foreign government access provisions in a series of steps that, first, would have authorized FinCEN to disclose BOI to intermediary Federal agencies; would have then authorized those agencies to redisclose BOI to the foreign requester; and would have authorized the foreign requester to use the BOI, including through re-disclosure, consistent with the applicable treaty.

Specifically, proposed 31 CFR 1010.955(b)(3) authorized FinCEN to disclose BOI to intermediary Federal agencies for transmission to the foreign requester where (1) an intermediary Federal agency provides FinCEN with the foreign request; (2) the requested BOI is for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, authorized under the laws of the foreign country; and (3) the request is made under an international treaty, agreement, or convention, or, when no such instrument is available, is an official request by a law enforcement, judicial, or prosecutorial authority of a trusted foreign country. Proposed 31 CFR 1010.955(c)(2)(v) would further authorize the intermediary Federal agency to disclose the BOI to the foreign requester, consistent with the CTA's foreign government provisions.

Lastly, proposed 31 CFR 1010.955(c)(2)(viii) allowed a foreign requester that receives BOI pursuant to a request made under an international treaty, agreement, or convention to re-disclose and use that BOI in accordance with the requirements of the relevant agreement. This approach accords with the CTA's preference for disclosing BOI to foreign requesters under international agreements and allowing the agreements to govern how the information is used, as indicated in the introductory paragraph in 31 U.S.C. 5336(c)(2)(B)(ii). For foreign requests that are not governed by an international treaty, agreement, or convention, FinCEN proposed reviewing re-disclosure requests from foreign requesters either on a case-by-case basis or pursuant to alternative arrangements with intermediary Federal agencies where those intermediary Federal agencies have ongoing relationships with the particular foreign requester. This would occur under former 31 CFR 1010.955(c)(2)(ix), now 31 CFR 1010.955(c)(2)(x), discussed in section III.D.ii.

Comments Received. Commenters noted several concerns regarding the re-disclosure of BOI by intermediary Federal agencies to foreign requesters. One commenter indicated that the proposed rule conflicted with section 2.3 of E.O. 12333 of December 4, 1981, as amended, by authorizing U.S. intelligence agencies to share information about U.S. persons with other countries' intelligence agencies without regard to the Executive Order's restrictions on collecting, retaining, and disseminating U.S. person information.[103] Another commenter criticized the proposed rule as unduly vague about the foreign recipient of BOI, the scope of application of the proposed 31 CFR 1010.955(c)(2)(viii), and whether re-disclosure would be consistent with the CTA where no international treaty, agreement, or convention is available. A third commenter observed that FinCEN could broaden § 1010.955(c)(2)(v) to allow intermediary Federal agencies to share BOI with ''relevant countries'' without first obtaining FinCEN's permission, while a fourth warned FinCEN to ensure that foreign countries do not use their tax authorities to obtain BOI for non-tax related reasons under the pretense of tax administration.

Final Rule. FinCEN views the proposed rules to be sufficiently clear and adopts the provisions as proposed, though the related provision at new 31 CFR 1010.955(c)(2)(x) is revised as discussed in section III.D.ii. Proposed 31 CFR 1010.955(c)(2)(v) makes clear that an intermediary Federal agency may disclose BOI only ''to the foreign person *on whose behalf the Federal agency made the request*'' to FinCEN (emphasis added). The provision is sufficiently specific as to the foreign recipient that receives BOI. The rule also is not in conflict with E.O. 12333, section 2.3 and, in particular, the requirement that elements of the Intelligence Community disseminate information concerning U.S. persons only in accordance with certain established procedures. FinCEN expects that intermediary Federal agency requests, and transmission of BOI to foreign requesters will be in accordance with any legal requirements, and internal protocols, applicable to the intermediary Federal agency. For instance, the guidelines of the Office of the Director of National Intelligence require that, for dissemination of information regarding U.S. persons to foreign governments, those entities must agree to restrictions on the use and dissemination of that information as necessary.[104] Furthermore, consistent with the rule, an agency's internal protocols might place certain process requirements on the agency in making the request to FinCEN for BOI or on the re-disclosure of the information to the foreign requester.

Former 31 CFR 1010.955(c)(2)(viii)—now renumbered as 31 CFR 1010.955(c)(2)(ix)—permits foreign requesters to re-disclose BOI consistent with the terms of the applicable international treaty, agreement, or convention, but does not authorize disclosure in any other contexts.

Relying on the general authority in 31 CFR 1010.955(c)(2)(x) for FinCEN to authorize by prior written authorization, protocols, or guidance redisclosures in furtherance of an authorized purpose or activity, FinCEN will review redisclosure requests from foreign requesters that did not request BOI pursuant to an international treaty, agreement, or convention.

FinCEN also declines to permit intermediary Federal agencies to re-disclose BOI to a defined list of countries, without either a governing international treaty, agreement, or convention or separate FinCEN authorization. The scenario the proposal seems to contemplate involves an intermediary Federal agency requesting BOI from FinCEN on behalf of one foreign requester, storing the information in the intermediary Federal agency's own database, and then later re-disclosing that same BOI to a different foreign requester that wants the information and satisfies the eligibility criteria that would qualify it to have the intermediary Federal agency request the information from FinCEN on its behalf. In this case, however, the intermediary Federal agency would not need to retrieve the BOI from FinCEN's BO IT system or involve FinCEN at all because it would already have the relevant BOI in its own system.

[103] E.O. 12333, 46 FR 59941 (Dec. 4, 1981) (''United States Intelligence Activities'').

[104] *See* Office of the Direct of National Intelligence, Attorney General (AG) Guidelines, Approved December 23, 2020, available at *https://www.intel.gov/assets/documents/702%20Documents/declassified/AGGs/ODNI%20guidelines%20as%20approved%20by%20AG%2012.23.20_OCR.pdf.*

FinCEN views this proposal as infeasible for a number of reasons. First, a reporting company might update its reported BOI in the interim between the times when two foreign requesters want the information. The intermediary Federal agency's stored BOI would not reflect those updates and would be out of date and potentially useless or confounding in an investigation or prosecution if passed to a foreign requester. Having foreign requesters receive outdated BOI would undercut the CTA's objective of providing useful information to authorized BOI recipients.

The second consideration weighing against the proposal has to do with auditing. FinCEN has extensive audit requirements with respect to Federal agencies that receive BOI under the CTA. While an intermediary Federal agency will not need FinCEN's explicit and case-specific ''permission'' to retrieve BOI from the BO IT system on a foreign requester's behalf, the intermediary will need to submit to FinCEN certain information about itself, the request, and the requester. FinCEN will in turn rely on this information to satisfy those audit requirements. The act of an intermediary Federal agency retrieving BOI from the BO IT system will also serve as information upon which FinCEN will rely as a proxy record indicating that a corresponding disclosure to a foreign requester occurred. Were FinCEN to authorize intermediary Federal agencies to store and disseminate FinCEN-derived BOI from their own databases instead of responding to foreign requests for BOI with information retrieved from FinCEN's BO IT system on a one-for-one basis, all of that information would be lost, more difficult to collect, or more subject to tampering. All of these considerations lead FinCEN to reject this proposal.

Finally, FinCEN takes seriously concerns about foreign requesters and other authorized BOI recipients requesting BOI for one purpose and using it for other purposes the CTA does not permit. This includes concerns about pretextual requests made under the guise of activities related to the enforcement of tax laws, a relatively narrow aspect of ''tax administration,'' as defined in 26 U.S.C. 6103(b)(4), for which the CTA authorizes BOI disclosure to foreign requesters.[105] These concerns are why FinCEN is requiring intermediary Federal agencies to certify that requests for BOI from foreign requesters satisfy applicable CTA requirements, including the requirement that requests be for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country.

That said, a foreign requester that originally obtained BOI for use in furtherance of an authorized law enforcement investigation or prosecution (including those related to tax laws), or for an authorized national security or intelligence activity, would not necessarily be prohibited from also using that BOI for other purposes when the BOI was obtained pursuant to a treaty, agreement, or convention. As explained previously, if a foreign requester obtains BOI pursuant to a treaty, agreement, or convention for use in an activity authorized by the CTA, then the requester is authorized to subsequently use or re-disclose the information in any way permitted by that treaty, agreement, or convention. This allowance reflects the general deference to treaties, agreements, and conventions exhibited by the CTA's foreign sharing provision. In all cases, FinCEN will work with intermediary Federal agencies to ensure that foreign requesters understand and agree to abide by the restrictions and requirements associated with BOI, as well as the potential consequences for failing to honor those commitments.

iv. Disclosure To Facilitate Compliance With Customer Due Diligence Requirements

The Access NPRM proposed to authorize disclosure of BOI to facilitate compliance with ''customer due diligence requirements under applicable law'' [106] to: (1) ''financial institutions'' subject to such customer due diligence requirements, and (2) ''Federal functional regulator[s] or other appropriate regulatory agenc[ies] . . . authorized by law to assess, supervise, enforce, or otherwise determine the compliance'' of financial institutions with such requirements.[107] FinCEN therefore discusses the proposed terms of financial institution and regulator access to BOI separately.

a. Financial Institutions

The Access NPRM proposed provisions specifying which financial institutions [108] could access BOI, the uses to which they could put BOI, and the prerequisites for their access and terms of use. The NPRM's treatment of financial institution access was the focus of many comments. Numerous comments focused both on FinCEN's proposal to limit the financial institutions authorized to obtain BOI to those with responsibilities under FinCEN's 2016 CDD Rule and on FinCEN's proposal to limit those financial institutions' use of BOI to facilitating compliance with 31 CFR 1010.230 of the 2016 CDD Rule. Both of those subjects are discussed here. Other issues raised by commenters on financial institution access and use of BOI were tied to larger systemic concerns and less closely associated with financial institutions per se, including the consent requirement, confidentiality and security protocols, and redisclosure of BOI. These more systemic comments are addressed elsewhere in this document.

Proposed Rule. The CTA authorizes FinCEN to disclose BOI upon receipt of a request ''made by a financial institution subject to customer due diligence requirements, with the consent of the reporting company, to facilitate the compliance of the financial institution with customer due diligence requirements under applicable law.'' [109] The CTA neither defines ''financial institution subject to customer due diligence requirements'' nor ''customer due diligence requirements under applicable law.'' Proposed 31 CFR 1010.955(b)(4)(i) described both the types of financial institutions entitled to request BOI and the purposes for which those financial institutions could use that BOI. Under the rule, FinCEN would disclose BOI to financial institutions ''subject to customer due diligence requirements under applicable law,'' and that BOI could be used ''in facilitating . . . compliance'' with those customer due diligence requirements.

Section 1010.955(b)(4)(i) further defined the phrase ''customer due diligence requirements under applicable law'' to mean the requirement imposed on ''covered financial institutions'' under 31 CFR 1010.230 to identify and

[105] The CTA does not authorize FinCEN to provide BOI to foreign requestors for any and all tax administration purposes. Some foreign tax-related activities, however, including enforcement of tax laws, may qualify as law enforcement, national security, or intelligence activities under the CTA, 31 U.S.C. 5336(c)(2)(B)(ii), permitting BOI to be disclosed under appropriate circumstances.

[106] 31 U.S.C. 5336(c)(2)(B)(iii); proposed 31 CFR 1010.955(b)(4).

[107] *Id.;* 31 U.S.C. 5336(c)(2)(B)(iii), (C)(i).

[108] FinCEN regulations generally define ''financial institution,'' including for the purposes of this rule, at 31 CFR 1010.100(t). This general definition is distinct from that of ''covered financial institution,'' as used in the 2016 CDD Rule and this preamble. Under the 2016 CDD Rule (specifically, 31 CFR 1010.230(f)), ''covered financial institution'' has the meaning set forth in 31 CFR 1010.605(e)(1).

[109] 31 U.S.C. 5336(c)(2)(B)(iii).

verify beneficial owners of their ''legal entity customers,'' primarily at account opening.[110] These ''covered financial institutions'' are limited to: banks (including credit unions); brokers or dealers in securities registered, or required to be registered, with the SEC; futures commission merchants and introducing brokers in commodities registered, or required to be registered, with the CFTC; and mutual funds.[111] In contrast, other types of financial institutions, such as money services businesses (MSBs) and insurance companies, would not be able to access BOI from FinCEN in light of the 2016 CDD Rule definition. Additionally, under the proposed rule, these financial institutions would be able to use BOI only to comply with 31 CFR 1010.230, but not for other purposes. This approach was designed to enhance security and confidentiality, and facilitate audit and oversight, of the BOI database by describing a defined set of financial institutions and limiting opportunities for unauthorized use or intentional or inadvertent breaches.

FinCEN also considered a broader approach that would permit financial institutions with CIP obligations [112] to access the database. A broader approach would have permitted more financial institutions to use BOI for a wider range of compliance activities, such as compliance with CIP regulations. FinCEN specifically requested comments on the interpretation of the phrase ''customer due diligence requirements under applicable law,'' including whether FinCEN should adopt a broader definition, how to best provide regulatory clarity, and how to maintain the security and confidentiality of BOI if a broader definition were adopted.[113]

Comments Received. FinCEN received many comments that were critical of FinCEN's proposed approach. First, commenters asserted that FinCEN's interpretation ran counter to the plain text of the CTA. Several commenters pointed to the CTA provision directing the Secretary to promulgate regulations that ''facilitate the compliance of [] financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.'' [114] In order to implement this provision, one commenter noted that FinCEN should allow financial institutions to access BOI for more uses than compliance with 31 CFR 1010.230, and pointed to contrasting references in the CTA to 31 CFR 1010.230 and ''customer due diligence requirements under applicable law'' as indicative of Congressional intent.[115] Another commenter stated that FinCEN erred when it pointed to the Sense of Congress as evidence that Congress understood ''customer due diligence requirements under applicable law'' did not include ''anti-money laundering, [and] countering the financing of terrorism.'' [116]

Second, commenters argued that the proposed rule's approach would be burdensome for financial institutions and undermine the usefulness of the BOI database. In particular, commenters claimed that the proposed approach conflicted with the core CTA objectives that the BOI database be ''highly useful'' to financial institutions,[117] and that burdens on financial institutions should be minimized.[118] In this respect, one commenter listed the variety of AML/CFT compliance and sanctions-related tasks for which banks relied on the BOI obtained from legal entity customers under the 2016 CDD Rule, including, for example, compliance with CIP requirements, customer risk ratings, transaction monitoring, sanctions screening, identifying politically exposed persons, and filing SARs or sanctions-related reports.[119] The commenter reiterated that the proposed rule would not provide financial institutions with any additional AML/CFT compliance value if financial institutions could use FinCEN-collected BOI only as described in the proposed rule; in fact, the commenter confirmed that financial institutions would be unlikely to use the database at all. Other commenters pointed to likely implementation burdens and duplicative requirements, such as the likely need to create a firewall and systems to separate FinCEN-obtained BOI from BOI obtained under the 2016 CDD Rule, given the different purposes for which those two types of BOI could be used. This, in turn, would also impose duplicative requirements on reporting companies, given their need to provide BOI to both FinCEN and to financial institutions.

Third, commenters maintained that the proposed approach conflicts with the broader AML/CFT regulatory framework, including supervisory expectations and FinCEN guidance on the role of customer due diligence in a financial institution's AML program. Several commenters stated squarely that the phrase ''customer due diligence requirements under applicable law'' clearly encompassed AML/CFT requirements beyond the identification and verification requirements of the 2016 CDD Rule. For example, commenters noted that the 2016 CDD Rule itself interprets ''customer due diligence'' broadly to encompass ongoing monitoring for reporting suspicious transactions,[120] and amends AML program rules to require financial institutions to implement risk-based

[110] 31 CFR 1010.230(b). Under the 2016 CDD Rule, ''legal entity customer means a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction that opens an account,'' with certain exceptions. *Id.* 1010.230(e). This definition of ''legal entity customer'' overlaps with, but is distinct from, the definition of ''reporting company'' in 31 CFR 1010.380(c) of the Reporting Rule.

[111] 31 CFR 1010.230(f) (cross-referencing the definition of ''covered financial institutions'' in 31 CFR 1010.605(e)(1)).

[112] *See* 31 CFR 1020.220, 1023.220, 1024.220, 1026.220.

[113] The preamble to the proposed rule noted that FinCEN also had considered defining ''customer due diligence requirements under applicable law'' to include State, local, and Tribal customer due diligence requirements similar in substance to the 2016 CDD Rule. However, FinCEN chose not to do so, noting that it was unaware of any such requirements. FinCEN invited comments about any State, local, or Tribal laws or regulations that require financial institutions to identify and verify the beneficial owners of legal entity customers. One commenter noted that some states, such as New York, require financial institutions operating in the state to implement AML programs that include general customer identification and customer due diligence requirements. However, this commenter did not cite to any requirements to identify and verify beneficial owners of legal entities, as FinCEN's 2016 CDD Rule requires.

[114] 31 U.S.C. 5336(b)(1)(F)(iv)(II).

[115] CTA, section 6403(d)(1) (directing the Secretary of the Treasury to revise the 2016 CDD Rule).

[116] CTA, section 6402(6)(B).

[117] *See* 31 U.S.C. 5336(b)(1)(F)(iv).

[118] *See* CTA, section 6403(d)(1)(C) (directing that the 2016 CDD Rule be revised to ''reduce any burdens on financial institutions and legal entity customers that are, in light of the enactment of this division and the amendments made by this division, unnecessary or duplicative'').

[119] The commenter noted, and FinCEN agrees, that the 2016 CDD Rule itself imposed no specific limits on how financial institutions could use the BOI collected under that rule, including for AML/CFT compliance purposes.

[120] *See* 2016 CDD Rule, 81 FR at 29398 (''FinCEN believes that there are four core elements of customer due diligence, and that they should be explicit requirements in the anti-money laundering (AML) program for all covered financial institutions, in order to ensure clarity and consistency across sectors: (1) Customer identification and verification; (2) beneficial ownership identification and verification; (3) understanding the nature and purpose of customer relationships to develop a customer risk profile; and (4) ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information.'').

procedures for doing so.[121] [122] Other commenters invoked supervisory expectations around the use of BOI, noting that the Federal Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual[123] states that banks should specify in their policies, procedures, and processes how BOI will be used to meet other regulatory obligations, such as identifying suspicious activity and identifying parties sanctioned by Treasury's Office of Foreign Asset Control (OFAC).[124] Commenters also provided specific suggestions to broaden the scope of use of BOI, for example, including CIP requirements under 31 CFR 1010.220 and the ongoing customer due diligence requirements under 31 CFR 1010.210 to facilitate the compliance with AML/CFT and customer due diligence requirements under applicable law.[125] Finally, some commenters claimed that the proposed approach would make it challenging for financial institutions to comply with other legal or regulatory requirements, such as sanctions screening, and urged FinCEN to broaden the permitted uses of BOI.

Fourth, commenters also expressed concerns about the policy reasons for choosing a narrower interpretation of ''customer due diligence requirements under applicable law,'' for example, easing administration of the BOI database and protecting BOI security and confidentiality. One commenter stated that ease of administration is not a sufficient justification to limit the ways financial institutions can use BOI to combat illicit finance. Several commenters noted that both the CTA, and laws requiring banks to protect the vast amounts of PII for which they are responsible, such as Gramm-Leach-Bliley, provide multiple safeguards to ensure the confidentiality and security of BOI, including substantial protocols that financial institutions must follow to access the BOI database.

Fifth, while a few commenters expressed support for the limitation on the types of financial institutions with access to BOI, many commenters argued that certain types of financial institutions not subject to the 2016 CDD Rule—in particular, MSBs—would benefit from access to the BOI and that FinCEN's definition of ''customer due diligence requirements under applicable law'' thus should be changed to allow these other financial institutions to access FinCEN-collected BOI.[126] One commenter noted that MSBs—which are required to implement AML compliance programs with ''policies, procedures, and internal controls reasonably designed'' to ensure compliance with the BSA[127]—may be required by those programs to identify and verify the beneficial owners of legal entity customers and authorized agents during onboarding. In this context, the commenter identified FinCEN's 2016 guidance to MSBs concerning agent monitoring that required MSB principals to identify the owners of an MSB's agents as a reason for interpreting the term ''customer due diligence requirements under applicable law'' to include such MSB requirements.[128] Lastly, one commenter urged FinCEN to allow any financial institution that has AML program obligations to have access to the BOI database, subject to appropriate security requirements and other access protocols, in order to enhance overall transparency in the U.S. financial system and to effectively fight illicit finance.

Final Rule. In light of the comments received, FinCEN has revised its proposed approach towards the financial institutions that will have access to the BOI database and the purposes for which that BOI may be used. The revised regulation now specifies that the clause ''customer due diligence requirements under applicable law'' includes ''any legal requirement or prohibition designed to counter money laundering or the financing of terrorism, or to safeguard the national security of the United States, to comply with which it is reasonably necessary for a financial institution to obtain or verify beneficial ownership information of a legal entity customer.'' Accordingly, the final regulations would permit a broader range of financial institutions to access BOI from the FinCEN database for a broader range of purposes than described in the proposed rule should FinCEN choose to afford such access. As discussed below in this section, however, FinCEN, in the exercise of its discretion, intends to permit only financial institutions with obligations under the 2016 CDD Rule to have access to the BOI database at this time.

Under this approach, a financial institution can use BOI obtained from FinCEN to help discharge its AML/CFT obligations under the BSA, including its AML program, customer identification, SAR filing, and enhanced due diligence requirements. It can also use BOI to satisfy other requirements, so long as those requirements are designed to counter money laundering or the financing of terrorism or safeguard U.S. national security, and so long as it is reasonably necessary to obtain or verify BOI of legal entity customers to satisfy those requirements. For example, a financial institution may use BOI obtained from FinCEN (with the consent of the reporting company) to facilitate compliance with sanctions imposed by OFAC on individuals and legal entities under the International Emergency Economic Powers Act[129] and other legal authorities, such as the Foreign Narcotics Kingpin Designation Act[130] and the Global Magnitsky Human Rights Accountability Act.[131] These sanctions can have national security and anti-money laundering purposes. Financial institutions regularly use BOI to comply with these sanctions, often through OFAC sanctions screening, including in ascertaining whether sanctions are applicable to persons by virtue of the so-called ''50-percent'' rule.[132]

At the same time, there are bounds to the uses of BOI by financial institutions under the final rule. As a threshold matter, the use of BOI should be directly

[121] *See* 2016 CDD Rule, 81 FR at 29457–29458, codified, as amended, at 31 CFR 1020.210(a)(2)(v), 1023.21(b)(5), 1024.210(b)(5), 1026.210(b)(5).

[122] One commenter also noted that banks have built their compliance systems to be consistent with the preamble to the 2016 CDD Rule. The commenter indicated that limiting the purposes for which BOI obtained from the database can be used thus would hurt such compliance efforts.

[123] FFIEC BSA/AML Examination Manual, available at *https://bsaaml.ffiec.gov/manual.*

[124] Relatedly, another commenter urged FinCEN to consider allowing broad BOI access for purely practical reasons, taking into account the value that BOI provides for financial institutions in meeting their regulatory obligations beyond the 2016 CDD Rule, such as fraud detection, customer identification and verification, and OFAC sanctions screening.

[125] In contrast, another commenter asked that FinCEN itemize exactly how financial institutions can use BOI, rather than cross-referencing 31 CFR 1010.230 or any other regulatory provision.

[126] Additionally, two commenters agreed with FinCEN's proposed definition of ''customer due diligence under applicable law'' but claimed that this did not lead to the limitations that FinCEN proposed to place on the use of BOI by financial institutions. These commenters asserted that FinCEN's proposed definition was consistent with a broader authorization for financial institutions to use BOI for any purpose consistent with a financial institution's anti-financial crimes program, including (but not limited to) AML, sanctions, anti-bribery, and anti-corruption procedures.

[127] *See* 31 CFR 1022.210(d)(1)(i).

[128] FIN–2016–G001, Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring (Mar. 11, 2016).

[129] 50 U.S.C. 1701–1706.

[130] 21 U.S.C. 1901–1908.

[131] 22 U.S.C. 10101–10103.

[132] The ''50 percent rule'' subjects to U.S. sanctions any entity that is 50 percent owned by a blocked person is itself blocked, and U.S. persons, including domestic financial institutions, are prohibited from transacting business with such an entity. *See, e.g.,* OFAC, Addition of General Licenses for the Official Business of the United States Government and Certain International Organizations and Entities and Updates to the 50 Percent Rule Interpretive in OFAC Sanctions Regulations, 87 FR 78470 (Dec. 21, 2022).

related to a financial institution's compliance with a legal obligation that is designed to counter money laundering or the financing of terrorism, or to safeguard the national security of the United States. For example, the final rule does not permit financial institutions to use BOI from FinCEN in assessing whether to extend credit to a legal entity, or in establishing the price of that credit, when credit decisions are unrelated to AML/CFT or national security purposes. Moreover, FinCEN does not consider general business or commercial uses of BOI, such as client development, to be consistent with AML/CFT or national security purposes.

The broader approach taken in the final rule is motivated by both legal and policy considerations. First, FinCEN is persuaded that both the statutory framework and congressional intent are properly read to encompass uses broader than compliance with the 2016 CDD Rule. The CTA provision governing the 2016 CDD Rule revisions directs that the revised rule needs to take into account financial institution access to BOI ''to facilitate the compliance of those financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.'' [133] The Sense of Congress similarly states that BOI should be available to ''facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.'' [134] This terminology is broader than a reference to the 2016 CDD Rule. Moreover, commenters correctly point out that the CTA's specific references to the 2016 CDD Rule contrast with those more general references to customer due diligence requirements elsewhere in the CTA.[135]

Second, as noted by many commenters, the revised approach will further the overarching purposes of the CTA to combat illicit activity by enabling financial institutions to use BOI for AML/CFT and national security purposes. The revised approach will allow a financial institution to integrate and leverage BOI obtained from FinCEN with other information that the financial institution uses for their full range of customer due diligence activities. It will also reduce the burdens on financial institutions in handling and using BOI, and correspondingly, increase its practical value.

The final rule also authorizes FinCEN to disclose BOI to a broader range of financial institutions consistent with the revised approach taken with respect to the meaning of ''customer due diligence requirements under applicable law.'' Accordingly, MSBs and other financial institutions with AML program requirements, such as casinos, along with ''covered financial institutions'' as defined in the 2016 CDD Rule, would be eligible under the final rule to access the database subject to appropriate security and confidentiality protocols. The final rule, however, accords FinCEN with discretion regarding the scope and timing of access by financial institutions. The CTA does not direct FinCEN to provide access to financial institutions, but rather states that FinCEN ''may disclose'' BOI to qualifying financial institutions, consistent with the CTA's security, confidentiality, and provisions regarding the usefulness of the database.[136] The final rule, 31 CFR 1010.955(b)(4)(i), likewise preserves this discretion accorded to FinCEN.

In the exercise of this discretion, FinCEN intends to provide access as an initial matter to financial institutions that are covered financial institutions under the 2016 CDD Rule. The initial focus on covered financial institutions under the 2016 CDD Rule will allow FinCEN to work towards timely access for those institutions with comprehensive security and confidentiality protocols and compliance and supervisory frameworks regarding the use of that information, while working to further evaluate whether it is appropriate and feasible to expand access to other financial institutions, such as MSBs or casinos, after an initial implementation period.

Against the backdrop of the comments received on this provision, FinCEN notes that two core considerations motivate access: the importance of BOI access for effective AML/CFT compliance and the need for security and confidentiality in the handing and use of such BOI. There are estimated to be over 300,000 financial institutions regulated under the BSA that are diverse in size, business types, complexity, and supervisory and regulatory frameworks, in particular, with differences in security and confidentiality requirements. Covered financial institutions under the 2016 CDD Rule are subject to the Gramm-Leach-Bliley security requirements and a national supervisory framework with respect to implementation of those requirements. In contrast, other financial institutions that are not subject to the 2016 CDD Rule, such as casinos, MSBs, and dealers in precious metals, precious stones, or jewels, are subject to more fragmented security standards that require additional time to evaluate and determine the extent to which standards and oversight mechanisms are required. Along with the development of new, and additional, standards, FinCEN will need to identify and implement additional outreach, help desk training, audit, oversight and other resources to ensure that this larger group of financial institutions complies with the security, confidentiality, and use requirements under the final rule. Lastly, FinCEN will continue to evaluate the usefulness of BOI access to particular industry sectors based on a range of factors, *e.g.,* which financial institutions with AML program requirements have legal entity customers,[137] the size of this customer base, and the related illicit finance risks, as it considers further expanding access to additional financial institutions.

b. Regulatory Agencies

1. Scope of Regulatory Agency Access to BOI

Proposed Rule. The CTA authorizes Federal functional regulators and ''other appropriate regulatory agencies'' to access ''the information'' previously made available to financial institutions subject to customer due diligence requirements under applicable law.[138] Consistent with this provision, proposed 31 CFR 1010.955(b)(4)(ii) would allow FinCEN to disclose BOI that has been previously provided to a financial institution to a ''Federal functional regulator or other appropriate regulatory agency'' if the regulator requests it, is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of such financial institution with ''customer due diligence requirements under applicable law'' (proposed § 1010.955(b)(4)(ii)(A)); will use the BOI solely for that purpose (proposed § 1010.955(b)(4)(ii)(B)); and has entered into an agreement with FinCEN to properly safeguard BOI (proposed § 1010.955(b)(4)(ii)(C)). As discussed in the preceding section (III.C.iv.a), in view of the proposed rule's approach towards the phrase ''customer due diligence requirements under applicable law,'' Federal functional regulators and other regulatory agencies would have been authorized to access BOI only to assess, supervise, enforce, or otherwise

[133] CTA, section 6402(d)(1)(B).

[134] CTA, section 6402(6).

[135] CTA, section 6403(d)(1).

[136] 31 U.S.C. 5336(c)(2)(B).

[137] As defined at 31 CFR 1010.230(e).

[138] 31 U.S.C. 5336(c)(2)(C).

determine a financial institution's compliance with 31 CFR 1010.230.

Comments Received. Two commenters raised concerns that the limitations on access for regulators were overly restrictive. The comments argued that the proposed rule did not adequately justify why supervisory access should be limited for the sole purpose of determining financial institution compliance with the requirements of 31 CFR 1010.230, and that regulators should have access to the database to assess a financial institution's compliance with customer due diligence obligations over which regulators broadly have regulatory authority.[139]

In contrast, one commenter noted skepticism as to whether Federal or state regulators even needed to access the BOI database if financial institutions would not be subject to a requirement to use the database. Absent such a requirement, the commenter noted that financial institutions would likely obtain beneficial ownership information directly from their customers under the 2016 CDD Rule. The commenter further stated that financial institutions should not be responsible for resolving any discrepancies between the BOI reported to FinCEN and the BOI that financial institutions received from their customers.

Final Rule. FinCEN retains proposed 31 CFR 1010.955(b)(4)(ii) in the final rule, but the scope of this provision has changed. In light of the revised approach to the phrase ''customer due diligence requirements under applicable law'' in 31 CFR 1010.955(b)(4)(i), § 1010.955(b)(4)(ii)(A) now provides access to BOI obtained from FinCEN to those regulatory agencies that ''assess, supervise, enforce, or otherwise determine'' compliance of financial institutions with AML/CFT- or national security-related legal requirements for which BOI access is reasonably necessary. Relatedly, final rule § 1010.955(b)(4)(ii)(B)—which also remains identical to the proposed rule—prescribes that regulatory agencies can now use that BOI obtained from FinCEN to conduct ''the assessment, supervision, or authorized investigation'' in connection with a financial institution's use of BOI obtained from FinCEN to comply with legal requirements to counter money laundering or the financing of terrorism, or to safeguard the national security of the United States. FinCEN does not expect the number of regulatory agencies with access to BOI under this provision to change significantly under the final rule's approach, but believes that the supervisory scope will be better matched to effectively supervise financial institutions for AML program implementation. Supervisory agencies that seek to retrieve BOI under § 1010.955(b)(4)(ii)(A) and (B) will continue to be required to enter into an agreement with FinCEN for such access under final rule § 1010.955(b)(4)(ii)(C). FinCEN adopts this provision without change, consistent with the CTA itself.[140]

FinCEN regards the comment which stated that regulatory access to the BOI database under these provisions will have no value if financial institution use of BOI obtained from FinCEN is not mandatory as incorrect in its understanding. First, the CTA expressly requires FinCEN to provide Federal functional regulators or other appropriate regulatory agencies with access to BOI provided to a financial institution.[141] It is true that if financial institutions in fact do not access BOI, regulatory access will be commensurately limited. But less access does not mean no utility: at the very least, regulatory agencies will be able to use their access to gauge the intensity of financial institution use of BOI, and therefore regulatory agency access will aid their understanding of financial institution activity. Likewise, as a policy matter, if financial institutions were to access BOI, supervisory agencies should have access to the same BOI for supervisory purposes to better understand the use and handling of BOI obtained from by financial institutions.

FinCEN notes, however, that neither the CTA nor the final rule requires financial institutions to access the BOI database. Under the final rule, the decision whether to access the database is left to the discretion of financial institutions, with the understanding that financial institutions that choose to access the BOI database will make use of such access subject to the use limitations and security and confidentiality requirements of the final rule itself. Accordingly, FinCEN notes that the final rule neither creates nor establishes supervisory expectations with respect to whether and the extent to which financial institutions access the BOI database, or report discrepancies between the BOI obtained from the database and BOI the financial institution may collect through other channels, including, for example, directly from its customers under the 2016 CDD Rule. In summary, the final rule does not create a new regulatory requirement for financial institutions to access BOI from the BO IT System or a supervisory expectation that they do so. The final rule also does not make any changes to the requirements of the 2016 CDD Rule. As such, the Access Rule does not necessitate changes to BSA/AML compliance programs designed to comply with the (unchanged) 2016 CDD Rule, and other existing BSA requirements, such as customer identification program requirements,[142] and suspicious activity reporting.[143] However, any access to and use of BOI obtained from the BO IT System must comply with the requirements of the CTA and the Access Rule. FinCEN will address whether, and if so how, financial institutions should access BOI for CDD Rule compliance purposes in its revision of the 2016 CDD Rule.

2. Meaning of ''Other Appropriate Regulatory Agencies''

Proposed Rule. Proposed 31 CFR 1010.955(b)(4)(ii) would permit FinCEN to disclose BOI to either a ''Federal functional regulator'' or an ''other appropriate regulatory agency . . . [that] assessed, supervised, enforced, or otherwise determined the compliance of such financial institution with customer due diligence requirements under applicable law.'' While ''Federal functional regulator'' is a defined term,[144] the proposed rule did not define ''other appropriate regulatory agency.'' [145] The preamble, however, provided illustrative examples, and invited comment. For example, the preamble noted that ''other appropriate regulatory agencies'' could ''include State banking regulators,'' [146] but that it was ''unclear'' whether SROs registered with or designated by a Federal functional regulator (*i.e.,* qualifying SROs) should be considered ''other appropriate regulatory agencies''.

Comments Received. Several comments requested that FinCEN define ''other appropriate regulatory agency'' to

[139] This commenter supported FinCEN's separate statement in the NPRM, 87 FR at 77411, that regulators engaged in national security or law enforcement activities would be able to access BOI under proposed 31 CFR 1010.955(b)(1) in addition to proposed 31 CFR 1010.955(b)(4)(ii), subject to specific conditions and limitations. The commenter viewed this position as partly correcting the limitation of regulatory access to supervising compliance with § 1010.230.

[140] 31 U.S.C. 5336(c)(2)(C)(iii).

[141] 31 U.S.C 5336(c)(2)(C).

[142] 31 CFR 1010.220.

[143] 31 CFR 1010.320.

[144] 31 CFR 1010.100(r). Under this definition, the Federal functional regulators are the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision, the NCUA, the SEC, and the CFTC.

[145] 87 FR at 77416.

[146] *Id.*

include specified entities. Three commenters suggested that state regulatory agencies be expressly included. These commenters variously recommended that the term ''State bank supervisor,'' as used in the AML Act,[147] state credit union regulators, and other state supervisory authorities should be expressly incorporated into the meaning of ''other appropriate regulatory agency'' in order to ensure consistent database access for state regulators supervising customer due diligence compliance and to avoid confusion. Another commenter argued that some SROs, including FINRA, should be considered to be ''other appropriate regulatory agencies,'' given that those SROs have broad AML/CFT oversight and that limiting SRO access to BOI would undermine the CTA's objectives.

Final Rule. The final rule does not provide the specificity in the regulatory definition of ''other appropriate regulatory agencies'' requested by commenters given that the rule provides sufficient clarity regarding the agencies that are entitled to BOI access under § 1010.955(b)(4)(ii).[148] FinCEN notes that ''State bank supervisors,'' as defined in the AML Act, as well as state credit union regulators and other state supervisory authorities that meet the criteria of the final rule may have access to the BOI database. Moreover, the term ''other appropriate regulatory agency'' does not include SROs because the term ''agency'' is generally understood to mean a governmental entity, rather than a private organization regardless of whether it performs governmental functions.[149] [150] FinCEN recognizes that SROs perform critical oversight functions with respect to AML/CFT compliance. The final rule retains the ability for qualifying SROs to receive BOI redisclosed to them from a financial institution or Federal functional regulator under § 1010.955(c)(2)(iii) and (iv).

3. Redisclosure of BOI to SROs

Proposed Rule. Proposed § 1010.955(c)(2)(iii) and (iv) [151] would allow financial institutions and Federal functional regulators to re-disclose BOI obtained from the BOI database to a qualifying SRO provided that it meets the requirements of proposed § 1010.955(b)(4)(ii). Under this provision, the qualifying SRO would have had to be authorized by law to determine compliance with customer due diligence requirements under appliable law; it would have been able to use BOI obtained from FinCEN only to determine such compliance; and it would have had to enter into an agreement with FinCEN to safeguard the information. The proposed rule noted that qualifying SROs play an important role, working under oversight of Federal functional regulators, in assessing, supervising, and enforcing compliance with customer due diligence requirements under applicable law, among other requirements.[152]

Comments Received. One commenter agreed that it is sufficient for qualifying SROs to receive BOI obtained from FinCEN through the re-disclosure provisions given the limited purposes for which that BOI could be used by regulators. However, the commenter noted that those limitations were too narrow and could interfere with other SRO oversight responsibilities, including investigations of fraud and other illicit activity.[153] Another commenter suggested that any SRO with market regulation functions, regardless of whether registered with or designated by a Federal functional regulator—beyond the two qualifying SROs (FINRA and NFA) specifically named in the NPRM—be permitted to receive BOI obtained from the BO IT system by financial institutions.[154]

Final Rule. FinCEN is adopting § 1010.955(c)(2)(iii) and (iv) as proposed.[155] In light of the revised approach to the scope of ''customer due diligence requirements under applicable law,'' however, qualifying SROs would be able to use BOI redisclosed to them to conduct ''the assessment, supervision, or authorized investigation'' in connection with a financial institution's use of BOI obtained from FinCEN to comply with legal requirements to counter money laundering or the financing of terrorism, or to safeguard the national security of the United States. Even if the CTA could be read to permit qualifying SROs to use BOI for purposes beyond these under the re-disclosure provision, however, such an approach would be inconsistent with the use limitations imposed on Federal functional regulators and other appropriate regulatory agencies and the CTA's emphasis on safeguarding BOI.

FinCEN also is not extending the re-disclosure provisions to SROs that have not registered with or been designated by a Federal functional regulator. Qualifying SROs exercise unique regulatory authority within the framework of Federal law and under the oversight of Federal functional regulators to assess, supervise, and enforce financial institution compliance with customer due diligence and other requirements.[156] [157] In light of their unique role, and the oversight provided by the Federal functional regulators, in particular, with respect to security and confidentiality requirements, FinCEN determined that qualifying SROs are appropriate authorized recipients for BOI re-disclosures under FinCEN's discretionary authority. In contrast, non-qualifying SROs do not play the same unique role within the Federal regulatory framework and are not subject to the same extensive government oversight as qualifying SROs.

v. Department of the Treasury Access

a. Disclosure to Officers or Employees of the Department of the Treasury

Proposed Rule. Proposed 31 CFR 1010.955(b)(5)(i) permits officers or

[147] *See* AML Act, section 6003(8), 6304 (cross-referencing 12 U.S.C. 1813); 12 U.S.C. 1813(r)(1) (''The term 'State bank supervisor' means any officer, agency, or other entity of any State which has primary regulatory authority over State banks or State savings associations in such State.'').

[148] 31 U.S.C. 5336(c)(2)(C).

[149] *See, e.g.,* 5 U.S.C. 551(1) (''agency' means each authority of the Government of the United States . . .'').

[150] *See, e.g., In re William H. Murphy & Co.,* SEC Release No. 34–90759, 2020 WL 7496228, *17 (Dec. 21, 2020) (explaining that FINRA ''is not a part of the government or otherwise a [S]tate actor'' to which constitutional requirements apply).

[151] These provisions are discussed in greater depth in section III.D.ii.

[152] 87 FR at 77416.

[153] The SRO also expressed concern that the proposed rule could be interpreted to prohibit financial institutions from collecting BOI or similar information from any source other than the BOI database. FinCEN does not believe that this is a reasonable reading of the regulatory text and thus does not believe the text needs revision. Regardless, to avoid any confusion, FinCEN clarifies that this rule does not restrict SROs' ability to acquire BOI from other sources.

[154] This commenter cited the CME Group as one example of an SRO that should have such access. CME Group, however, is an SRO that has been designated by a Federal functional regulator (CFTC) pursuant to Federal statute, *i.e.,* a qualifying SRO. *See, e.g.,* CFTC, Final Rule, Financial Surveillance Examination Program Requirements for Self-Regulatory Organizations, 84 FR 12882, 12884 n. 22 (Apr. 3, 2019). Thus, these provisions would not prohibit financial institutions or Federal functional regulators from redisclosing BOI to the CME Group if the provisions' other requirements were met.

[155] Comments regarding re-disclosure under § 1010.955(c)(2) more broadly are discussed in section III.D.ii FinCEN has made several changes to proposed § 1010.955(c)(2) in response to these comments, but these changes do not include any alterations to § 1010.955(c)(2)(iii) or (iv).

[156] *See, e.g.,* FINRA Rule 3310(f); NFA Compliance Rule 2–9(c)(5).

[157] *See, e.g., Scottsdale Cap. Advisors Corp.,* 844 F.3d at 418 (''Before any FINRA rule goes into effect, the SEC must approve the rule and specifically determine that it is consistent with the purposes of the Exchange Act. The SEC may also amend any existing rule to ensure it comports with the purposes and requirements of the Exchange Act.'' (citations omitted); *Birkelbach,* 751 F.3d at 475 (''A [FINRA] member can appeal the disposition of a FINRA disciplinary proceeding to the SEC, which performs a *de novo* review of the record and issues a decision of its own.'').

employees of the U.S. Department of the Treasury to access BOI when official duties require such inspection or disclosure, subject to internal procedures and safeguards.

Comments Received. Multiple comments supported the proposed access for Treasury officers and employees. Commenters suggested a few clarifications, *e.g.,* listing the official duties that justify access such as Treasury's role in auditing and reporting on BOI. Other comments suggested that FinCEN should apprise the public of, or clarify, the internal Treasury procedures to ensure the confidentiality and security of BOI. Some commenters proposed that BOI be treated as ''return information'' subject to the same protections as tax information under 26 U.S.C. 6103, particularly when it is obtained by IRS. One commenter stated that there should be coordinating regulations issued to ensure that BOI disclosed to Treasury's officers and employees, including those at the IRS, is ''protected to at least the same degree'' as BOI that is disclosed to other agencies and that these regulations should be coordinated with 26 U.S.C. 6103.[158]

Final Rule. FinCEN adopts the proposed rule. FinCEN declines to add to the rule a list of official duties that would require access to BOI because those duties may change over time, and because, consistent with the CTA, Treasury access to BOI will be governed by internal procedures and safeguards. As noted in the proposed rule, however, FinCEN expects that Treasury officers and employees will access and use BOI for a range of appropriate purposes, including: tax administration, enforcement actions, intelligence and analytical purposes, use in sanctions -related investigations, and identifying property blocked pursuant to sanctions, as well as for administration of the BOI framework, such as for audits, enforcement, and oversight. This will include access to BOI necessary to complete the reports required by section 6502 of the AML Act and audit and oversight activities, including access by the Treasury OIG. FinCEN will work with other Treasury components to establish internal policies and procedures governing Treasury officer and employee access to BOI. These policies and procedures will ensure that FinCEN discloses BOI only to Treasury officers or employees with official duties requiring BOI access, or for tax administration.

Furthermore, FinCEN does not believe that BOI reported to it is ''return information'' subject to the disclosure limitations on tax-related information under the Internal Revenue Code (26 U.S.C. 6103). Since BOI is information reported to FinCEN to fulfill a reporting requirement under Title 31 of the United States Code, it does not fall within the definition of ''return information'' at 26 U.S.C. 6103(b)(2), which is defined to include information received by the Secretary in connection with determining ''a person's liability (or the amount thereof) . . . under this title''—*i.e.,* Title 26 containing the Internal Revenue Code. The CTA instead provides particular security and confidentiality requirements to govern the protection and disclosure of BOI, which this final rule implements.

In accordance with the detailed security and confidentiality requirements in the CTA, the final rule expressly imposes robust requirements on ''requesting agencies'' outside of the Treasury Department. Similarly, Treasury access to BOI will be governed by internal procedures and safeguards consistent with the CTA. FinCEN anticipates that these internal procedures and safeguards will be comparable to, and include elements of, the security and confidentiality requirements in 31 CFR 1010.955(d)(1) taking into account Treasury's unique role in administering the BO IT system and framework. Officers and employees identified as having duties potentially requiring access to BOI would receive training on, among other topics, determining when their duties require access to BOI, what they can do with the information, and how to handle and safeguard it. Their activities would also be subject to audit.

b. Disclosure for Tax Administration Purposes

Proposed Rule. Proposed 31 CFR 1010.955(b)(5)(ii) permits disclosure of BOI to officers or employees of the Department of the Treasury for tax administration as defined in 26 U.S.C. 6103(b)(4), subject to internal procedures and safeguards.

Comments Received. Several commenters suggested that use of BOI for tax administration purposes should be further clarified. Comments asked for greater specificity on tax administration uses, and one commenter requested clarification on the ''analytical'' use of BOI referenced in the NPRM, as applied to tax administration. Another commenter stated that use by Treasury should be limited to the purposes of the CTA.

Final Rule. FinCEN adopts the proposed rule. As explained in the NPRM, FinCEN interprets the term ''tax administration,'' as employed in the CTA, to have the meaning provided for in 26 U.S.C. 6103(b)(4). Accordingly, in the context of tax administration, use of BOI in an ''analytical'' capacity would be delimited by this definition. Further, as explained in the NPRM, FinCEN believes that adopting the 26 U.S.C. 6103(b)(4) definition of tax administration is appropriate because Treasury officers and employees who administer tax laws are already familiar with it and have a clear understanding of the activity it covers. FinCEN also believes the definition is broad enough to avoid inadvertently excluding a tax administration-related activity that would be undermined by lack of access to BOI. In response to the proposal that FinCEN limit access to matters within the scope of the CTA, FinCEN declines to make this proposed amendment and notes that the CTA specifically provides that officers and employees of the Treasury may obtain access to beneficial ownership information for ''tax administration purposes'' generally.

vi. Other Disclosures and Related Issues

Proposed Rule. Consistent with the CTA, proposed 31 CFR 1010.955(b) limits disclosure of BOI by FinCEN, and corresponding access to BOI, to certain categories of recipients. The NPRM included a question for comment about whether there are additional circumstances not reflected in this proposed rule when the CTA would authorize FinCEN to disclose BOI.

Comments Received. Commenters suggested additional categories of authorized recipients and additional recipients within categories already proposed in the NPRM. Within government channels, commenters proposed that FinCEN should make BOI available to public authorities involved in public procurement at both the Federal and state level and to those with audit authority over BOI—the Government Accountability Office (GAO) and Treasury OIG. Commenters also stated that additional financial institutions should have access to BOI, including money services businesses (MSBs). Another commenter, however,

[158] The commenter also requested clarification on the sharing of BOI by Treasury with state or foreign requesters for tax administration purposes, as well as how FinCEN would ensure that any BOI shared is adequately protected. FinCEN notes that state-level and foreign requesters will obtain BOI pursuant to other provisions of 31 CFR 1010.955(b)—specifically, 31 CFR 1010.955(b)(2) and (b)(3). In contrast, 31 CFR 1010.955(b)(5) is specific to access by officers or employees of the Department of the Treasury; 1010.955(b)(5) does not itself authorize these Treasury officers or employees to share BOI with state or foreign requestors for tax administration purposes. 31 CFR 1010.955(d) provides security and confidentiality requirements for BOI shared with state or foreign requestors pursuant to (b)(2) and (b)(3).

asked for confirmation that financial institutions with access to BOI will be limited to ''covered financial institutions'' as defined in 31 CFR 1010.230(f). Several commenters stated that real estate professionals, such as land title agencies and real estate settlement agents, should be permitted to access BOI. These commenters stated such access would facilitate compliance with laws regarding foreign ownership of agricultural land and FinCEN's real estate geographic targeting orders (GTOs), among other common business practices. Commenters also stated that entities that assist financial institutions with customer due diligence and beneficial ownership data analysis, such as regulatory technology (RegTech) firms and beneficial ownership data service providers, should be able to access and request BOI from FinCEN on behalf of a financial institution. One commenter noted that such entities are ''contractors'' or ''agents'' of financial institutions. Another commenter noted that access should be broadened to include non-governmental organizations, journalists, and eventually the public, to align with global standards.

Several commenters asked whether and how BOI would be authenticated before disclosure for purposes of a proceeding governed by rules of evidence. Two commenters focused their concern on authentication in foreign courts, focusing on a statement in the preamble to the NPRM regarding the authentication of BOI in international sharing arrangements. That statement indicated that ''[w]here a request for BOI includes a request that the information be authenticated for use in a legal proceeding in the foreign country making the request, FinCEN may establish a process for providing such authentication via MOU with the relevant intermediary Federal agency.'' These commenters conveyed that FinCEN should issue a blanket rule authorizing all Federal agencies that transmit BOI to authenticate such records, rather than doing so through ad hoc agreements.

One of the same commenters asked that the rule be clarified to allow Federal, State, local, and Tribal agencies to themselves authenticate BOI obtained from FinCEN, rather than requiring FinCEN to authenticate the records in each case. The commenter was concerned that if FinCEN must certify the authenticity of these records in every case, then it could create an administrative chokepoint that could impede civil and criminal actions.

Final Rule. FinCEN declines to make further changes to the categories of recipients to which BOI may be disclosed. The proposed rule aligns with the CTA in limiting disclosure to the categories of recipients FinCEN has already identified. The CTA does not provide for FinCEN to disclose BOI to non-governmental organizations, journalists, or the public.

FinCEN notes, however, that the CTA and the final rule permit disclosure to some of the specific recipients commenters suggested within those categories. Regarding additional disclosures for government users, FinCEN reiterates that authorities with audit requirements such as the GAO and Treasury OIG will have the ability to complete these statutorily mandated activities. FinCEN anticipates working with the GAO to ensure access to BOI as required by the CTA,[159] and as permitted by 31 U.S.C. 716(a).[160] Treasury OIG will have access to BOI under the specific CTA and final rule provision for employees and officers of the Department of the Treasury.[161] Regarding access for procurement-related purposes, FinCEN expects that it will be able to disclose BOI to government agencies for such purposes when the procurement or the review of the procurement is an activity for which FinCEN is otherwise authorized to disclose BOI, *e.g.,* a national security, law enforcement, or intelligence activity.

Discussion about which types of financial institutions will have access to BOI is included in section III.C.iv.a. With respect to the question of whether FinCEN may disclose BOI to RegTech firms, beneficial ownership data service providers, due diligence vendors, or other third-party service providers to financial institutions, FinCEN believes that the final rule authorizes the disclosure of FinCEN BOI to such services providers provided that they and their employees are ''agents'' or ''contractors'' of a financial institution with access to BOI and are performing a function on behalf of the financial institution that requires direct access to it. If a financial institution relies on a service provider or other contractor to request, obtain, and access BOI, the financial institution will ultimately be responsible for the activity of any service provider or contractor accessing BOI on its behalf. Service providers that are agents or contractors of a financial institution authorized to access BOI will be able to request and access BOI through accounts associated with that financial institution. It will be the financial institution's responsibility to ensure that its service providers or other such contractors comply with all applicable obligations, including requirements to protect and store BOI in compliance with the rule, and ensuring that BOI is used for appropriate purposes. Additionally, service providers and other contractors will not be permitted to use the BOI accessed on behalf of a financial institution for any purpose not authorized by the CTA or FinCEN's regulations. For example, BOI requested by a service provider on a financial institution's behalf cannot be integrated into downstream services that the service provider makes accessible to other financial institutions. When requesting BOI for a financial institution, a service provider or contractor is acting for or on behalf of this specific financial institution; it cannot repurpose BOI for the contractor's own use, such as data aggregation, or for the use of other financial institutions.

Regarding authentication of BOI, FinCEN declines to add a specific regulatory provision to address this issue. With respect to foreign countries, foreign laws will govern what constitutes an authenticated record in a particular legal proceeding. Many foreign countries have developed information sharing arrangements for criminal, civil, or other investigations or proceedings. These arrangements include Mutual Legal Assistance Treaties (MLATs), multilateral conventions, and other agreements that are typically consistent with a foreign country's rules concerning authentication. In most such international arrangements, the U.S. Department of Justice's Office of International Affairs (DOJ/OIA) is the intermediary Federal agency that would receive information from FinCEN and transmit it to the requesting foreign authority.

In some cases, a foreign country's laws may require FinCEN, as the records custodian of BOI, to certify the information's authenticity. Some foreign countries may require that DOJ/OIA certify the authenticity of the BOI, while others still might require that both agencies provide a certification. The preamble to the NPRM explained:

[159] *See* 31 U.S.C. 5336(c)(10); *see also* Anti-Money Laundering Act of 2020, section 6502.

[160] 31 U.S.C. 716(a) entitles GAO to ''obtain such agency records as . . . require[d] to discharge [its] duties . . . .'' Only certain foreign intelligence records and agency records ''specifically exempted from disclosure to the Comptroller General by a statute'' fall outside this requirement. *Id.* at 716(d)(1). Indeed, 31 U.S.C. 716 expressly contemplates agencies' disclosure of confidential information to GAO, requiring GAO to ''maintain the same level of confidentiality'' over records disclosed to it as is required of the agency responsible for the record. *Id.* at 716(e)(1).

[161] *See* 31 U.S.C. 5336(c)(5).

Where a request for BOI includes a request that the information be authenticated for use in a legal proceeding in the foreign country making the request, FinCEN may establish a process for providing such authentication via MOU with the relevant intermediary Federal agency. Such process may include an arrangement where FinCEN searches the beneficial ownership IT system and provides the information and related authentication to the intermediary Federal agency consistent with the terms of the relevant MOU.[162]

This approach allows for variations in the requests for authentication that may come from foreign countries. All government agencies obtaining BOI from FinCEN, including those transmitting BOI to foreign countries, will be required to enter into an MOU with FinCEN in order to ensure that all domestic agencies have appropriate protocols in place to ensure the proper handling and use of BOI. FinCEN will take into consideration the question of authentication in crafting its MOUs with intermediary Federal agencies such as OIA.

FinCEN did not accept the proposal that the regulation should be altered to allow State, local, and Tribal agencies to themselves authenticate BOI they obtain from FinCEN, that is, without obtaining a certificate of authenticity or other form of evidentiary authentication from FinCEN. The authentication of evidence depends on the operation of applicable law. For example, state-level rules of evidence often require documents maintained by Federal agencies to be authenticated by the affixing of the official seal of the agency, a statement or testimony by a designated custodian of those records by the agency, or some other certification of authenticity by the agency.[163] Each jurisdiction has its own applicable rules of evidence, however, and may not require certification by a Federal agency. FinCEN declines to issue a blanket rule on authentication, as such a rule would be hard to craft given the variation in State, local, and Tribal procedures and would invite needless confusion on the interaction between State, local, or Tribal rules of evidence and FinCEN's rule. FinCEN believes that existing laws will suffice to provide for authentication of BOI.

D. Use of Information

i. Use of Information by Authorized Recipients

Proposed Rule. Proposed 31 CFR 1010.955(c)(1) provided generally that authorized recipients shall use BOI received from FinCEN ''only for the particular purpose or activity for which such information was disclosed,'' unless otherwise authorized by FinCEN. In the unique case of a Federal agency that receives information pursuant to 31 CFR 1010.955(b)(3) (*Disclosure for Use in Furtherance of Foreign National Security, Intelligence, or Law Enforcement Activity*), the rule more specifically provided that the Federal agency shall only use it to facilitate a response to that foreign request for assistance. In other words, the proposed rule limits the use of BOI by an intermediary Federal agency to facilitating a response to a proper request for BOI from a foreign requester.

Comments Received. One commenter suggested deleting the word ''only'' from proposed 31 CFR 1010.955(c)(1) and adding language that would allow BOI to be used for any CTA-authorized purpose for that agency once FinCEN disclosed it. This commenter raised practical concerns about the restriction that BOI obtained from FinCEN only be used for the particular purpose or activity for which the information was disclosed, noting that this could lead to multiple requests to FinCEN for the same information by the same agency. They then provided the example of a Federal functional regulator obtaining BOI, and then realizing it would be critical for a legal action.

Final Rule. FinCEN adopts the proposed rule with two revisions to the first sentence of 31 CFR 1010.955(c)(1). First, FinCEN amends this sentence to begin ''[e]xcept as permitted under paragraph (c)(2) of this section,'' instead of ''[u]nless otherwise authorized by FinCEN.'' Second, FinCEN has added the phrase ''shall not further disclose such information to any other person'' to this sentence, so that the first sentence of 31 CFR 1010.955(c)(1) of the final rule reads: ''Except as permitted under paragraph (c)(2) of this section, any person who receives information disclosed by FinCEN under paragraph (b) of this section shall not further disclose such information to any other person, and shall use such information only for the particular purpose or activity for which such information was disclosed.''

Both of these newly added phrases were (with minor, non-substantive differences) previously contained in proposed 31 CFR 1010.955(c)(2)(ix), the last provision of proposed § 1010.955(c), and establish that recipients of BOI under § 1010.955(b) may only re-disclose that BOI when authorized under § 1010.955(c)(2). Given the importance of this limitation to BOI use generally, FinCEN determined that this text should be given greater prominence at the beginning, rather than placed at the end, of § 1010.955(c)'s provisions governing the use of BOI.[164] FinCEN also continues to believe that limiting the use of BOI by authorized recipients to the ''particular purpose or activity for which such information was disclosed'' is necessary to reflect the general expectation in the CTA that authorized recipients should not obtain BOI for one authorized activity and then use it for another, unrelated purpose. Thus, for example, a Federal agency officer, employee, contractor, or agent who obtains BOI from FinCEN for use in furtherance of national security activity would be authorized to use that BOI only for the particular national security activity for which the request was made. With respect to the commenter's suggestion to delete the word ''only'' from this paragraph, FinCEN believes such a change is unnecessary. With respect to the commenter's suggestion to add language to allow BOI to be used for any CTA-authorized purpose for that agency, FinCEN declines to adopt this suggestion. FinCEN believes that such an authorization would be overbroad and would run counter to the disclosure framework and oversight, audit, and access protocols of the CTA and the proposed rule. Further, as described in proposed 31 CFR 1010.955(c)(2), FinCEN has proposed to allow the re-disclosure of BOI in certain specified circumstances to further the goals of the CTA, subject to applicable security and confidentiality requirements.

ii. Disclosure of Information by Authorized Recipients

Proposed Rule. Proposed 31 CFR 1010.955(c)(1) would establish a blanket prohibition on the ''re-disclosure'' of BOI by an authorized recipient unless such disclosure is authorized by FinCEN. However, provided that the authorized recipient abides by applicable security and confidentiality requirements, the proposed rule would permit authorized recipients to re-disclose BOI in eight circumstances, as summarized here:

1. Officers, employees, contractors, or agents of a Federal, State, local or Tribal agency may disclose BOI to other officers, employees, contractors, or agents within the same organization for the particular purpose or activity for which the BOI was requested (proposed § 1010.955(c)(2)(i)).

2. Officers, employees, contractors, or agents of a financial institution may

[162] 87 FR at 77414–15.

[163] *See, e.g.,* Fed. R. Evid. 902(1)–(2), (4).

[164] As discussed below in section III.D.ii.e. (*Re-Disclosure with Written Consent of FinCEN*), FinCEN's decision to move this language to 31 CFR 1010.955(c)(1) was also based in part on FinCEN's consideration of a commenter recommending an alteration to proposed 1010.955(c)(2)(ix).

disclose BOI to other officers, employees, contractors, or agents within the United States of the same financial institution for the particular purpose or activity for which the BOI was requested (proposed § 1010.955(c)(2)(ii)).

3. Officers, employees, contractors, or agents of a financial institution may disclose BOI to the financial institution's Federal functional regulator, a self-regulatory organization that is registered with or designated by a Federal functional regulator pursuant to Federal statute, or other appropriate regulatory agency, that meets the requirements identified in proposed 31 CFR 1010.955(b)(4)(ii)(A) through (C) (proposed § 1010.955(c)(2)(iii)).[165]

4. Any officer, employee, contractor, or agent of a Federal functional regulator may disclose BOI to a self-regulatory organization that is registered with or designated by the Federal functional regulator, provided that the self-regulatory organization meets the requirements of proposed 31 CFR 1010.955(b)(4)(ii)(A) through (C) (proposed § 1010.955(c)(2)(iv)).

5. Any officer, employee, contractor, or agent of a Federal agency that receives BOI from FinCEN after requesting it on behalf of a foreign authority pursuant to proposed § 1010.955(b)(3) may disclose the BOI to the foreign person on whose behalf the Federal agency made the request (proposed § 1010.955(c)(2)(v)).

6. Any officer, employee, contractor, or agent of a Federal agency engaged in a national security, intelligence, or law enforcement activity, or any officer, employee, contractor, or agent of a State, local, or Tribal law enforcement agency may disclose BOI to a court of competent jurisdiction or parties to a civil or criminal proceeding (proposed § 1010.955(c)(2)(vi)).

7. Any officer, employee, contractor, or agent of a Federal agency that receives BOI from FinCEN pursuant to 31 CFR 1010.955(b)(1) (Federal agencies engaged in national security, intelligence, or law enforcement activity), (b)(4)(ii) (Federal functional regulators or other appropriate regulatory agencies), or (b)(5) (The Department of the Treasury) may disclose BOI to the United States Department of Justice for purposes of making a referral to the Department of Justice or for use in litigation related to the activity for which the requesting agency requested the information (proposed § 1010.955(c)(2)(vii)).

8. A foreign authority specified in proposed § 1010.955(b)(3) may disclose and use BOI consistent with the international treaty, agreement, or convention under which the request for BOI was made (proposed § 1010.955(c)(2)(viii)).

In addition to these eight circumstances, the proposed rule contains a catch-all, proposed 31 CFR 1010.955(c)(2)(ix), that would permit FinCEN to authorize the re-disclosure of BOI by an authorized recipient, so long as the re-disclosure is for an authorized purpose. To this end, proposed 31 CFR 1010.955(c)(2)(ix) specified that, except as described above, any information disclosed by FinCEN under proposed 31 CFR 1010.955(b) shall not be further disclosed to any other person for any purpose without the prior written consent of FinCEN, or as authorized by applicable protocols or guidance that FinCEN may issue.

In sum, the proposed rule would permit the re-disclosure of BOI by authorized recipients in limited circumstances that further the core underlying national security, intelligence, and law enforcement objectives of the CTA while at the same time ensuring that BOI is disclosed only where appropriate for those purposes. Generally, authorized re-disclosures would be subject to protocols designed, as with those applicable to initial disclosures of BOI from the BO IT system, to protect the security and confidentiality of BOI.

a. Re-Disclosure—In General

Comments Received. Several commenters approved of the approach in the proposed rule permitting certain broad categories of re-disclosure, and not requiring a case-by-case determination by FinCEN. On the other hand, several commenters felt that, as written, the scope of the authorized re-disclosure of BOI was too limiting. One commenter proposed that FinCEN consider creating a special ''amended request'' form for situations in which an agency or a financial institution requests BOI and then comes back to FinCEN to request authorization to re-disclose that BOI, rather than requiring separate requests for the BOI and subsequent re-disclosure authorization.

Several commenters felt that the proposed re-disclosure provisions would unduly restrict the use of the BOI. They raised concerns about repeatedly needing to return to FinCEN for requests to use the same BOI for one purpose, then another, in the course of, for example, a regulatory examination. Two commenters expressed concern that the proposed rule might not permit re-disclosure in open court.

Commenters raised several other, more specific issues related to re-disclosure that are discussed elsewhere in this preamble.[166]

Final Rule. FinCEN adopts the proposed rule with several modifications described in subsections below. Specifically, FinCEN inserted a new 31 CFR 1010.955(c)(2)(viii) to allow a re-disclosure of BOI by State, local, and Tribal law enforcement agencies to State, local, and Tribal agencies for the purpose of making a referral for possible prosecution by that agency, or for use in litigation related to the activity for which the requesting agency requested the information (discussed in greater detail below). FinCEN also renumbered 31 CFR 1010.955(c)(2)(ix) as 31 CFR 1010.955(c)(2)(x) to account for the insertion of the new paragraph (c)(2)(viii) and revised the text of that paragraph.

Concerning comments that the proposed rule might not permit re-disclosure in open court, proposed 31 CFR 1010.955(c)(2)(vi) would permit re-disclosure ''to a court of competent jurisdiction or parties to a civil or criminal proceeding,'' including, in the appropriate circumstance, in open court. Further, this rule would also permit re-disclosure to a court of competent jurisdiction in broader settings such as in an application for a search warrant or a warrant pursuant to the Foreign Intelligence Surveillance Act. Thus, no changes to the proposed rule are needed to allow for the disclosure of BOI in these circumstances.

As to the comment that FinCEN consider an ''amended request'' form, FinCEN will consider the appropriate process for requesting authorization to re-disclose BOI and will issue guidance for such requests when implementing the final rule.

b. Re-Disclosure—Law Enforcement

Proposed Rule. As described above, the proposed rule would permit re-

[165] Proposed 31 CFR 1010.955(b)(4)(ii)(A) through (C) provide that the agency—

''(A) [i]s authorized by law to assess, supervise, enforce, or otherwise determine the compliance of such financial institution with customer due diligence requirements under applicable law; (B) [w]ill use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in paragraph (b)(4)(ii)(A) of this section; and (C) [h]as entered into an agreement with FinCEN providing for appropriate protocols governing the safekeeping of the information.''

[166] Such topics include re-disclosure to outside contractors and agents, re-disclosure to state examiners, re-disclosure within a financial institution to persons and directors responsible for monitoring compliance with customer due diligence rules, re-disclosure related to 314(b) sharing, and geographic limitations on re-disclosure.

disclosure of BOI for law enforcement purposes by Federal, State, local, or Tribal agencies in several contexts. As relevant here, under the proposed rule, Federal, State, local, or Tribal agencies that receive BOI from FinCEN pursuant to a request under 31 CFR 1010.955(b)(1) or (2) would be permitted to re-disclose BOI to a court of competent jurisdiction or parties to a civil or criminal proceeding (proposed § 1010.955(c)(2)(vi)); and agencies that receive BOI under 31 CFR 1010.955(b)(1) (Federal agencies engaged in national security, intelligence, or law enforcement activities), (b)(4)(ii) (Federal functional regulators or other appropriate regulatory agencies), or (b)(5) (the Department of the Treasury) would be permitted to re-disclose BOI to the United States Department of Justice (DOJ) for purposes of making a referral to DOJ or for use in litigation related to the activity for which the requesting agency requested the information (proposed § 1010.955(c)(2)(vii)).

Comments Received. One commenter noted that State, local, and Tribal law enforcement agencies did not have a rule analogous to § 1010.955(c)(2)(vii) that would permit re-disclosure of BOI to State, local, or Tribal prosecutors for purposes of making a case referral, and recommended the addition of such a rule. The commenter suggested amending proposed 31 CFR 1010.955(c)(2)(vi) to insert ''to any officer, employee, contractor, or agent of an attorney general, district attorney'' after the word ''jurisdiction,'' in order to enable such re-disclosure.

Another commenter noted that, at times, law enforcement and regulatory agencies engage in joint investigations—that is, multiple agencies investigate a single fact pattern, sharing information among themselves. The commenter proposed that FinCEN clarify that authorization from FinCEN is not needed for re-disclosure within a joint investigation.

Commenters expressed concern that the re-disclosure rules would prevent effective use of BOI by law enforcement. For example, authorized recipients outside of law enforcement would be prohibited from providing the information to law enforcement without first going to FinCEN to obtain permission to re-disclose that information. One commenter suggested an edit to proposed 31 CFR 1010.955(c)(2)(ix), the catch-all provision permitting FinCEN to authorize re-disclosure of BOI, to permit an authorized recipient to disclose BOI to a Federal agency engaged in national security, intelligence, law enforcement activities, or a Federal regulatory agency when in the judgment of that person re-disclosure would be in the public interest and would assist in combatting illicit finance.

Final Rule. FinCEN modifies the proposed rule to include an additional re-disclosure authorization for State, local, and Tribal law enforcement agencies, what is now 31 CFR 1010.955(c)(2)(viii), as noted above. FinCEN agrees that State, local, and Tribal law enforcement agencies should be permitted to disclose BOI for the purpose of making a referral to another State, local, or Tribal agency for possible prosecution. Although such disclosures may be covered by proposed 31 CFR 1010.955(c)(2)(vi) in certain contexts, FinCEN is electing to expand 31 CFR 1010.955(c)(2) to include a new provision, 31 CFR 1010.955(c)(2)(viii), to explicitly address such disclosures. FinCEN declines the proposed edits to 31 CFR 1010.955(c)(2)(vi) as that paragraph is intended to apply to active litigation matters.

FinCEN recognizes that at times agencies engage in joint investigations; that is, multiple agencies work together on a single investigation. Federal agencies that are a part of a task force to target specific criminal activity, such as drug trafficking or corruption, may also need to share BOI within the task force. In such cases, it would be more efficient for the agencies involved to share BOI directly among themselves instead of each agency having to separately request the same BOI from FinCEN.[167] FinCEN did not include a provision permitting re-disclosure in joint investigations or task forces in the proposed rule, but it did explicitly address joint investigations and task forces in the preamble to the proposed rule. There, FinCEN indicated that it would evaluate requests to share BOI in the context of a joint investigation or task force under its discretionary re-disclosure authority under proposed 31 CFR 1010.955(c)(2)(ix).

FinCEN recognizes that sharing between agencies in the context of joint investigations or task forces is consistent with the CTA's direction that BOI should be used to advance law enforcement interests. However, joint investigations and task forces come in many potential permutations—for example, multiple Federal agencies, a mix of Federal and state agencies, state and Tribal agencies, multiple state agencies, etc. Each such permutation raises unique issues. For example, in a joint investigation between Federal and state law enforcement agencies, do the agencies have to provide FinCEN both a request from Federal law enforcement under 31 CFR 1010.955(b)(1) and a court authorization under 31 CFR 1010.955(b)(2), or would one type of process suffice? If a Federal law enforcement agency obtained BOI for the purpose of investigating Federal crimes, could it re-disclose that information to a state law enforcement agency for its purpose in investigating state crimes? Does a task force consisting of both state and Tribal law enforcement agencies need to obtain a court authorization from multiple courts of competent jurisdiction, or just one? It would be difficult to establish a regulation that would resolve all of these issues, and even attempting to do so in a regulation runs the risk of further complicating the issue.

For these reasons, FinCEN is not creating a specific re-disclosure provision in 31 CFR 1010.955(c)(2) that would address these scenarios. Instead, FinCEN will address joint investigations and task forces in future guidance, with an eye toward issuing guidance that captures the most common or straightforward circumstances, and in more unusual or complex situations evaluating specific re-disclosure requests on a case-by-case basis under its 31 CFR 1010.955(c)(2)(x) authority to approve in writing re-disclosure of BOI in furtherance of an authorized purpose or activity. This approach permits FinCEN greater flexibility in crafting appropriate rules for varied circumstances.

As noted, one commenter stated that FinCEN should permit an authorized recipient to re-disclose BOI to a Federal agency engaged in national security, intelligence, law enforcement activities, or a Federal regulatory agency, when in the judgment of that person, re-disclosure would be in the public interest and would assist in combating illicit finance. FinCEN finds such a provision to be too vague and subjective to be implementable. The CTA prohibits re-disclosure of beneficial ownership information except as authorized in the protocols promulgated by regulation, thereby leaving it to FinCEN to establish the appropriate re-disclosure rules.[168] FinCEN is promulgating rules to permit the re-disclosure of beneficial ownership information under certain, limited circumstances that would further the core underlying national security, intelligence, and law

[167] 87 FR at 77419.

[168] 31 U.S.C. 5336(c)(2)(A). The CTA appears to presume that some re-disclosure will be permitted when it requires requesting agencies to keep records related to their requests, including of ''any disclosure of beneficial information made by . . . the agency.'' 31 U.S.C. 5336(c)(3)(H).

enforcement objectives of the CTA while at the same time ensuring that BOI is disclosed only where appropriate for those purposes. However, the proposed change suggests supplementing objective standards with the subjective judgment of any person in receipt of BOI. This proposal is beyond the confines of the CTA's disclosure provisions. Although the number of cases in which BOI would need to be disclosed to law enforcement as a matter of emergency is likely to be quite low, FinCEN will consider future guidance on this topic.

c. Re-Disclosure—Financial Institutions

Proposed Rule. Proposed 31 CFR 1010.955(c)(2)(ii) would authorize any director, officer, employee, contractor, or agent of a financial institution who received BOI from FinCEN to re-disclose the information to another director, officer, employee, contractor, or agent within the United States of the same financial institution for the particular purpose or activity for which the BOI was requested, consistent with the security and confidentiality requirements of 31 CFR 1010.955(d)(2). Proposed 31 CFR 1010.955(c)(2)(iii) would further authorize financial institutions to re-disclose BOI received from FinCEN to regulators—specifically, Federal functional regulators, specified SROs, and other appropriate regulatory agencies—that meet the requirements identified in paragraphs (b)(4)(ii)(A) through (C) of the proposed rule. Financial institutions would be able to rely on a Federal functional regulator, SRO, or other appropriate regulatory agency's representation that it meets the requirements.

Comments Received. Commenters generally opposed the requirement in proposed 31 CFR 1010.955(c)(2)(ii) and 31 CFR 1010.955(d)(2)(i) that financial institutions limit disclosure of BOI obtained from FinCEN under the CTA to directors, officers, employees, contractors, and agents physically present within the United States. These comments and FinCEN's response to them are consolidated in the discussion of proposed 31 CFR 1010.955(d)(2)(i) in section III.E.ii.a below.

Several comments interpreted these proposed authorizations as prohibitions against financial institutions disclosing BOI to directors, officers, employees, contractors, or agents. One commenter asked FinCEN to include safe harbor provisions to permit employees to share BOI within their institutions according to that institution's policies and procedures. Other comments asked FinCEN to state explicitly that the proposed rule would authorize BOI disclosure ''enterprise-wide,'' as well as to certain specific parties. These specific parties were (1) internal and external auditors; (2) legal and compliance personnel; (3) state regulators; (4) affiliated financial institutions and other financial institutions involved in syndicated loans; (5) other financial institutions under USA PATRIOT Act section 314(b); and (6) third-party service providers, including RegTech companies.

Final Rule. FinCEN adopts proposed 31 CFR1010.955(c)(2)(ii) and (iii) without change, other than deletion of the phrase ''within the United States,'' the reasons for which will be discussed in section III.E.ii.a below. As indicated above, 31 CFR 1010.955(c)(2)(ii) does not prohibit financial institution directors, officers, employees, contractors, or agents from re-disclosing BOI received from FinCEN to one another, but rather authorizes them to do so, provided re-disclosure is for the particular purpose or activity for which the BOI was requested. ''Employees'' might include, among others, a financial institution's internal legal and compliance personnel. ''Contractors'' and ''agents'' might include any individual or entity providing services by contract, including, for example, outside counsel, auditors, and providers of data analysis software tools.

FinCEN views state regulators that meet the requirements identified in paragraphs (b)(4)(ii)(A) through (C) of the final rule as ''other appropriate regulatory agencies'' to which financial institutions may re-disclose BOI from FinCEN under 31 CFR 1010.955(c)(2)(iii).

FinCEN understands that financial institutions might want or need to re-disclose BOI from FinCEN to parties that are not their directors, officers, employees, contractors, agents, or regulators. Examples provided in comments include affiliated financial institutions, other financial institutions involved in syndicated loan agreements, and other financial institutions eligible to participate in section 314(b) information sharing. Another example might be an external compliance monitor appointed as part of a civil or criminal enforcement matter. These are typically complex arrangements with highly variable facts and circumstances that do not lend themselves well to one broad regulation. FinCEN will therefore address these issues in future guidance, with an eye toward evaluating specific re-disclosure requests on a case-by-case basis under its 31 CFR 1010.955(c)(2)(x) authority to approve in writing re-disclosure of BOI in furtherance of an authorized purpose or activity.

d. Re-Disclosure Required by Law

Proposed Rule. The proposed rule did not provide for explicit directions for responding to legal demands for BOI.

Comments Received. Several commenters requested that the rule contain specific processes for responding to legal demands for BOI. For example, a commenter asked how a financial institution should respond to a law enforcement subpoena for BOI obtained from FinCEN. Another commenter asked that FinCEN treat BOI like SAR information and issue a prohibition on re-disclosure of BOI by financial institutions in response to legal process.

Final Rule. FinCEN recognizes the issues that may be raised when compulsory legal process—such as a court order or grand jury subpoena—calls for the production of BOI obtained from FinCEN. The resolution of these issues is most appropriate for post-rule guidance. FinCEN will seek to address these issues in future guidance or through specific re-disclosure requests under its 31 CFR 1010.955(c)(2)(x) authority to approve in writing re-disclosure of BOI in furtherance of an authorized purpose or activity.

e. Re-Disclosure With Written Consent of FinCEN

Proposed Rule. Proposed 31 CFR 1010.955(c)(2)(ix) would prohibit the re-disclosure of BOI obtained under proposed 31 CFR 1010.955(b) other than as permitted in proposed 31 CFR 1010.955(c)(2), and would permit FinCEN to authorize the re-disclosure of BOI in other circumstances via written consent, or through applicable protocols or guidance that FinCEN may issue.

Comments Received. One commenter recommended removing the first sentence of proposed § 1010.955(c)(2)(ix) as redundant given proposed 31 CFR 1010.955(a), the baseline prohibition on re-disclosure. The language the commenter suggested removing reads, ''[e]xcept as described in this paragraph (c)(2), any information disclosed by FinCEN under paragraph (b) of this section shall not be further disclosed to any other person for any purpose without the prior written consent of FinCEN, or as authorized by applicable protocols or guidance that FinCEN may issue.''

Final Rule. FinCEN adopts proposed 31 CFR 1010.955(c)(2)(ix) with technical and organizational changes. First, FinCEN made a minor technical update to renumber 31 CFR 1010.955(c)(2)(ix) as 31 CFR 1010.955(c)(2)(x) to reflect the insertion of the new 31 CFR 1010.955(c)(2)(viii). Second, FinCEN

considered the comment which suggested the removal of the first sentence of proposed 31 CFR 1010.955(c)(2)(ix). Although there is some overlap with 31 CFR 1010.955(a), FinCEN believes that the first sentence of this provision is important to clarify the obligations of authorized recipients of BOI with respect to the re-disclosure of such information once they have obtained it. However, as described above in section III.D.i (*Use of Information by Authorized Recipients*), FinCEN concluded that language describing this obligation was better placed in 31 CFR 1010.955(c)(1) given its importance and general applicability. Accordingly, FinCEN removed the portions of the first sentence of proposed 31 CFR 1010.955(c)(2)(ix) prohibiting re-disclosure of BOI, except as permitted in § 1010.955(c)(2), and inserted them into the first sentence of 31 CFR 1010.955(c)(1).

FinCEN retained the proposed provision providing that FinCEN may authorize further re-disclosures of BOI not otherwise permitted under § 1010.955(c)(2) by prior written consent or ''by applicable protocols or guidance that FinCEN may issue,'' but moved this limitation into the remaining sentence in new 31 CFR 1010.955(c)(2)(x). This part now reads, ''FinCEN may by prior written authorization, or by protocols or guidance that FinCEN may issue, authorize persons to disclose information obtained pursuant to paragraph (b) of this section in furtherance of a purpose or activity described in that paragraph.'' This provision gives FinCEN the ability to authorize, either on a case-by-case basis or categorically through written protocols, guidance, or regulations, the re-disclosure of BOI in limited cases to further the purposes of the CTA.

As stated in the proposed rule, this provision could be used to address situations involving sharing of BOI by government agencies as part of a joint investigation or within a task force. The requirements that an agency would need to satisfy to obtain BOI through re-disclosure are the same as those an agency would need to satisfy to obtain BOI from FinCEN directly under this proposed rule. FinCEN also envisions including re-disclosure limitations in the BOI disclosure MOUs it enters into with recipient agencies. These provisions would make clear that it would be the responsibility of a recipient agency to take necessary steps to ensure that BOI is made available for purposes specifically authorized by the CTA, and not for the general purposes of the agency. Such agency-to-agency agreements can be effective at creating and enforcing standards on use, reuse, and redistribution of sensitive information.

E. Security and Confidentiality Requirements

The CTA directs the Secretary to establish by regulation protocols to protect the security and confidentiality of any BOI provided directly by FinCEN.[169] It then prescribes specific security and confidentiality requirements that FinCEN must impose on ''requesting agencies'' and grants the Secretary authority to ''provide such other safeguards which the Secretary determines (and which the Secretary prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the beneficial ownership information.'' [170]

i. Security and Confidentiality Requirements for Domestic Agencies

a. General

Proposed Rule. Proposed 31 CFR 1010.955(d)(1)(i) addressed general security and confidentiality requirements applicable to Federal, State, local, and Tribal requesting agencies, including intermediary Federal agencies acting on behalf of authorized foreign requesters, Federal functional regulators, and other appropriate regulatory agencies (collectively, ''requesting agencies''). These general requirements would need to be satisfied by a requesting agency for it to be eligible to receive BOI from FinCEN. Proposed 31 CFR 1010.955(d)(1)(i) required that each requesting agency:

(1) Enter into an agreement with FinCEN specifying the standards, procedures, and systems to be maintained by the agency, and any other requirements FinCEN might specify, to protect the security and confidentiality of such information;

(2) Establish standards and procedures, approved by the head of the agency, to protect the security and confidentiality of BOI;

(3) Provide FinCEN with an initial report that describes these standards and procedures established and includes a certification from the head of the agency that the standards and procedures implement the requirements of this paragraph;

(4) Establish and maintain a secure system for storing BOI which complies with information security standards prescribed by FinCEN;

(5) Establish and maintain a permanent, auditable system of standardized records of the agency's BOI requests;

(6) Restrict access to BOI to personnel meeting specified criteria, which would include meeting the training requirements of the proposed rule;

(7) Conduct an annual audit to verify that information obtained from FinCEN has been accessed and used appropriately, provide FinCEN with the results of the audit upon FinCEN's request, and cooperate with FinCEN's annual audit of requesting agencies' adherence to the requirements established under this paragraph;

(8) Provide a semi-annual certification from the head of the agency, on a non-delegable basis, that the agency's standards and procedures are in compliance with the security and confidentiality requirements of this provision; and

(9) Provide FinCEN an annual report that describes the standards and procedures the agency uses to ensure the security and confidentiality of the BOI it receives from FinCEN.

The preamble to the proposed rule explained that the agreement required by 31 CFR 1010.955(d)(1)(i)(A) would be a MOU that each requesting agency would enter into with FinCEN before being able to request any BOI.

Comments Received. FinCEN received several comments on security and confidentiality requirements for all authorized users, as well as comments focused more specifically on security and confidentiality requirements for domestic requesting agencies. For all authorized users, one commenter expressed support for the proposed rule's general security and confidentiality requirements, noting that these align with the CTA. Several other commenters expressed appreciation for FinCEN's efforts to balance the interests of those requesting BOI against the protections and restrictions mandated by the CTA. One commenter viewed these requirements as adequate and argued that FinCEN should not add any new requirements that were not included in the CTA.

As for the requirements applicable to requesting agencies, one commenter argued that the proposed requirements would be so strict that they could hinder the agencies' access to BOI. However, this commenter recognized that in proposing these requirements, FinCEN was simply implementing statutory requirements, and that any change to these requirements would have to come from Congress. With respect to the requirement that agencies establish and maintain secure systems for BOI storage, one commenter welcomed the clarification in the Access NPRM preamble that agencies may rely on existing databases and related IT infrastructure to satisfy this requirement. This commenter proposed additional points of clarification with respect to these systems—for example, on how FinCEN would coordinate with

[169] 31 U.S.C. 5336(c)(3)(A).

[170] 31 U.S.C. 5336(c)(3)(B)–(K).

agencies to develop technology-enabled access that ''maximize[s] the utility of access and minimize[s] additional development costs,'' and whether agencies would be able to pool their resources and collaborate to satisfy this requirement.

There were several comments requesting additional clarifications or changes to proposed 31 CFR 1010.955(d)(1)(i). Two commenters asked that FinCEN clarify in the final rule that certain security and confidentiality requirements for requesting agencies apply to the entire information-sharing relationship between FinCEN and the requesting agency, instead of applying on what one commenter referred to as an ''iterative'' basis, which FinCEN understands to mean case-by-case or request-by-request. One commenter cited the provisions of the CTA contained in sections 5336(c)(2)(C)(iii) and 5336(c)(3)(B)–(D), (H), and (I), which 31 CFR 1010.955(d)(1)(i) implements, as examples of provisions that should apply at the relationship rather than the case-by-case level. These commenters argued that applying certain of these requirements for each individual request would be impractical and would effectively undermine the usability of the BOI database. These same commenters asked FinCEN to further clarify that it does not intend to review access determinations on a case-by-case basis prior to authorized users accessing the BOI database.

There were also several comments related to the proposed rule's audit requirements. One commenter suggested that FinCEN should expand the audit requirements in the final rule to require that agencies verify that requests for BOI are appropriate under proposed 31 CFR 1010.955(b) and that records of BOI requests are kept in accordance with proposed 31 CFR 1010.955(d)(1)(i)(E), which requires agencies to maintain an auditable record of requests. This commenter also suggested that the final rule should include audit requirements specifically for Federal agencies that are making requests on behalf of foreign persons, *i.e.,* for intermediary Federal agencies. These requirements would include ensuring that the information required of intermediary Federal agencies under 31 CFR 1010.955(d)(1)(ii)(B)(*3*) and (*4*) has been maintained and that these agencies are compliant with 31 CFR 1010.955(d)(3), the security and confidentiality requirements for foreign persons on whose behalf an intermediary Federal agency requests BOI. A different commenter also requested that FinCEN audit BOI requests from foreign requesters. Another commenter recommended that FinCEN modify the audit and annual report requirements to be completed by requesting agencies to also include data relevant for evaluating the accuracy, completeness, and usefulness of the BOI database.

One commenter requested that FinCEN provide for greater involvement by the head of a requesting agency in satisfying the agency's security and confidentiality requirements. For example, this commenter suggested that the final rule should specify that only the head of an agency, on a non-delegable basis, could enter into the agreement with FinCEN, or acknowledge the final audit report satisfying the requirements under 5336(c)(3)(B) and (H). In addition, one commenter asked FinCEN to add a provision requiring that agencies specify which agency personnel can make requests to FinCEN for BOI and access BOI. Finally, one commenter suggested that FinCEN could develop a series of model MOUs for each agency type (local law enforcement agency, state law enforcement agency, etc.).

Final Rule. The final rule adopts proposed 31 CFR 1010.955(d)(1)(i) with only minor technical changes. FinCEN agrees with the commenter that the general security and confidentiality requirements for domestic agencies are statutory requirements, and any change to these requirements would have to be mandated by Congress. FinCEN believes these requirements are reasonable given the sensitive nature of BOI and expects that once a requesting agency meets the general security and confidentiality requirements, it should be able to use the BO IT system to access BOI in a rapid and efficient manner. With respect to requests for additional clarifications on the requirement that agencies establish and maintain a secure system for BOI storage, FinCEN appreciates these suggestions and will give them due consideration in the context of entering into MOUs with domestic agencies. FinCEN believes that agencies will likely be able to leverage existing databases and related IT infrastructure to meet this requirement, and has included the statutory language ''to the satisfaction of the Secretary'' in the regulatory text to ensure sufficient flexibility to implement this approach.[171] FinCEN may also choose to provide additional guidance on these topics in the future.

As for the comments requesting clarification that the requirements in this provision apply generally and not on a request-by-request basis, FinCEN believes that the rule text, and the heading ''general requirements,'' made it sufficiently clear that these requirements apply to requesting agencies generally, and that the requirements of 31 CFR 1010.955(d)(1)(ii), as the heading ''requirements for requests for disclosure'' suggests, are request-by-request requirements. Several of the general requirements, such as the audit, certification, and report requirements, explicitly state that these requirements apply on an annual or semi-annual basis. Other requirements, such as the requirement that requesting agencies establish and maintain a secure system to store BOI, would by their nature apply on an ongoing basis.

FinCEN also considered comments suggesting that additional audit requirements are necessary. Regarding the commenter suggesting that FinCEN include audit requirements to ensure that BOI requests are appropriate under proposed 31 CFR 1010.955(b) and that requesting agencies have properly maintained an auditable record of requests, FinCEN believes that the proposed audit requirements sufficiently cover these areas. FinCEN also declines to accept this commenter's proposal to add specific requirements concerning the audit of requests by intermediary Federal agencies on behalf of foreign persons. In FinCEN's view, when a request for BOI is made under an international treaty, agreement, or convention, the arrangements set forth in (or authorized by) that treaty, agreement, or convention would govern. When no such treaty, agreement, or convention is involved, and a trusted foreign country is involved, FinCEN will work closely with the intermediary Federal agency and will take measures to confirm compliance with proposed 31 CFR 1010.955(d)(3).

In response to the commenter recommending that the audit and reporting requirements for requesting agencies should also address the accuracy, completeness, and usefulness of the BOI database, FinCEN does not view these issues as relevant to the security and confidentiality provisions of the regulation, which FinCEN adopted directly from the CTA. FinCEN may consider these requirements in the context of MOUs with relevant agencies to establish feedback mechanisms to facilitate evaluation of the quality of the

[171] With the addition of the statutory language ''to the satisfaction of the Secretary'' to the regulatory text, FinCEN also removed as unnecessary the proposed language that would have required any agency's secure system for BOI storage to ''compl[y] with information security standards prescribed by FinCEN.''

database with a view to improving compliance and enforcement.

As for the commenter suggesting an additional requirement for agencies to specify which personnel may request and access BOI, FinCEN does not believe a rule change is necessary but will consider this suggestion further and potentially address it in future guidance. In response to the commenter suggesting an expanded role in the security and confidentiality requirements for agency heads, FinCEN believes that the involvement of agency heads in these requirements is already significant, and that greater involvement would create burdens on agencies without clear benefits. Lastly, concerning the comment regarding MOUs, FinCEN appreciates this feedback and will consider developing template MOUs for different types of BOI user agencies. FinCEN will also consider further tailoring MOUs as needed for specific agencies and will work with agencies on MOUs when appropriate.

b. Minimization and Requirements for Individual Requests for BOI by Domestic Agencies

Proposed Rule. Proposed 31 CFR 1010.955(d)(1)(ii) includes requirements that would apply to each individual request for BOI from requesting agencies. This provision includes two general requirements. First, agencies must minimize, to the greatest practicable extent, the scope of the BOI they request consistent with the purpose of the request (the NPRM referred to this as the ''minimization'' requirement). Second, the head of a Federal agency, or their designee, must provide written certifications to FinCEN, in the form and manner that FinCEN prescribes, (1) that the agency is engaged in a national security, intelligence, or law enforcement activity, and (2) that the BOI requested is for use in such activity, along with the specific reasons why the BOI is relevant to the activity.

Comments Received. FinCEN did not receive comments concerning the minimization requirement. FinCEN received several comments relating to FinCEN's review process for BOI requests from authorized users generally, and these comments also apply to proposed 31 CFR 1010.955(d)(1)(ii)(B) on the requirements for written certification by Federal agencies. Commenters generally requested that FinCEN clarify in the final rule that FinCEN will not review the agency requests for BOI on a case-by-case basis. One commenter claimed that case-by-case review of the purpose of an agency's requests would not be worth the costs given FinCEN's resource constraints. This commenter focused on the general security and confidentiality requirements that the CTA imposes on requesting agencies and argued that additional oversight on a case-by-case basis would be unnecessary. Another commenter argued that case-by-case review would create administrative hurdles for agencies in accessing BOI, thereby undermining the usefulness of the BOI database. This commenter also argued that the CTA was not meant to give FinCEN the authority to question requesting agencies' substantive reasons for requesting BOI. Thus, this commenter urged FinCEN to clarify in the final rule that FinCEN will not evaluate the purpose of agencies' requests in deciding whether to grant requests for BOI.

Separately, one commenter recommended that FinCEN should further strengthen the safeguards concerning individual requests for BOI by requiring senior-level review and written approvals by requesting agencies for each BOI request. While this commenter did not specify which provision of the rule text should be changed, the commenter appeared to suggest adding additional requirements to proposed 31 CFR 1010.955(d)(1)(ii). This commenter argued that because of the highly sensitive nature of BOI and the importance of securing it, FinCEN should require senior-level officials of agencies to provide written approval for each BOI request to FinCEN by an agency. These senior-level officials, the commenter argued, should be Senate-confirmed Presidential appointees of Federal agencies and chief executives or their designees for State, local, or Tribal agencies.

Final Rule. The final rule adopts 31 CFR 1010.955(d)(1)(ii) largely as proposed. Although not specifically suggested by comments, FinCEN is removing the proposed requirement at 31 CFR 1010.955(d)(1)(ii)(B)(*3*)(*ii*) that intermediary Federal agencies identify the date of the international treaty, agreement, or convention under which a request for BOI is being made; FinCEN believes that identification of the date is unnecessary. Regarding the comments expressing concerns that FinCEN will be reviewing each agency's requests for BOI on a case-by-case basis, FinCEN does not believe it is necessary to change the rule to address this concern. Instead, FinCEN reiterates here that it has no intention of reviewing each individual request for BOI from a requesting agency. The requirement for certifications from requesting agencies is sufficient to establish a basis for FinCEN to know which agencies are accessing the BOI database, and the basis on which they are doing so. This is important for purposes of meeting FinCEN's audit requirements. FinCEN, however, will not review each individual request from these agencies in real time. As for the commenter who argued that FinCEN should add a requirement that senior-level officials at requesting agencies must approve each BOI request, FinCEN declines to adopt this recommendation. Such a requirement would add an unwarranted burden on requesting agencies and would not be outweighed by sufficient benefits.

ii. Security and Confidentiality Requirements for Financial Institutions

a. Restriction on Personnel Access to Information

Proposed Rule. FinCEN proposed to require financial institutions to limit access to BOI obtained from FinCEN to the financial institutions' directors, officers, employees, contractors, and agents within the United States. Proposed 31 CFR 1010.955(d)(2)(i) explicitly imposed this limitation, while proposed 31 CFR 1010.955(c)(2)(ii) made clear that it not only applied to initial BOI recipients, but continued to apply when directors, officers, employees, contractors, and agents of a financial institution wanted to re-disclose BOI to directors, officers, employees, contractors, and agents within the same financial institution for the particular purpose or activity for which the financial institution requested the information.

Comments Received. Commenters generally opposed the requirement that financial institutions limit disclosure of BOI obtained from FinCEN to directors, officers, employees, contractors, and agents physically present within the United States. One commenter supported the limitation, but many more did not. Comments stated that the limitation would cause a disruption in the financial industry and run counter to current business practices. Commenters indicated that contracting with foreign workers is common for AML/CFT purposes, and financial institution personnel outside of the United States (including contractors and agents) routinely have access to customer information.

Commenters further argued that the limitation would decrease the utility of BOI. Some stated that financial institutions may choose to continue to collect BOI from customers under the 2016 CDD Rule and forego accessing FinCEN's BO IT system altogether to avoid the BOI handling requirements set

out in the NPRM. One commenter stated that the limitation would result in less effective risk management, while others indicated that it would increase compliance costs. One commenter estimated that it will take years and millions of dollars to ''onshore'' job functions tasked with handling BOI from FinCEN. Further, commenters asserted that the limitation is not included in the CTA and that it contradicts other portions of the AML Act. Commenters also claimed that the proposed limitation is inconsistent with U.S. and international regulatory expectations for enterprise-wide risk management. Comments pointed to previous Treasury, FinCEN, and other regulatory guidance about sharing information across borders within enterprises. A commenter stated that FinCEN did not give a specific reason for the limitation.

Some comments proposed alternatives, such as allowing re-disclosure to individuals outside of the United States and relying on technological safeguards and security requirements to protect the information. Another suggestion was to limit access to the BO IT system to personnel within the United States, but allow re-disclosure to directors, officers, employees, contractors, and agents in other countries. A few comments suggested those counterparts could be limited to ''trusted foreign countries'' or other specified destinations. Finally, one commenter asked FinCEN to define ''physically present in the United States.''

Final Rule. The final rule at 31 CFR 1010.955(d)(2)(i) and (ii) revises the limitation on sending BOI outside the United States so that it is less stringent than the proposed rule. Under the final rule, financial institutions do not need to keep BOI confined to the United States, but rather are prohibited from sending BOI to certain foreign jurisdictions and categories of jurisdictions. As articulated in the Access NPRM, the CTA describes a framework for disclosures of BOI to foreign governments, and the regulations should seek to ensure consistency with the broader CTA framework. At the same time, FinCEN takes seriously commenters' argument that a flat prohibition on sending BOI abroad is too blunt a mechanism that would impose significant costs.[172] FinCEN has determined that it is not necessary to prohibit *all* offshoring of BOI in order to address the threat posed by sending BOI to jurisdictions of greatest concern. Instead, 31 CFR 1010.955(d)(2)(i) prohibits BOI from being sent to Russia, China, any jurisdiction designated as a state sponsor of terrorism, and any jurisdiction that is subject to comprehensive sanctions under U.S. law, which are the jurisdictions SARs cannot be sent to pursuant to 31 U.S.C. 5318(g)(8)(C)(i). While the information contained in SARs is clearly different from BOI in many respects, FinCEN considers the selection of these jurisdictions to be a strong indicator of a broader congressional perspective on the acceptability of exposing sensitive information filed with the U.S. government to the legal processes of these foreign jurisdictions. As the selection of these jurisdictions indicates, Congress clearly regards the exposure of such sensitive information as more acceptable when it involves some jurisdictions than when it involves others. FinCEN has used this list of jurisdictions based on that understanding of the general congressional perspective on offshoring of information. The Secretary is authorized to add to this list to ensure compliance with the CTA or for national security reasons.

FinCEN acknowledges that allowing BOI to be used and disseminated offshore creates a risk of unauthorized disclosure and misuse, and entails translating U.S. legal requirements for non-U.S. personnel and training them to understand and comply with those requirements. FinCEN weighed these risks against the burden that limiting BOI to directors, officers, employees, contractors, and agents within the United States would impose on some financial institutions. Many financial institutions operate global compliance programs that apportion responsibilities among different regions and reduce compliance expenses. Relocating certain compliance functions to the United States simply to allow them to obtain BOI from FinCEN could be very costly, and in many cases might be financially infeasible. FinCEN assesses that the cost of the targeted offshoring limitation should be *de minimis:* it is FinCEN's understanding that U.S financial institutions currently do not send a significant volume of customer information to Russia, China, any jurisdiction designated as a state sponsor of terrorism, or any jurisdiction that is subject to comprehensive sanctions under U.S. law, and with respect to jurisdictions that are state sponsors of terrorism, sending such information is already prohibited by other law.

In addition, in order for FinCEN to monitor foreign government interest in obtaining BOI, the final rule requires that financial institutions notify FinCEN within three business days of receiving a demand from a foreign government for BOI obtained from FinCEN. FinCEN assesses that this offshoring limitation with notification requirement addresses the legitimate issues regarding security and conformity with the CTA raised by sending BOI outside the United States, without resorting to a blanket onshoring requirement.

b. Safeguards and Security Standards

Proposed Rule. Proposed 31 CFR 1010.955(d)(2)(ii) described safeguards applicable to financial institutions that were designed to maintain the security and confidentiality of BOI while preserving accessibility and usefulness.[173] Proposed 31 CFR 1010.955(d)(2)(ii)(A) required financial institutions to develop and implement administrative, technical, and physical safeguards reasonably designed to protect BOI as a precondition for receiving BOI. The provision did not prescribe specific safeguards or security requirements. Rather, proposed 31 CFR 1010.955(d)(2)(ii)(A) provided that the application to BOI obtained from FinCEN of security and information handling procedures established by a financial institution to comply with section 501 of the Gramm-Leach-Bliley Act (Gramm-Leach-Bliley) [174] and its implementing regulations, with regard to the protection of its customers' nonpublic personal information, would satisfy the requirement.

Gramm-Leach-Bliley provides general baseline expectations for keeping data secure and confidential, while each agency's implementing regulations take into account factors unique to the financial institutions the agency supervises. Section 501 of Gramm-Leach-Bliley, codified at 15 U.S.C.

[172] At least one commenter suggested that any such limitation is in conflict with the FFIEC manual's recognition that ''[a] bank may choose to implement customer due diligence policies, procedures and processes on an enterprise-wide basis.'' Such a choice, however, as the manual itself acknowledges, is permissible only ''to the extent permitted by law.'' FFIEC BSA/AML Examination Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence—Overview* (May 5, 2018), p. 4, *https://www.ffiec.gov/press/pdf/Customer%20Due%20Diligence%20-%20Overview%20and%20Exam%20Procedures-FINAL.pdf.* Here, the CTA establishes the legal parameters under which an institution can choose its enterprise-wide policies by authorizing FinCEN to prescribe by regulation any safeguards it determines to be necessary or appropriate to protect the confidentiality of BOI. 31 U.S.C. 5336(c)(3)(K).

[173] *See* 31 U.S.C. 5336(c)(3)(K).

[174] Public Law 106–102, 113 Stat. 1338, 1436–37 (1999).

6801(b) and 6805, requires each Federal functional regulator to establish appropriate standards relating to administrative, technical, and physical safeguards for financial institutions it regulates to: (1) ensure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer. The Federal functional regulators have implemented these requirements in different ways. The OCC, FRB, FDIC, and the NCUA incorporated into their regulations the Interagency Guidelines Establishing Interagency Security Standards (Interagency Guidelines).[175] The Interagency Guidelines add detail to the more general Gramm-Leach-Bliley requirements, covering specific subjects related to identifying, managing, and controlling risk (*e.g.,* physical and electronic access controls, encryption and training requirements, and testing). The CFTC has incorporated the Gramm-Leach-Bliley expectations of financial institutions into its regulations [176] and recommended best practices for meeting them that are ''designed to be generally consistent with'' the Interagency Guidelines.[177] The SEC has also incorporated the Gramm-Leach-Bliley expectations of financial institutions into its regulations,[178] and has instituted enforcement actions for violations of such regulations.[179]

Under proposed 31 CFR 1010.955(d)(2)(ii)(B), financial institutions that were not subject to the requirements of section 501 of Gramm-Leach-Bliley could apply security and handling procedures that were ''at least as protective of the security and confidentiality of customer information'' as procedures that satisfy the standards set out in Gramm-Leach-Bliley. For these financial institutions, the proposed rule suggested that the Interagency Guidelines might serve as a useful checklist against which to evaluate existing security and confidentiality practices, as well as a useful guide for possible information security program modifications.

Comments Received. Commenters generally concurred with the proposal to anchor BOI security and confidentiality requirements to Gramm-Leach-Bliley, noting that the information security program requirements under that statute and its implementing regulations were sufficient to secure BOI received by financial institutions. Commenters observed that these requirements are already familiar to financial institutions and integrated into business practices.

Commenters further encouraged FinCEN not to impose additional security and information handling protocols on financial institutions that could be duplicative of, inconsistent with, or more burdensome than these existing requirements. A commenter requested that FinCEN create a safe harbor provision for all employees of a financial institution that is compliant with Gramm-Leach-Bliley to further minimize compliance burden. Regarding information security requirements generally, commenters requested clarification on whether background checks would be required for any employees, and whether a ''firewall'' would be required to block access to BOI by employees not involved in opening accounts for new customers.

Final Rule. The final rule adopts the proposed rule without change. Allowing financial institutions to satisfy the requirement to safeguard BOI by applying the security and information handling procedures used to comply with Gramm-Leach-Bliley and its implementing regulations is intended to avoid duplicative or inconsistent requirements and reduce burdens, while maintaining a high degree of security and confidentiality. As commenters pointed out, many financial institutions are generally familiar with the Gramm-Leach-Bliley requirements and already have policies, procedures, and infrastructure in place to comply with its requirements. In addition, Federal functional regulators currently assess financial institutions for compliance with Gramm-Leach-Bliley, which reduces burdens on supervisors while ensuring continued predictability for financial institutions. Lastly, for financial institutions not subject to Gramm-Leach-Bliley, the Interagency Guidelines provide a blueprint for establishing or benchmarking existing compliance systems so that those financial institutions can access the BO IT system and manage BOI securely.

FinCEN is not extending a safe harbor to employees of a financial institution that is compliant with Gramm-Leach-Bliley standards. It is important for FinCEN to retain discretion to evaluate individual conduct by a director, officer, employee, contractor, or agent and related facts and circumstances on a case-by-case basis where there are unauthorized disclosures or uses by a financial institution, and to consider potential enforcement action.

On the question of background checks and firewalls, the final rule does not include additional safeguards or other requirements. FinCEN views the security and information handling procedures implemented by financial institutions to comply with Gramm-Leach-Bliley to be sufficient. Additional requirements could create inconsistencies with existing security and information handling programs and create unnecessary burdens on both financial institutions and their supervisors, without a clear security benefit given the absence of specific concerns from commenters on the sufficiency of the Gramm-Leach-Bliley requirements.

FinCEN also declines to impose specific, additional safeguards on financial institutions that are not subject to Gramm-Leach-Bliley because such requirements could result in unintended consequences. These financial institutions can vary significantly in size, organizational structure, client base, risk profile, resources, and other characteristics. Many of these financial institutions could face significant costs and technical challenges in implementing uniform, additional standards, or FinCEN would need to expend resources to consider case-by-case modifications to address the diversity of unique circumstances.

c. Protocols and Training

Proposed Rule. For each BOI request, proposed 31 CFR 1010.955(d)(2)(iii) would require a financial institution to certify in writing that it fulfilled information security and other requirements set out in that section. The proposed rule explained that FinCEN expected that financial institutions would establish protocols to satisfy these information security requirements, including appropriate recordkeeping, to enable FinCEN to fulfill its audit and oversight responsibilities. The proposed rule also indicated that financial institutions would need to develop a training program that would ensure that BO IT system users at the financial institution received training on the protocols and completed FinCEN-provided online training as a condition

[175] *See Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness,* 66 FR 8616 (Feb. 1, 2001). The agencies' implementing regulations are at 12 CFR part 30, app. B (OCC); 12 CFR part 208, app. D–2 and part 225, app. F (FRB); 12 CFR part 364, app. B (FDIC); and 12 CFR part 748, apps. A & B (NCUA).

[176] *See* 17 CFR 160.

[177] *See* CFTC Staff Advisory No. 14–21 (Feb. 16, 2014).

[178] *See* 17 CFR 248.1–248.100.

[179] *See, e.g.,* Morgan Stanley Smith Barney LLC, SEC Exchange Act Release No. 95832 (Sept. 20, 2022).

for creating and maintaining system accounts.

Comments Received. One commenter was skeptical that financial institutions would act in accordance with FinCEN's expectations for protocols and training without specific regulatory requirements. The commenter suggested expressly setting out in the regulations the expectations regarding protocols and training. Another commenter expressed appreciation that FinCEN planned to provide training on the BO IT system when it becomes available. A third commenter asked FinCEN to confirm that only financial institution employees who will access the system would need to take this training, and not employees who may view and use BOI retained on the financial institution's system in accordance with applicable requirements.

Final Rule. FinCEN adopts the proposed rule without change given that the imposition of additional requirements regarding protocols and training would likely be duplicative and potentially confusing. Financial institutions can satisfy the requirements of 31 CFR 1010.955(d)(2)(ii) by either applying to BOI security and information handling procedures designed to comply with section 501 of Gramm-Leach-Bliley Act or by implementing procedures that are ''at least'' as protective of customer information as procedures that satisfy Gramm-Leach-Bliley standards. The different materials promulgated by the Federal functional regulators to implement Gramm-Leach-Bliley have in common requirements to (1) establish policies and procedures that govern security; and (2) provide related training.[180] Additional requirements to establish protocols and training could create confusion and inconsistencies in implementation, and likely impose additional burdens on financial institutions and FinCEN.

Moreover, the final rule imposes on the director, officer, employee, contractor, or agent of a financial institution the individual responsibility for ensuring compliance with BOI security and information handling requirements. Accordingly, FinCEN believes that financial institutions have appropriate incentives to develop protocols and training programs that adequately train relevant financial institution staff on requirements for handing BOI based on the nature, scope, and risks presented in particular circumstances.

[180] *See generally* Interagency Guidelines, *supra* note 168, p. 138.

d. Consent To Obtain Information

Proposed Rule. The CTA authorizes FinCEN to disclose a reporting company's BOI to a financial institution only if the reporting company consents to the disclosure.[181] Proposed 31 CFR 1010.955(b)(4) would have allowed FinCEN to disclose a reporting company's BOI to a financial institution only if the reporting company consented to the disclosure. In addition, proposed 31 CFR 1010.955(d)(2)(iii) would have required a financial institution that wanted a reporting company's BOI to obtain and document the company's consent to having its BOI disclosed before requesting the BOI from FinCEN.

Comments Received. FinCEN received comments for and against requiring financial institutions to obtain consent from reporting companies. It also received comments addressing specific aspects of how the consent process should be managed.

Commenters in favor of imposing the requirement on financial institutions to obtain consent generally agreed with the rationale articulated in the proposed rule. In the preamble, the proposed rule reasoned that financial institutions are best positioned to obtain consent because they have (1) direct customer relationships with reporting companies, and (2) existing policies and procedures to obtain and document consent on other matters. Commenters agreed that financial institutions can leverage these existing relationships and processes to fulfill the consent requirement and did not view the additional requirement to be overly burdensome. Several commenters noted concerns, however, that a request by a financial institution to a reporting company for consent could be perceived to be ''tipping off'' reporting companies if the financial institution was investigating the company for suspicious activity. Two commenters recommended that FinCEN add provisions to prevent tipping off reporting company prospects or customers.

Other commenters argued that FinCEN, rather than financial institutions, should obtain a reporting company's consent. One commenter stated that FinCEN's role as the central U.S. repository for BOI made FinCEN the appropriate choice for collecting consent and revocations of that consent. Another noted that FinCEN would have a direct relationship with reporting companies through the collection of BOI reports and could use the reporting mechanism to obtain and document consent. Commenters also suggested ways that FinCEN could facilitate reporting company consent at the time the company submits a BOI report. For example, FinCEN could generate a blanket notice to a reporting company at the time it submits a BOI report stating that government agencies and financial institutions can request the reporting company's information for specific purposes. A related suggestion was to allow reporting companies to pre-authorize financial institutions to access their BOI at the submission of the BOI report, as a way to reduce burdens on the reporting companies.

Commenters covered additional subjects. One commenter noted that financial institutions already collect BOI from customers under existing requirements and argued that requiring explicit consent to retrieve the same information from another source—in this case FinCEN's BO IT system—adds unnecessary complexity. Another commenter recommended delaying the consent requirement until FinCEN finalizes revisions to the 2016 CDD Rule. Two commenters stated that money launderers and other illicit actors who deliberately form shell companies to engage in criminal activity will see the consent requirement as an opportunity to further obscure their identity, noting that it is difficult to imagine a shell company providing consent to retrieve its BOI.

Two commenters noted that the consent requirement could have unintended consequences on reporting company access to financial services. One commenter stated that reporting companies risk losing financial services if they do not provide consent. Another commenter stated that the consent requirement may push reporting companies to seek out alternative financing rather than provide financial institutions with consent to retrieve their BOI.

FinCEN also received numerous comments about when and how reporting company consent should be obtained. Several commenters stated that consent should be obtained at account opening in a customer-acknowledged agreement, not as a standalone document. Commenters also likewise requested that FinCEN expressly allow financial institutions to obtain consent in conjunction with other required consents and certifications, and through normal account opening and customer onboarding processes. Numerous commenters requested that FinCEN clarify that consent need only be obtained once at account opening and that it does not expire unless expressly revoked. One commenter stated that

[181] 31 U.S.C. 5336(c)(2)(B)(iii).

consent should remain valid for the length of the customer relationship, and that a financial institution should not need to renew consent or notify a reporting company each time the financial institution retrieves its BOI. One commenter asked whether a reporting company changing its structure would affect its consent. That commenter also asked whether a new consent is required each time a reporting company customer opens a new account. Several commenters requested that FinCEN create standardized consent language for financial institutions to use to obtain a reporting company's consent. One commenter requested that FinCEN explicitly permit reporting companies to grant consent on behalf of their parent companies.

Several commenters proposed alternatives to requiring a reporting company to provide affirmative consent. Two commenters suggested permitting a reporting company to opt-out if it did not want to consent to its BOI being obtained by a financial institution. One commenter suggested that financial institutions be allowed to provide disclosures of intent to obtain a reporting company's BOI from FinCEN that would be acknowledged by the reporting company, instead of requiring affirmative consent.

Other commenters proposed alternatives to written affirmative consent, with one commenter suggesting a checkbox and another commenter suggesting replacing the term ''written'' with ''documented'' or defining ''written'' in a way that provides financial institutions with flexibility about how to implement the requirement. Several commenters suggested that any consent that satisfies these requirements should benefit from a safe harbor under which such consent is deemed effective.

Two commenters stated that consent should be in writing and financial institutions should furnish a copy of that written consent to FinCEN when requesting the relevant BOI. Two other commenters expressed the opposite view that FinCEN should not require financial institutions to submit proof of consent.

A few commenters requested clarification on how consent may be provided and by whom. Several commenters stated that FinCEN should expressly permit a financial institution to obtain consent from a reporting company customer authorizing the financial institution to use that customer's BOI for broader purposes. Another commenter stated that financial institutions should be able to rely on their affiliates to obtain consent, providing the example of futures commission merchants often relying on introducing brokers to engage with customers as a way of arguing that the former should be able to obtain a reporting company's BOI based on consent obtained by the latter.

One commenter requested a clear definition of what constitutes customer consent and sought guidance on when customer consent is deemed revoked. Several commenters requested clarification on how revocation should be documented, while others recommended that FinCEN issue guidance to financial institutions on what to do if a customer refuses to provide consent.

Final Rule. FinCEN adopts the proposed rule with the clarification that reporting company consent must be documented but need not specifically be in writing. FinCEN cannot eliminate the consent requirement as suggested by commenters given that the CTA authorizes FinCEN to disclose a reporting company's BOI to a financial institution only if the reporting company consents to the disclosure.[182] Nor can FinCEN side-step the consent requirement by notifying reporting companies that financial institutions can request their BOI for specific purposes or treat the submission of a BOI report as implied consent.

After carefully considering comments and the relative burdens and options, FinCEN continues to believe that financial institutions are better positioned to obtain and document a reporting company's consent. As explained in the proposed rule, financial institutions are well-positioned to obtain consent—and to track any revocation of such consent—given that they maintain direct customer relationships and are able to leverage existing onboarding and account maintenance processes to obtain reporting company consent. By contrast, considerable delay and burdens on reporting companies could result if FinCEN were to administer the consent process. For example, it would be impractical for FinCEN to administer a process through which a reporting company could consent to the disclosure of BOI to some financial institutions, but not others. It would also be administratively complex for FinCEN to establish a mechanism to timely verify and respond to consent requests, which could result in delays in a reporting company's ability to access financial services.

The final rule does not prescribe any particular means by which a financial institution must obtain a reporting company's consent. Rather, the final rule affords financial institutions substantial discretion in the manner in which they obtain consent. FinCEN recognizes that financial institutions vary greatly in customer bases, risk tolerance, and resources. All financial institutions obtain customer consent on a range of subjects and have existing policies and procedures for doing so that reflect their unique attributes. Those policies and procedures also reflect different legal requirements, including those involving consent in the data privacy context at the Federal and state levels.

Additionally, in response to comments that suggested replacing the term ''written'' with ''documented'' to provide financial institutions with more flexibility in how to implement the requirement (*e.g.,* via a checkbox), the final rule no longer requires consent to be in writing; it only requires that the consent be documented.

FinCEN also believes that providing financial institutions with flexibility in how they implement this requirement will help minimize the burden associated with obtaining consent from reporting company customers. Financial institutions may satisfy this requirement through any lawful method of obtaining meaningful consent from a customer. As a consequence of offering this flexibility, however, FinCEN cannot offer a safe harbor for any particular method used to obtain consent.

The final rule does not require a financial institution to notify a reporting company each time the financial institution retrieves the reporting company's BOI from FinCEN, nor does it require financial institutions to submit proof of consent to FinCEN, unless otherwise required by law. The final rule only requires the financial institution to obtain a reporting company's consent at a time prior to an initial request for the reporting company's BOI from FinCEN, and it may rely on that consent to retrieve the same reporting company's BOI on subsequent occasions, including to open additional accounts for that reporting company, unless the consent is revoked. The ability of financial institutions to broadly obtain reporting company consent is expected to alleviate concerns regarding ''tipping off'' reporting companies about investigations that require the retrieval of BOI.

The final rule also does not address either revocation or expiration of consent. Rather, the final rule provides

[182] 31 U.S.C. 5336(c)(2)(B)(iii).

flexibility to financial institutions to develop appropriate procedures and mechanisms with respect to the revocation of consent or the expiration of consent. This flexibility will allow financial institutions to develop processes appropriate to their size, business lines, and customer types, among other considerations, and provide reporting companies greater flexibility regarding the manner in which they provide and revoke consent—in contrast, a FinCEN mechanism will likely provide less flexibility and disadvantage both financial institutions and reporting companies. For example, if needed, financial institution may set terms through contract or otherwise to provide for the expiration of consent or revocation given that the final rule does not specify any time frames for expiration of consent.

The final rule also does not articulate specific procedures or mechanisms through which a reporting company can provide or revoke consent, *e.g.,* what forms or mechanisms a financial institution should use, which company representatives may provide or revoke consent, whether affiliates can consent on behalf of one another, when corporate changes would require obtaining new consent, or how financial institutions should handle customers who refuse to provide consent. Rather, FinCEN believes that it is appropriate to provide flexibility to a financial institution based on its practices and circumstances, as well as its extensive experience in implementing consent procedures in other contexts and subject to different legal requirements. FinCEN will consider additional guidance or FAQs if additional clarification is required.

Lastly, FinCEN does not share concerns that the consent requirement could drive customers with legitimate business away from financial institutions. FinCEN's 2016 CDD Rule already requires financial institutions to identify the beneficial owners of legal entity customers, and financial institutions regularly seek information from reporting companies regarding beneficial ownership information. As such, FinCEN does not expect reporting companies to systemically decline financial services because of the consent requirement and the availability of the FinCEN database to confirm reporting company BOI.

e. Certification

Proposed Rule. Proposed 31 CFR 1010.955(d)(2)(iv) would require a financial institution to ''make a written certification to FinCEN'' for each BOI request that it: (1) is requesting the information to facilitate its compliance with customer due diligence requirements under applicable law; (2) obtained the reporting company's ''written consent'' to request its BOI from FinCEN; and (3) fulfilled the other security and confidentiality requirements financial institutions must satisfy to receive BOI from FinCEN (as reflected in other provisions of § 1010.955(d)(2)). The Access NPRM indicated that a financial institution would be able to make the certification via a checkbox when requesting BOI via the BO IT system.[183]

Comments Received. One commenter suggested that the final rule should not require a financial institution to obtain a ''written'' certification from financial institutions.

Final Rule. FinCEN is amending the proposed rule to require that financial institutions provide a certification to FinCEN ''in such form and manner as FinCEN shall prescribe.'' The revision in the final rule will allow FinCEN to take a flexible approach towards implementation of the certification requirement that takes into account a range of considerations, such as technological feasibility. Accordingly, FinCEN intends to prescribe a certification mechanism that seeks to minimize burdens and provide certainty, and may include checkboxes or other forms. As it develops the BO IT system, FinCEN anticipates that a financial institution will be able to make the certification via a simple checkbox when requesting BOI via the BO IT system.

Additionally, FinCEN amends proposed § 1010.955(d)(2)(iv) to require a financial institution to certify that it has obtained and ''documented'' a reporting company's consent to request the reporting company's BOI from FinCEN. The revised approach eliminates the requirement for the financial institution to obtain ''written'' consent from the reporting company, requiring only that consent be ''documented.''

iii. Sensitivity of Beneficial Ownership Information

Proposed Rule. Proposed 31 CFR 1010.955(a) states that information reported to FinCEN pursuant to 31 CFR 1010.380 is confidential and may not be disclosed except in certain enumerated circumstances.[184] The draft rule identifies five categories of recipients who may receive BOI, with each category of disclosure limited to a particular purpose or purposes, and an additional eight categories of authorized re-disclosure, plus a catch-all provision permitting FinCEN to authorize re-disclosure in other circumstances.[185]

Comments Received. Commenters provided mixed views on the overall sensitivity of BOI and the security and confidentiality requirements that should be applicable to protect BOI from unauthorized use or disclosure and the privacy interests of beneficial owners and company applicants. Some commenters felt that the CTA's confidentiality requirement was too broad, and that individuals should have little or no privacy interest in such information. One commenter noted that the CTA never identifies ''privacy'' as a statutory objective, arguing that while the CTA does direct FinCEN to build a secure database, ensuring data security is not equivalent to implementing privacy protections for individuals or entities. Another argued that individuals should not have any expectation of privacy over BOI because an entity ''exists only through the public's concession.'' Others felt that the CTA's confidentiality requirements were too narrow, highlighting the impact on small businesses. One commenter noted that the proposed rule did not provide adequate reassurances that the information would be protected; others felt that the disclosure provisions under proposed 31 CFR 1010.955(b) rendered the idea of confidentiality or privacy meaningless. Finally, as discussed above in section III.D.v.a, one commenter felt that the confidentiality requirements for BOI should mirror those for tax returns and tax return information under 26 U.S.C. 6103 to ensure that BOI is protected.

Final Rule. The final rule adopts proposed 31 CFR 1010.955(a) as written. FinCEN considered the comments and is sensitive to concerns about data security and privacy. As discussed throughout this preamble, the CTA establishes that BOI is ''sensitive information'' and imposes strict security and confidentiality requirements on BOI. For example, 31 U.S.C. 5336(c)(2)(A) creates a baseline presumption of confidentiality with a provision on prohibition on disclosure by any individual who receives it. Other provisions reinforce the sensitivity of BOI and further limit such disclosures. For example, the CTA mandates ''appropriate protocols'' in order to disclose BOI to recipients, and even specifies procedural steps in certain

[183] 87 FR at 77422.

[184] 31 U.S.C. 5336(c)(2)(A).

[185] 31 U.S.C. 5336(c)(2)(B).

cases,[186] such as the requirement that a State, local, or Tribal law enforcement agency obtain authorization from a court of competent jurisdiction to seek the information in a criminal or civil investigation. FinCEN is following the statutory requirements prescribed by Congress in the CTA in promulgating the security and confidentiality provisions in the final rule.

On the other hand, FinCEN agrees with comments that the overarching goal of the CTA is to make BOI available to help law enforcement and agencies engaged in national security activities prevent and combat money laundering, terrorist financing, tax fraud, and other illicit activity, as well as protect national security. As discussed above in section III.D.v.a, FinCEN has declined to adopt provisions that mirror those in 26 U.S.C. 6103. The CTA provides detailed security and confidentiality requirements tailored to the BO IT system's authorized uses and authorized recipients, and the final rule adopts these requirements to ensure the protection of this sensitive information. In addition, FinCEN believes that the requirements of 26 U.S.C. 6103 would impose a substantial burden on the overall functionality of the BO IT system and the requirement to establish a BOI database highly useful to law enforcement. For example, 26 U.S.C. 6103 at times requires Federal law enforcement to obtain a court order to access tax returns and tax return information, while the CTA imposes no such restriction.[187] Further, the CTA envisions that financial institutions would have access to BOI for its customers through access to FinCEN's database, while 26 U.S.C. 6103 has no analogous provision. Ultimately, FinCEN found this suggestion unworkable in the context of the CTA.

F. Administration of Requests

i. Rejection of Requests

Proposed Rule. Proposed 31 CFR 1010.955(e)(1) provided that requests for BOI under 31 CFR 1010.955(b) shall be submitted to FinCEN in such form and manner as FinCEN shall prescribe. Proposed 31 CFR 1010.955(e)(2)(i) states that FinCEN will reject requests for BOI made under 31 CFR 1010.955(b)(4) (Disclosure to facilitate compliance with customer due diligence requirements) if such request is not submitted in the form and manner prescribed by FinCEN. Furthermore, proposed 31 CFR 1010.955(e)(2)(ii) provided that FinCEN may reject requests or otherwise decline to disclose BOI if FinCEN, in its sole discretion, finds that, with respect to the request, the requester has failed to meet any requirements of the rule, the BOI is being requested for an unlawful purpose, or other good cause exists to deny the request.

Comments Received. FinCEN received several comments relating to the level of discretion that FinCEN can exercise in determining when to grant or deny a request for access to BOI. One commenter supported the proposed rule's provisions related to FinCEN's authority to reject requests for BOI as a faithful implementation of the CTA. A few commenters requested that FinCEN remove the words ''sole discretion'' from proposed 31 CFR 1010.955(e)(2)(ii). One commenter argued that there are significant protocols under the CTA to adequately protect the security and confidentiality BOI, so it is not consistent with the CTA for FinCEN to have unlimited discretion to reject or grant access. The commenter also noted that the CTA does not use the term ''sole discretion.''

Final Rule. The final rule adopts 31 CFR 1010.955(e)(2) as proposed. In FinCEN's view, it is important to clearly state in 31 CFR 1010.955(e)(2)(ii) that FinCEN has the sole discretion to approve or deny requests for access to BOI because FinCEN has obligations under the CTA to protect the security and confidentiality of BOI, ensure that BOI is used for authorized purposes by authorized recipients, and to ensure audit and oversight of the BO IT System. The CTA does not require that FinCEN consult with any other agency or with those requesting access to BOI when it decides to grant or reject access. FinCEN believes it is within its authority under the CTA to decide, based on its sole discretion, whether to accept or reject a request for access to BOI.

ii. Suspension of Access

Proposed Rule. In keeping with the CTA,[188] proposed 31 CFR 1010.955(e)(3)(i) specified that FinCEN could suspend or debar a requesting agency or financial institution (referred to in the proposed provision as a ''requesting party'') from access to BOI for (1) failing to meet applicable regulatory requirements; (2) requesting BOI for an unlawful purpose; or (3) other good cause. Proposed 31 CFR 1010.955(e)(3)(ii) further specified that FinCEN could reinstate a suspended or debarred party's access upon the latter satisfying any terms or conditions that FinCEN deems appropriate. The Access NPRM explained that suspension of access to BOI would be temporary while debarment would be permanent. FinCEN alone would determine suspension periods.[189]

Comments Received. One commenter asked for more information about how FinCEN would evaluate whether to suspend or debar a financial institution. This commenter also asked whether FinCEN or the financial institution's appropriate state or Federal functional regulator would make the ultimate suspension or debarment decision, and whether a financial institution would have an opportunity to rebut a claim that it improperly used BOI. Several commenters asked how financial institutions should continue meeting their customer due diligence obligations if they lose access to BOI from FinCEN. One commenter viewed the use of the term ''requesting party'' in proposed § 1010.955(e)(3)(i) as limiting FinCEN to permanently debarring or temporarily suspending only entities rather than individual users as well. This commenter recommended that FinCEN clarify that there may be times when FinCEN wants to allow continued access by an agency or financial institution but disallow continued access by an individual user from that agency or financial institution.

Final Rule. FinCEN adopts 31 CFR 1010.955(e)(3)(i) and (ii) with minor modifications. These final regulations as a whole establish the requirements that a financial institution must satisfy to obtain BOI from FinCEN, what they may do with the information, and how they must safeguard it. Section 1010.955(e)(3)(i) makes clear that failing to abide by these requirements and restrictions, including by requesting BOI for an unlawful purpose, can result in suspension or debarment from access to BOI. FinCEN further reserves the right to suspend or debar a requesting party for good cause involving other circumstances. As stated in the Access NPRM, the decision to suspend or debar a financial institution from access to BOI is subject to FinCEN's sole discretion. Imposing limitations on that discretion as a regulatory matter, such as by implementing a ''three strikes'' rule on certain conduct while identifying other activity as grounds for immediate debarment, are premature and require further evaluation. FinCEN will make determinations on a case-by-case basis after considering the available facts and circumstances. FinCEN will continue to consider whether additional standards or limitations are needed to foster predictability, provide fairness,

[186] 31 U.S.C. 5336(c)(3).

[187] 26 U.S.C. 6013(i).

[188] 31 U.S.C. 5336(c)(6)–(7).

[189] 87 FR at 77423.

and enhance compliance after gaining experience.

Questions about how a financial institution temporarily or permanently losing access to BOI from FinCEN might affect the institution's ability to meet its customer due diligence obligations are also premature because they implicate the forthcoming 2016 CDD Rule revisions. FinCEN may address those issues in that future rulemaking.

FinCEN, however, has decided to make modest changes to 31 CFR 1010.955(e)(3)—changing the term ''requesting party'' in 31 CFR 1010.955(e)(3)(i) and the term ''requester'' in 1010.955(e)(3)(ii) to ''individual requester or requesting entity''—in order to clarify that FinCEN may permanently debar or temporarily suspend individual users at an agency or financial institution in addition to the entity itself.

G. Violations—Unauthorized Disclosure or Use

Proposed Rule. Proposed rule 31 CFR 1010.955(f) tracks the CTA's language making it unlawful for any person to knowingly disclose, or knowingly use, BOI obtained by that person, except as authorized by the CTA and these regulations. The rule applies to BOI whether the person obtained it directly or indirectly, and whether this information was contained in a report submitted to FinCEN under 31 CFR 1010.380 or disclosed by FinCEN under 31 CFR 1010.955(b). The rule goes on to broadly define ''unauthorized use'' to include accessing information without authorization, or ''any violation'' of the security and confidentiality requirements described in 31 CFR 1010.955(d) in connection with any access.

Comments Received. Several commenters stated that they approved of the enforcement provisions of the proposed rule, largely in the context of providing comments to other parts of the rule. Otherwise, FinCEN did not receive substantive comments about the enforcement provisions.

Final Rule. FinCEN adopts the rule as written and notes that the CTA provides civil penalties in the amount of $500 for each day a violation continues or has not been remedied. Criminal penalties are a fine of not more than $250,000 or imprisonment for not more than 5 years, or both.[190] The CTA also provides for enhanced criminal penalties, including a fine of up to $500,000, imprisonment of not more than 10 years, or both, if a person commits a violation while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period.[191]

H. Implementation Efforts

i. Implications for Revision of the 2016 CDD Rule

Proposed Rule. The preamble to the proposed rule discussed the requirement in section 6403(d) of the CTA that FinCEN revise the 2016 CDD Rule in order to (1) ensure that the rule conforms with the CTA; (2) address how financial institutions with customer due diligence obligations will access the database; and (3) reduce burdens on financial institutions and legal entity customers.[192] The CTA requires that FinCEN revise the 2016 CDD Rule within one year of January 1, 2024, the effective date of the final BOI Reporting Rule, by rescinding paragraphs (b) through (j) of 31 CFR 1010.230.[193] The preamble to the proposed rule noted that FinCEN will revise the 2016 CDD Rule at a later date instead of addressing it in this rulemaking. The preamble further stated that FinCEN expected that the revision of the 2016 CDD Rule would likely address the interaction of financial institutions' existing customer due diligence efforts and the BOI database. The proposed rule did not otherwise address the required revision to the 2016 CDD Rule.

Comments Received. Some commenters expressed that it was difficult to comment comprehensively on the Access NPRM as FinCEN has not yet issued a notice of proposed rulemaking concerning revisions to the 2016 CDD Rule. Other commenters, however, addressed the future rulemaking despite FinCEN's express reservation of 2016 CDD Rule issues for consideration at a later date. In particular, these commenters identified several issues that they believe a revision of the 2016 CDD Rule should address in light of financial institution access to the BOI database. These issues included (1) whether FinCEN should mandate that financial institutions access the BOI database; (2) the verification and identification of financial institutions customers' beneficial owners; (3) how to address discrepancies between the BOI database and the BOI that financial institutions receive directly from their customers; (4) whether there should be a safe harbor for financial institutions in case of such discrepancies; and (5) regulatory expectations related to financial institutions' use of the BOI database. FinCEN also received comments on a number of technical issues related to specific provisions of the 2016 CDD Rule, the desirability of changes to those provisions, and the overall process of revision.

Final Rule. FinCEN appreciates the comments on the interaction of the proposed rule with the forthcoming revision to the 2016 CDD Rule but declines to make modifications in this final rule based on consideration of the forthcoming revision. Furthermore, comments that relate to how FinCEN should revise the 2016 CDD Rule are not addressed in this rule. However, FinCEN will consider these comments in its development of a notice of proposed rulemaking on this topic in the future. Covered financial institutions will continue to be subject to the existing 2016 CDD Rule until a revision of that rule is effective. In addition, FinCEN, in consultation with the Federal functional regulators, will issue guidance on this topic as appropriate.

While FinCEN is reserving consideration of certain issues for the 2016 CDD Rule revision, comments on the Access NPRM are addressed here—in particular those comments that are relevant to the use of the BOI database by financial institutions in the period between the effective date of this final rule and the revision to the 2016 CDD Rule. FinCEN is also addressing comments that requested specific changes to this final rule in connection with reporting discrepancies in BOI, as well as those that requested a definitive authorization to rely on BOI or a definitive exemption from liability (a safe harbor provision). FinCEN addresses these matters as follows.

Some commenters requested that FinCEN explicitly state in this final rule that use of the BOI database by financial institutions is not mandatory. As with the proposed rule, the final rule outlines who may access the BOI database and for what purpose; however, it does not require financial institutions to access the BOI database, nor does it speak to what financial institutions' obligations may be once the 2016 CDD Rule is revised. FinCEN expects to more fully address the question of the extent to which, and how, financial institutions should access the BOI database for the purpose of fulfilling their customer due diligence obligations when FinCEN revises the 2016 CDD Rule. As

[190] 31 U.S.C. 5336(h)(3)(B).

[191] 31 U.S.C. 5336(h)(3)(B)(ii)(II).

[192] *See* CTA, section 6403(d)(1)(A)–(C).

[193] CTA, section 6403(d)(1), (2). The CTA orders the rescission of paragraphs (b) through (j) directly (''the Secretary of the Treasury shall rescind paragraphs (b) through (j)'') and orders the retention of paragraph (a) by a negative rule of construction (''nothing in this section may be construed to authorize the Secretary of the Treasury to repeal . . . [31 CFR] 1010.230(a)[.]'').

explained in section III.C.iv.b.1, the final rule does not create a new regulatory requirement for financial institutions to access BOI from the BO IT System or a supervisory expectation that they do so. Thus, the Access Rule does not necessitate changes to BSA/AML compliance programs designed to comply with existing BSA requirements, such as the 2016 CDD Rule, customer identification program requirements,[194] and suspicious activity reporting.[195] However, any access to and use of BOI obtained from the BO IT System must comply with the requirements of the CTA and the Access Rule.

Similarly, on the issue of discrepancies between the BOI that financial institutions obtain from FinCEN and the BOI that they obtain directly from their customers, several commenters asked FinCEN to clearly state in the final rule that financial institutions would not be required to report discrepancies. This final rule does not require financial institutions to access the BOI database, nor does it require them to report discrepancies between information obtained from customers and BOI obtained from FinCEN, if any are discovered. This final rule also does not change a financial institution's obligations under other provisions of the BSA and implementing regulations, including the regulatory requirement for financial institutions to maintain an anti-money laundering program that involves, among other things, the reporting of suspicious transactions to FinCEN.[196] FinCEN declines to follow suggestions from commenters that the final rule address this subject. If FinCEN finds that additional guidance or regulatory changes are necessary, it may issue stand-alone guidance or take up the subject in a later rulemaking such as the revision of the 2016 CDD Rule.

The issues raised by commenters relating to handling discrepancies and the provision of a safe harbor are connected to the issue, also raised by commenters, of the extent to which financial institutions may rely on BOI obtained from FinCEN for the purpose of fulfilling their regulatory customer due diligence requirements. As explained above, revisions to the 2016 CDD Rule and its requirements will be the subject of a future rulemaking. However, FinCEN appreciates the consideration of these issues, as reflected in the comments already submitted, and FinCEN will take them into account in the context of that future rulemaking.

Finally, with respect to the comments that raised concerns about regulatory expectations, FinCEN continues to work closely with Federal functional regulators on how financial institutions are examined with respect to their use of the BOI database to facilitate compliance with customer due diligence requirements under applicable law, including the 2016 CDD Rule and its revision. As part of this effort, FinCEN will continue consulting with the Federal functional regulators on whether to issue guidance in this area.

ii. Information Technology Systems Issues

a. Access—In General

Comments Received. Several commenters made general comments on access to beneficial ownership information reported to FinCEN. Two commenters made statements that access to BOI should be simple, uncomplicated, and timely. One commenter stated that the beneficial ownership database should be built so that it maximizes access to authorized users with eventual public access in mind. Another commenter stated that the final rule should clarify that the structure and nature of the access protocols in the CTA are meant to facilitate auditable and technologically-enabled access to the BOI database, and that access will generally not be considered by FinCEN on a case-by-case basis. One commenter stated that any required certifications should be filed electronically.

Another commenter stated that BOI should be available in bulk, noting that bulk data formats will allow users to find patterns or red flags relating to beneficial ownership, or to assess and improve data quality. Another commenter requested that financial institutions have the ability to submit required certifications and access BOI on a bulk, automated basis. This commenter noted that if access to the BO IT system requires manual submissions on a customer-by-customer basis, this would be unnecessarily cumbersome and would adversely impact the ability of financial institutions to use information from the database effectively and efficiently for illicit finance risk management.

Two commenters requested that FinCEN clarify what information authorized users will receive from the BO IT system, and that such information should include the chain of ownership between the reporting company and the beneficial owners. Several commenters requested clarification as to whether authorized users will have access to the underlying BOI when a FinCEN identifier is included in a beneficial ownership information report in lieu of the personal identifying information of a beneficial owner or company applicant. One commenter suggested that this be explicit in the regulatory text. Another commenter explained that if a bank relies on a BOI report with FinCEN identifiers in lieu of know-your-customer/customer identification program information, it will be unable to fully conduct customer due diligence or enhanced due diligence.

Another commenter noted that FinCEN should provide BOI in a structured data format, and recommended that FinCEN adopt the Beneficial Ownership Data Standard (BODS) as the common data standard for BOI stored in the IT system so that the data is compatible with other jurisdictions' BOI databases. One commenter suggested that one authorized access be assigned to each entity, and that each entity should be held responsible for controlling who uses that access. Another commenter stated that ensuring limited access to beneficial ownership data is essential to help with public confidence in the system and for compliance purposes and encouraged FinCEN to think about how to prevent, mitigate, and manage potential data breaches that could occur, including how affected parties will be notified and how remedies can be implemented within reasonable timelines. This commenter also suggested that FinCEN should have the highest protective protocols in place for the database and that access to the database should be tracked, so that FinCEN is aware at all times of who has access to the database and who is making requests. Further, given the sensitive nature of BOI and the limited uses for which BOI obtained from FinCEN might be used, one commenter requested that FinCEN consider providing financial institutions with confirmation that BOI was obtained from FinCEN.

Response. FinCEN appreciates the need to provide automated, user-friendly access to the BO IT system, and is developing the BO IT system against those parameters and the requirements set forth in the CTA. Notably, the CTA does not provide for public access to BOI, and the modalities for authorized users to access BOI reflect that fact. With respect to comments regarding bulk access to BOI, FinCEN does not, at this time, anticipate providing bulk data exports of BOI to authorized users. However, FinCEN expects that financial

[194] 31 CFR 1010.220.

[195] 31 CFR 1010.320.

[196] *See* 31 CFR 1020.320.

institutions will use Application Programming Interfaces (APIs) to access BOI, and that the BO IT system will accommodate the use of APIs for this purpose (including the submission of required certifications).

Regarding comments that FinCEN should avoid engaging in case-by-case reviews of BOI access requests, FinCEN notes that this is generally consistent with the proposed access modalities for the six categories of authorized users. Although FinCEN had initially proposed a case-by-case review mechanism for State, local, and Tribal law enforcement agency requests for BOI, it has eliminated that requirement from the final rule. FinCEN will review certain requests for BOI from a ''trusted foreign country'' on a case-by-case basis, but believes that the case-by-case handling of those requests is warranted given their nature (*i.e.,* they are requests from a foreign government that are not governed by an existing treaty, agreement, or convention) and the fact that foreign governments, per the CTA, must submit requests for BOI through an intermediary Federal agency and will not have direct access to the BO IT system.

Two commenters requested that FinCEN clarify what information authorized users will receive from the BO IT system, and that such information should include the chain of ownership between the reporting company and the beneficial owners. Other commenters requested clarification as to whether authorized users will have access to the underlying BOI when a FinCEN identifier is included in beneficial ownership information report in lieu of the personal identifying information of a beneficial owner or company applicant.

FinCEN will disclose to authorized users the information that reporting companies are required to report under 31 CFR 1010.380(b). This means that authorized users will receive information about (1) the reporting company, (2) its beneficial owners, and (3) any company applicants. For the reporting company, authorized users will receive a transcript with (1) the full legal name and any trade or ''doing business as'' names of the reporting company, (2) the complete current address of the reporting company, (3) the State, Tribal, or foreign jurisdiction of formation of the reporting company, (4) for a foreign reporting company, the State or Tribal jurisdiction where the foreign reporting company first registers, and (5) the IRS Taxpayer Identification Number or foreign tax identification number of the reporting company. For beneficial owners or company applicants, authorized users will receive a transcript with (1) the full legal name of the individual, (2) the individual's date of birth, (3) a complete current address, and (4) the unique identifying number and the issuing jurisdiction from an acceptable identification document (*i.e.,* a non-expired U.S. passport, a non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual, a non-expired driver's license issued to the individual by a state, or a non-expired passport issued by a foreign government to the individual). Images of individuals' identification documents will be made available to Federal agencies engaged in law enforcement, national security, or intelligence activities, or to State, local, or Tribal law enforcement agencies. Information associated with a FinCEN identifier that has been reported in a beneficial ownership information report will be included in the BOI transcripts made available to authorized users. Lastly, FinCEN intends to mark BOI reports to identify them as originating from FinCEN's BO IT system.

In respect of data format, FinCEN evaluated existing data standards, which includes Extensible Markup Language (XML), and the Open Ownership (OO) data standards when developing its beneficial ownership data standards. To the extent possible, FinCEN did use those standards in the OO data catalog that could be incorporated consistent with the CTA.

The BO IT system will adhere to FISMA (Federal Information Security Management Act) ''High'' standards, which require implementing the highest level of security controls for a system at the unclassified level, to help protect against the loss of confidentiality, integrity, or availability of information. For the BO IT systems, FinCEN is responsible for implementing Executive Order 14028 (''Improving the Nation's Cybersecurity''), Treasury's Zero Trust mandates, Continuous Diagnostic Mitigation Program, and other Federal directives to protect systems and information. In addition, Treasury has established a Cyber Review Board, which has established the Treasury Incident Coordination Process (T–ICP) to appropriately escalate any data breaches and compromises.

b. IT System Search Capabilities

Comments Received. FinCEN received comments both on how all authorized users would conduct searches for BOI in the IT system, and more specific comments about how financial institutions would conduct searches. Multiple commenters requested that all users be able to search using a wide range of search fields or that FinCEN adopt a layered approach in which some users would be able to conduct wider ranging searches while others would be more limited. One commenter also requested that users be able to search for historical BOI on a single reporting company. Commenters also highlighted the need for information on how authorized users can access BOI and requested that FinCEN provide guidance for users in conducting searches in the form of pre-populated forms, templates, guidance documents, FAQs, or an ''access toolkit.''

With respect to financial institution access, several commenters argued that the proposed level of financial institution searching capabilities is far too restrictive and should mirror that of law enforcement agencies so financial institutions can conduct broad and open-ended queries. One commenter stated that financial institutions should be able to broadly search throughout the BOI database to learn more about a specific customer's beneficial owners and their connections to other companies in order to strengthen their customer due diligence compliance.

Many commenters also requested that FinCEN adopt technologies that would facilitate immediate, on-demand access to BOI that would be compatible with financial institutions' systems, and the most common request was for FinCEN to allow the use of APIs to access the IT system. Some commenters asked FinCEN to clarify that FinCEN would not manually review and approve each request to search the database, as this could overwhelm FinCEN's capabilities considering the number of search requests. Many commenters requested an automated system for financial institutions to certify their requests for access and be approved by FinCEN so that they could conduct bulk searches instead of individual searches, and they argued that the proposal in the NPRM of a single ''electronic transcript'' per BOI search would be costly and inefficient. Commenters also requested that FinCEN make changes to the information FinCEN requires from financial institutions to conduct searches, and one commenter argued that FinCEN should require that financial institutions use a reporting company's FinCEN identifier as an added security measure. Finally, related to financial institution searches of the database, a few commenters asked that, prior to January 1, 2024, FinCEN clarify how financial institutions would be informed when their queries match or

fail to match data in the database, and how FinCEN will handle query errors and mismatches generally. One commenter provided specific suggestions for a matching system that FinCEN could use.

Response. As explained in the proposed rule, FinCEN expects that there will be differing levels of access to the BO IT system, depending on the type of authorized BOI recipient.

Domestic agency users (*i.e.,* Federal agencies engaged in national security, intelligence, and law enforcement activity; Treasury officers and employees who require access to BOI to perform their official duties or for tax administration; and State, local, and Tribal law enforcement agencies) will be able to access and query the BO IT system directly. This type of access would permit authorized individuals within an authorized recipient agency to log in, run queries using multiple search fields, and review one or more results returned immediately. This broad access to the BO IT system will allow domestic agency users to conduct a wide range of searches using a variety of search fields. FinCEN believes this broad, flexible access for domestic agency users is necessary to enable them to use BOI effectively to facilitate investigations or other activities for which they may obtain BOI.

As discussed in the proposed rule, such broad search capabilities within the BO IT system require domestic agencies to clearly understand the scope of their authorization and their responsibilities under it. That is why the proposed rule establishes protocols for requirements, limitations, and expectations with respect to searches by domestic agencies of the BO IT system. As part of these protocols, each domestic agency would first need to enter into an MOU with FinCEN before being allowed access to the system. Several commenters also requested that FinCEN provide guidance to users on how to conduct searches. FinCEN expects to offer guidance and training for all authorized users on the use of the BO IT system, similar to the trainings it provides to law enforcement and others on access to BSA data.

As noted in the proposed rule, other categories of authorized BOI recipients will have more limited search capabilities. Foreign BOI recipients will have no access to the BO IT system, as their requests will flow through an intermediary Federal agency. Financial institutions and their regulators (Federal functional regulators and other appropriate regulatory agencies) would both have direct access to the BO IT system, albeit in more limited form than domestic agency users. The difference in access between domestic government agencies and financial institutions is explained by the provisions of the CTA, which require the consent of the reporting company before a financial institution may obtain the company's BOI from FinCEN. FinCEN anticipates that once a financial institution has obtained that consent, the financial institution would submit identifying information specific to that reporting company and receive in return an electronic transcript with that entity's BOI. FinCEN anticipates that financial institutions will be able to obtain a transcript immediately after submitting the search request; financial institutions' search requests will not be subject to manual review. Because of the need to limit financial institution access to those BOI transcripts for which it has reporting company consent, FinCEN believes that it would not be consistent with this statutory requirement to allow financial institutions to broadly query the BO IT system, which may result in the financial institutions obtaining information about other reporting companies or beneficial owners for which they do not have consent. One commenter suggested that FinCEN require financial institutions to use a reporting company's FinCEN identifier for the search as an added security measure. FinCEN notes, however, that reporting companies are not required to obtain FinCEN identifiers, and not all reporting companies will request them.

With respect to Federal functional regulators and other appropriate regulatory agencies exercising supervisory functions, the CTA allows these agencies to request from FinCEN BOI that the financial institutions they supervise have already obtained from FinCEN, but only for assessing a financial institution's compliance with customer due diligence requirements under applicable law. FinCEN expects regulators acting in this supervisory capacity to be able to retrieve any BOI that the financial institutions they supervise received from FinCEN during a particular period, but they will not be able to broadly search the BO IT system. However, Federal functional regulators and other appropriate regulatory agencies responsible for bringing civil enforcement actions will be able to avail themselves of the broader search functionality described above for domestic agency users.

c. Notification of Updates or Changes to BOI

Comments Received. Several commenters argued that the final rule should provide more clarity on whether FinCEN will provide financial institutions with the updates to BOI that reporting companies provide when there are changes to that company's BOI. These commenters specifically asked that FinCEN create a mechanism for automated updates of BOI to financial institutions when reporting companies change their BOI. Commenters argued that such automated updates would meet the requirements of the CTA that BOI provided to FinCEN is ''highly useful'' and assists financial institutions in meeting their customer due diligence and AML/CFT obligations. A few commenters requested that FinCEN develop a ''push'' notification system for the automated updates, and others requested a system in which financial institutions could sign up for updates when they first queried the database for a reporting company's BOI. Commenters also suggested that financial institutions could be given a choice to ''opt out'' at any point, such as when a financial institution's customer withdraws consent for searches of its BOI.

Response. FinCEN appreciates the commenters' suggestions regarding the BO IT system functionality. FinCEN will consider these suggestions as a possible future enhancement to the BO IT system.

d. Inability and Loss of Access

Comments Received. Several commenters asked FinCEN how financial institutions should continue meeting their customer due diligence obligations in the event of an unexpected event that results in loss of access to the BO IT system, such as a system outage or cyberattack that causes the system to be inaccessible. One commenter asked for FinCEN to clarify whether access to the system would be limited to business days and whether financial institutions would be prohibited from opening accounts during times of inaccessibility.

Response. FinCEN anticipates that the BO IT system will be available for access 24 hours a day and 7 days a week. When there are planned system outages for regular maintenance activities or period of unexpected system unavailability, FinCEN will provide appropriate notification to users. Questions pertaining to the use of BOI for 2016 CDD rule compliance will be addressed in FinCEN's forthcoming proposed rule to revise 31 CFR 1010.230.

e. Verification of Beneficial Ownership Information

In the preamble to the proposed rule, FinCEN stated that it continues to

review the options available to verify BOI within the legal constraints in the CTA. It also clarified that in the term ''verification,'' as FinCEN uses it in this context, means confirming that the reported BOI submitted to FinCEN is actually associated with a particular individual.

Comments Received. FinCEN received several comments on the issue of verification of the beneficial ownership information it will receive under 31 CFR 1010.380. Commenters argued that FinCEN is required by the CTA to verify information in the BO IT system, and that such verification is necessary to ensure the BOI reported to FinCEN is ''accurate, complete, and highly useful'' consistent with the CTA. Some commenters urged FinCEN itself to verify data in the BOI database, while others suggested that verification should involve coordination with other governmental agencies and that such coordination is required by the CTA. Suggested verification mechanisms included checks against the Consular Consolidated Database maintained by the Department of State, the National Law Enforcement Telecommunications System, the U.S. Postal Service, and Departments of Motor Vehicles. One commenter noted that any verification method should be efficient and not burdensome to businesses.

Some commenters noted the experience of other countries in verifying information in their beneficial ownership registers, and that FinCEN's proposal did not meet the verification requirements set forth by FATF. Others noted that FinCEN's definition of ''verification'' was unduly narrow and should be expanded to include verifying both that identifying information submitted is for an actual person and that the BOI is related to the named reporting company. Multiple commenters argued that verification, by ensuring BOI was accurate and complete, would reduce burden for financial institutions (or concomitantly, that failing to verify BOI would increase burden by imposing additional compliance costs on financial institutions). Commenters also argued that BOI would not be useful for financial institutions without verification. Multiple commenters suggested that FinCEN explore verification using privacy-protected data sharing mechanisms such as a Zero-Knowledge Proof which match certain data elements without requiring any of the parties to exchange or disclose the underlying data.

With respect to the timing of verification, one commenter suggested that cross-checking information should happen at the time an entity is formed and that financial institutions should therefore not have to collect the information but instead access the FinCEN database to assist in customer due diligence. Other commenters suggested that information should be verified upon submission to FinCEN. One commenter noted that FinCEN could increase the usefulness of the database by sanctions screening BOI against OFAC's Specially Designated Nationals and Blocked Persons List and alerting users who access such BOI.

Response. Although verification is not addressed in this rule, FinCEN appreciates the comments on this topic and is carefully considering the suggestions provided. FinCEN agrees that verification is an important part of its overall efforts to ensure that the BOI reported to it is ''accurate, complete, and highly useful'' and continues to assess options to verify BOI taking into consideration practical, legal, and resource challenges.

f. Other IT System Issues

Comments Received. FinCEN received additional comments pertaining to the functionality or use of the BO IT system. Two commenters suggested that FinCEN should make the BO IT system compatible with other countries' databases. Others suggested that FinCEN provide a proof of registration page when a BOI report is successfully filed. Another commenter noted that the proposed rule does not address whether authorized users may make copies of the BOI reports they obtain from the BO IT system. One commenter recommended that FinCEN develop an interactive database which discloses generic BOI database query trends.

Response. FinCEN appreciates these ideas and will take them into consideration as it continues to implement the CTA.

iii. The Proposed BOI Reporting Form

Comments Received. While not the subject of this proposed rule, FinCEN received several comments on the proposed Beneficial Ownership Information Report (BOIR), which is the form that FinCEN will use to collect beneficial ownership information from reporting companies pursuant to 31 CFR 1010.380. Commenters were critical of checkboxes on the proposed BOIR form that would provide a mechanism for reporting companies to indicate when they are unable to obtain certain information about the reporting company's beneficial owners and company applicants. Several of these commenters requested that FinCEN remove all such checkboxes. Two commenters expressed concern with the quality and reliability of BOI if reporting companies are allowed to indicate that they are unable to identify beneficial owners entirely or provide only certain information associated with beneficial owners. One commenter stated that the checkboxes would act as a roadblock to banks' compliance with customer due diligence obligations and principles. One commenter stated that inclusion of the checkboxes supports financial institutions' voluntary use of BOI. One commenter stated that submission of declarations where the reporting company does not know who its beneficial owners are should not be permitted outside exceptional circumstances and that in such circumstances, the reporting company should submit supporting evidence and an explanation why the person is anonymous or their identity is unknown.

Response. As part of its obligations under the Paperwork Reduction Act of 1995 (PRA), FinCEN separately solicited public comment on the proposed BOIR form through a 60-day PRA notice, issued on January 17, 2023.[197] Given that the BOIR form is outside the scope of this rulemaking and was instead the subject of the 60-day PRA notice, FinCEN considered the comments it received on the form as part of its consideration of the comments received in response to the 60-day PRA notice. Pursuant to the PRA, on September 29, 2023, the Department of the Treasury, on behalf of FinCEN, published a 30-day PRA notice, which considered these comments and proposed a revised approach to the BOIR form.[198] OMB approved the proposed BOIR form on November 27, 2023.

iv. Outreach and Guidance

Proposed Rule. FinCEN acknowledged in the proposed rule that implementation of the final rule will require additional engagement with stakeholders to ensure a clear understanding of the Access Rule's requirements, including through guidance and FAQs, help lines, and other communications. In question 29 in the Access NPRM, FinCEN asked what specific issues FinCEN should address via public guidance or FAQs as well as whether there were specific recommendations on engagement with stakeholders to ensure that the authorized recipients—in particular, State, local, and Tribal authorities and small and mid-sized financial

[197] 88 FR 2760 (Jan. 17, 2023).

[198] 88 FR 67443 (Sept. 29, 2023).

institutions—are aware of requirements for access to the BO IT system.

Comments Received. FinCEN received a variety of comments in response to the outreach questions in the Access NPRM. Commenters noted that a Small Entity Compliance Guide and FAQs, available well in advance of any effective date, would be useful for authorized users of the BO IT system. Training videos and step-by-step guides for each type of authorized recipient, including an online tip platform, would also improve CTA effectiveness. Commenters also suggested the importance of having educational materials for foreign requesters available in as many languages as feasible. Those commenters stated that the guidance on foreign access should include examples, templates, forms, and other materials that can streamline the process as much as possible. Several commenters suggested developing guidance and educational materials for financial institutions, Certified Public Accountants, and Secretary of State offices that could be provided to their customers and constituents. One commenter specifically highlighted a variety of national law enforcement and tribal association annual conferences where FinCEN should present and be available to educate participants on access to, and the utility of, the BO IT system. Regarding engagement with potential foreign requesters, one commenter suggested that FinCEN consider discussing access requirements with the key foreign partners of Federal agencies. One commenter recommended that FinCEN use clear font styles and sizes, avoid small footnotes and legalese, and use contrasting colors.

Final Rule. As with the Reporting Rule published on September 30, 2022,[199] FinCEN envisions committing significant resources upon publication of the final Access Rule to prepare for and enable successful implementation. FinCEN anticipates that these resources will be used to conduct outreach, as well as draft and issue guidance, user guides, FAQs, and other educational materials. FinCEN recognizes the need to ensure that reporting companies, authorized users, and other stakeholders have a thorough understanding of the beneficial ownership Reporting and Access Rules and their requirements, both before and after the effective date of the rules. FinCEN also remains mindful of the imperative to minimize burdens on reporting companies, financial institutions, and authorized users while also fulfilling the CTA's directives for establishing an effective reporting and access framework. FinCEN appreciates that outreach and education is an important element of the effort to reduce compliance burdens and enhance the utility of the BO IT system. In addition to its planned outreach and educational efforts, FinCEN continues to track inquiries coming into its Regulatory Support Section and will draw on those inquiries when planning outreach and drafting future guidance and educational materials.

FinCEN notes that 31 U.S.C. 5336(g) requires the Director of FinCEN, in promulgating regulations carrying out the CTA, to reach out to the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the CTA's requirements. FinCEN has engaged in such outreach throughout the Access rulemaking processes. As noted in the Access NPRM, FinCEN conducted more than 30 outreach sessions to solicit input on how best to implement the statutory authorizations and limitations regarding BOI disclosure. Participants included representatives from Federal agencies, state courts, state and local prosecutors' offices, Tribal governments, financial institutions, financial SROs, and government offices that had established BOI databases. Topics discussed included how stakeholders might use BOI, potential IT system features, circumstances in which potential stakeholders might need to re-disseminate BOI, and how different approaches might help further the purposes of the CTA. These conversations helped FinCEN refine its thinking about how to create a useful database for stakeholders while protecting BOI and individual privacy.

FinCEN intends to continue its substantial outreach to stakeholders, including Federal and state law enforcement officials, Indian Tribes, trade groups, and others, to ensure coordinated efforts to provide notice and sufficient guidance to all potential authorized users. FinCEN will also provide guidance materials and training materials for authorized users of the BO IT system.

FinCEN appreciates the suggestions on how to minimize burden to State, local, and Tribal authorities and make the use of the BO IT system as effective as possible. FinCEN currently administers access to the FinCEN Query system and would build on its experience and contacts with law enforcement agencies and others in administering access to and providing training on BOI access.

I. Other Access NPRM Comments

i. Inspector General Complaint Process

Comments received. One commenter stated that the proposed rule lacked any acknowledgement of the user complaint process established in the CTA.[200] The CTA provides that the Inspector General of the Department of the Treasury, in coordination with the Secretary of the Treasury, shall provide public contact information to receive external comments or complaints regarding the beneficial ownership information notification and collection process or regarding the accuracy, completeness, or timeliness of such information. The CTA also requires the Inspector General to make a periodic report to Congress on user complaints and any resulting recommendations to ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.[201]

Response. FinCEN is cognizant of the CTA's requirements with respect to the user complaint process. FinCEN acknowledged Treasury OIG's role in this process in the final beneficial ownership Reporting Rule, noting that the Treasury OIG had established an email inbox (*CorporateTransparency@oig.treas.gov*) to receive such complaints.[202] FinCEN expects that officers and employees of OIG, as officers and employees of the Department of the Treasury, would have access to BOI in the BO IT system for any official duties that require access to information in that system, including for purposes of fulfilling the Treasury OIG's responsibilities under the user complaint process as outlined in the CTA.

ii. Effective Date

Proposed Rule. FinCEN proposed an effective date for the Access Rule of January 1, 2024, to align with the date on which the Reporting Rule at 31 CFR 1010.380 becomes effective.[203] FinCEN explained in the proposed rule that a January 1, 2024, effective date is intended to provide the public and authorized users of BOI with sufficient time to review and prepare for implementation of the rule.[204]

Comments Received. Several commenters expressed concern about the January 1, 2024, effective date. One commenter stated that it is unlikely that FinCEN will be able to promulgate a final access rule by the end of 2023 or

[199] 87 FR at 59548.

[200] 31 U.S.C. 5336(h)(4).

[201] *Id.*

[202] 87 FR 59498, 59508.

[203] 87 FR 77404, 77425.

[204] *Id.*

that the related BO IT system will be built, tested, and operational by the end of 2023. The commenter noted that it is unlikely that authorized users will have met the regulatory obligations that are prerequisites to their ability to access BOI by that date. The commenter suggested that FinCEN should set out a manageable, realistic timeline extending past January 1, 2024, and communicate this timeline to all stakeholders. Another commenter expressed concern about a ''go live'' date of January 1, 2024,[205] and the ability of FinCEN and financial institutions to make the necessary implementation preparations by that date given resource constraints. This commenter suggested that FinCEN delay the effective date of the beneficial ownership rules and consider a staged implementation approach. Finally, another commenter expressed concern that the effective date of FinCEN's beneficial ownership rules will coincide with a regulatory action by the Consumer Financial Protection Bureau, which would overwhelm financial institution compliance staff.

Final Rule. This final rule will be effective February 20, 2024. However, the effective date of the Reporting Rule remains January 1, 2024, and FinCEN continues to target January 1, 2024, for the release of the BO IT system. Given the publication date of this final rule in advance of January 1, 2024, and FinCEN's phased implementation approach outlined in section II.D.iii, FinCEN believes authorized users will have sufficient advance notice of the requirements of this rule. FinCEN appreciates these comments and pragmatic suggestions and will make adjustments to its implementation plans if circumstances warrant.

With respect to concerns about potential overlap with another significant regulatory action, FinCEN notes that under the Reporting Rule, existing reporting companies will have one year (until January 1, 2025) to file their initial beneficial ownership reports. FinCEN also notes that there is no requirement in the rule that authorized users of the BO IT system access the system immediately upon the effective date of this rule. The final CTA-related rulemaking to revise FinCEN's customer due diligence rule must occur no later than one year after the effective date of the Reporting Rule, or January 1, 2025, and this process will likely extend into 2024.[206]

iii. Budget and Staffing

Proposed Rule. The preamble of the proposed rule included a discussion of FinCEN's resource constraints with respect to implementation of the CTA.[207] FinCEN noted in that discussion that without the availability of additional appropriated funds to support this project and other mission-critical services, FinCEN may need to identify trade-offs, including with respect to guidance and outreach activities, and the staged access by different authorized users to the database.

Comments Received. One commenter made note of this discussion in the proposed rule and requested a fuller explanation of the staged access approach. This same commenter also observed that FinCEN would likely receive an exponentially greater number of inquiries and requests for technical support from filers and users of the BO IT system than it currently handles and that FinCEN will need to hire and train hundreds of support personnel in the next twelve months. Another asked what ''staged access'' means and noted that the final rule should address specifics about this and how it will impact community banks. Finally, one commenter suggested that FinCEN address its resource constraints by considering a professional internship program to address short term staffing needs to support CTA implementation.

Response. As previewed in the proposed rule, FinCEN has undertaken efforts to identify options to implement the requirements of the CTA within its current resources. One of several options to manage implementation in the current resource-constrained environment is to implement a phased rollout of access to the BO IT system—meaning that different groups of authorized users would obtain access to the system at different times in a set timeframe. As discussed further in section II.D.iii, to manage smoothly the draw on resources that this process will demand, FinCEN will take a phased approach to providing access to the BO IT system.

FinCEN continues to move expeditiously to put in place the necessary infrastructure to implement the CTA and to provide adequate guidance and support to reporting companies and authorized users of the BO IT system. To this end, FinCEN is currently working to implement and staff a dedicated beneficial ownership contact center to field both substantive and IT-related inquiries. FinCEN has also hired additional full-time staff who will be assigned to support the beneficial ownership portfolio and has procured additional contractor support for FinCEN's CTA implementation efforts. Any changes to FinCEN's plans to implement the CTA will be clearly communicated to the public and stakeholders.

IV. Severability

If any of the provisions of this rule, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

V. Regulatory Analysis

This section contains the final regulatory impact analysis (RIA) for this final rule; it estimates the anticipated cost of the BOI access requirements to the public, among other items. The final rule imposes requirements on domestic agencies, foreign requesters, and financial institutions when they elect to access FinCEN's BOI database. The requirements and the associated costs vary depending on whether the affected entity is a domestic agency, foreign requester, or financial institution. To estimate costs associated with accessing beneficial ownership information in accordance with the final rule, FinCEN assigns an hourly burden to each requirement in the rule and uses an estimated wage rate to determine a per-entity expected cost of following that requirement. Where appropriate, FinCEN varies the hourly burden and wage according to the entity type and the size of the entity. To approximate an upper bound of aggregate expected costs, FinCEN multiplies the per entity costs computed as described by the total number of expected affected entities. These expected costs do not represent fees that affected entities need to pay to access beneficial ownership information, as no such fees are imposed by the final rule. Instead, the costs as estimated below reflect the dollar value FinCEN assigned, where possible, to the estimated time burden associated with the rule's requirements.

Many of the rule's benefits are not as readily quantifiable, in part because the rule sets forth access requirements for obtaining BOI that is not yet available,[208] and because expected use (and hence benefits) by at least some

[205] The commenter actually referred to January 1, 2025, but FinCEN believes this was a typographical error intended to refer to January 1, 2024.

[206] CTA, section 6304(d).

[207] 87 FR 77404, 77408.

[208] BOI will be collected pursuant to 31 CFR 1010.380, finalized under the Reporting Rule, which will be effective January 1, 2024.

parties cannot be reliably estimated before the CTA's required revision to the 2016 CDD Rule has been finalized.[209] Other important expected benefits of the rule are not reliably quantifiable because an attempt to isolate the incremental benefits uniquely attributable to this rule would be inherently speculative, and even if such discrete increments could be identified, assigning a dollar value to items such as national security or public faith in the integrity of the U.S. financial system is impracticable. The rule, nevertheless, is generally expected to improve investigations by law enforcement and assist other authorized users in a variety of activities. To the extent that this increased efficiency in information gathering can be proxied by reduced search costs,[210] FinCEN quantified these expected benefits to certain affected parties in the NPRM and in the RIA below. The potential improvements in the breadth, scope, and efficiency of investigations and other activities by authorized users should in turn strengthen national security, enhance financial system transparency and integrity, and align the United States more closely with international AML/CFT standards. The RIA includes a discussion of these qualitative benefits and quantifiable efficiency gains which may accrue to domestic agencies alongside the quantitative discussion of costs.

FinCEN has made efforts to assess the expected costs and benefits of the rule realistically, but notes that the rule relates to access to newly required information that is not yet available; thus, the estimates are based on several assumptions where FinCEN lacks certain direct supporting data. FinCEN further notes that the analysis of expected costs and benefits, as previewed in the NPRM and discussed below, is performed over annual increments that assume a fully operational framework, one in which all potentially affected parties access a database that includes BOI reports from all reporting companies that are in existence as of the Reporting Rule's effective date.[211] This framing is not expected to specifically depict the costs or benefits corresponding to the first, or subsequent, calendar year(s) following the adoption of the final rule, given the phased nature of related regulatory implementation.[212] However, FinCEN is utilizing this approach because it imposes the fewest extraneous assumptions about how phased regulatory implementation impacts the expected economic effects.

FinCEN acknowledges that during initial implementation, while entities begin to gain access to BOI and initial BOI reports are populated in the database, the anticipated aggregate costs and benefits of the rule may be lower that the estimates presented below. FinCEN further acknowledges that during this period, the balance of costs to benefits may also differ such that the relative economic value (benefits scaled by costs) of the rule as discussed below could be overestimated. However, as the methodological approach of the RIA, in the NPRM and below, conservatively ascribes no quantifiable benefits to financial institutions as a subgroup of authorized users while nevertheless incorporating an estimated full cost burden of access to them, it is unlikely that the aggregate net benefits in the RIA are overstated because in practice the benefit to participating financial institutions is expected to be nonzero.

FinCEN has described its cost estimates in detail to inform the public about the rule and its impact and has analyzed the final rule as required under Executive Orders (E.O.s) 12866, 13563, and 14094, the Regulatory Flexibility Act, the Unfunded Mandates Reform Act, and the Paperwork Reduction Act. FinCEN's analysis assumes the baseline scenario is the current regulatory framework, in which there is no general Federal beneficial ownership information disclosure requirement and therefore no access to this information. Thus, any estimated costs and benefits as a result of the rule are new relative to maintaining the current framework. It has been determined that this regulation is a ''significant regulatory action'' under section 3(f)(1) of E.O. 12866, as amended. Pursuant to the Regulatory Flexibility Act, FinCEN's analysis concluded that the rule will have a significant economic impact on a substantial number of small entities. Furthermore, pursuant to the Unfunded Mandates Reform Act, FinCEN concluded that the rule will result in an expenditure of $177 million or more annually by State, local, and Tribal governments or by the private sector.[213]

Because the rule is a significant regulatory action under section 3(f)(1) of E.O. 12866, FinCEN prepared and made public a preliminary RIA, along with an Initial Regulatory Flexibility Analysis (IRFA) pursuant to the Regulatory Flexibility Act, on December 16, 2022.[214] FinCEN received multiple comments about the RIA and the IRFA, which are addressed in this section. FinCEN has incorporated additional data points, additional cost considerations, and responses to other points raised by commenters into the final RIA, which is published in its entirety following a narrative response to the comments.

A. Executive Orders 12866, 13563, and 14094

E.O.s 12866, 13563, and 14094 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. It has been determined that this regulation is a significant regulatory action under section 3(f)(1) of E.O. 12866, as amended. Accordingly, this final rule has been reviewed by the Office of Management and Budget (OMB).

i. Discussion of Comments to the RIA

FinCEN received several comments related to the Access NPRM RIA. The majority of these comments focused on the estimated costs for financial institutions to comply with the proposed access requirements. A smaller group of comments raised points on other aspects of the NPRM's RIA, primarily on the cost analysis.

[209] FinCEN would need to know how access to BOI under the rule will impact financial institutions' customer due diligence obligations, which FinCEN will not be able to assess until its revises the 2016 CDD Rule. Thus, FinCEN will instead assess the value that BOI access has to financial institutions in the regulatory analysis of FinCEN's upcoming revisions to the 2016 CDD Rule. Throughout the analysis, FinCEN notes issues that may be affected by the required revision to the CDD rule.

[210] In this analysis, ''search cost'' refers to the cost associated with obtaining beneficial ownership information. *See.* discussion in section V.A.ii.g. about monetizing the time component of search costs.

[211] The Reporting Rule requires such entities to report BOI within one year of the effective date.

[212] The phased implementation is discussed in section II.D.iii. of the preamble.

[213] The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of $100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in 1995, the year of the Unfunded Mandates Reform Act, as 71.823, and as 127.224 in 2022. *See* U.S. Bureau of Economic Analysis, ''Table 1.1.9. Implicit Price Deflators for Gross Domestic Product'' (accessed Friday, June 2, 2023). Thus, the inflation adjusted estimate for $100 million is $127.224/71.823 \times 100 = \$177$ million.

[214] *See* 87 FR 77426–77454.

a. Comments Related to Costs to Financial Institutions

Comments generally stated that the access requirements will be burdensome for financial institutions. Time and resources will be required to adjust to the rule's requirements for financial institutions to access BOI. In particular, a comment noted that compliance costs will include training relevant staff, changing policies and procedures, enhancing information security, and educating senior management and customers, and that these costs are significant and should not be overlooked or underestimated. Comments also stated that banks would need to hire or reallocate personnel if the rule is implemented as proposed. FinCEN generally agrees with comments observing that time and resources that will be required for financial institutions to adjust to the rule's requirements. FinCEN aims in this analysis to accurately estimate the burden of implementing requirements to access BOI.

Comments also discussed the estimates in the NPRM for financial institution costs. One comment stated that the estimates were generally inaccurate and were not reasonable. Comments provided specific feedback on the following financial institution cost estimates:

Administrative, Technical, and Physical Safeguards. A few commenters stated that the NPRM's estimate of the costs for financial institutions to establish administrative and physical safeguards to protect accessed BOI was far too low—one comment called it ''exponentially off''—and needed to be revisited. One commenter stated that financial institutions would need to spend vastly more than estimated to develop and implement new systems, with ongoing costs that would include training on how to treat BOI from FinCEN differently than other BOI a financial institution may collect. The commenter estimated it would cost between $1 million and $3 million to develop new systems or adapt existing systems to comply with the proposed rule and to prevent BOI obtained from FinCEN from ''flowing'' into other financial institution monitoring systems or to affiliates outside of the United States. The commenter notes this cost could double if financial institutions are only able to access BOI on a manual, and not automated, basis.

Relatedly, a commenter stated that FinCEN significantly underestimates the costs financial institutions will incur to update processes and IT systems to comply with the proposed rule. The commenter stated that financial institutions would need to ''reengineer'' their existing processes and technology to comply with the limitations on sharing outside of the United States and to segregate BOI from FinCEN from standard customer documentation. The commenter did not provide a cost estimate. A commenter reminded FinCEN to be mindful that modifying existing procedures to accommodate requests and other related issues will take time and resources and requested FinCEN write the final rule in a clear and straightforward manner.

Finally, a commenter expressed concern that BOI reported to FinCEN will not be accurate or reliable, forcing banks to shoulder the majority of the burden in implementing the CTA by acting as ''regulatory quality control.'' Commenters stated that if financial institutions are required to rely on BOI reported to FinCEN, the quality and reliability of customer risk profiles would be undermined unless the financial institutions maintain duplicate systems of BOI financial institutions receive directly from their customers and identify discrepancies between the two data sources.

In response to these comments, FinCEN increased the burden estimate of financial institutions establishing administrative and physical safeguards. FinCEN retains its estimate for IT costs.

As explained in section III.H.ii.e. although this rule does not address the verification of BOI reported to FinCEN, FinCEN agrees that verification is an important part of its overall efforts to ensure that the BOI reported is ''accurate, complete, and highly useful'' and continues to assess options to verify BOI taking into consideration practical, legal, and resource challenges. Regardless of exactly how FinCEN ultimately addresses verification, FinCEN does not anticipate that the final rule will require financial institutions to need to separate BOI obtained from FinCEN and BOI obtained from customers under their existing customer due diligence processes, as some commenters suggested would be necessary if FinCEN retained a strict prohibition on financial institutions using or storing BOI obtained from FinCEN outside the United States; therefore, FinCEN is not estimating the burden for financial institutions to reallocate resources or create duplicative systems to separately store BOI obtained from FinCEN. FinCEN also notes that financial institutions will have the ability to submit multiple search requests simultaneously through an automated process, lessening costs associated with manual searches by financial institutions.

Customer Consent. Under the rule, financial institutions must obtain and document the consent of a reporting company customer prior to accessing BOI about that customer. Multiple commenters stated that FinCEN's estimate for the burden of obtaining this customer consent was too low and not reasonable; one comment called the estimate ''patently absurd.'' Commenters noted that this process would involve multiple steps, including identifying all applicable forms, drafting and reviewing appropriate consent language, and updating or establishing new processes and procedures. A commenter noted that updating online forms, which is the format that many banks use for account opening documents, requires technical development work and testing, among other tasks. The commenter stated that small banks will require less than the estimated 10 hours, but the majority of institutions will require significantly more time to implement the requirement. Another commenter stated that the NPRM estimate disregarded the time and attention necessary to devote on an ongoing basis to meeting this requirement. Another commenter noted that costs could also arise if a customer does not give consent or revokes consent, because the financial institution would be required to expend resources to monitor on an ongoing basis which customers have consented. A commenter estimated it would take 10,000 hours of personnel time, and potentially 100,000 hours in the largest institutions, to update account opening policies, procedures, processes, and forms to include the customer consent requirement. A commenter noted that large banks will be able to absorb these costs but predicted small and mid-sized banks will turn to service providers.

FinCEN changed the burden estimate for obtaining customer consent based on these comments. FinCEN increased the initial burden for updating forms and procedures to account for this requirement and considered the multiple steps this will require based on comments. FinCEN also added an ongoing maintenance cost for this requirement to account for the necessity to change or update procedures. FinCEN assesses, however, that this ongoing maintenance cost is relatively minimal. FinCEN is not estimating costs related to obtaining customer consent more than once, but will assess if such a cost should be considered in the future CDD Rule revision. FinCEN is not assessing a cost related to a customer not providing or revoking consent. FinCEN

believes that the tracking of such information would be included in the existing cost estimates related to customer consent. Additionally, FinCEN expects that few customers will not provide consent given that providing BOI and general consent for financial institutions to access information from other sources are both routine requirements that customers anticipate and accept.

Customer consent was the focus of one of the regulatory alternatives analyzed in the NPRM. Under this alternative, FinCEN, rather than financial institutions, would have obtained the required consent from reporting companies before financial institutions could access those companies' BOI.[215] A commenter stated that the cost savings to financial institutions would be much larger in practice than FinCEN estimated in the NPRM's alternative analysis, and that FinCEN's reason for rejecting this alternative—that financial institutions are better positioned to obtain consent (and track consent revocation) given their direct customer relationships and ability to leverage existing onboarding and account maintenance processes—does not make sense. FinCEN retains this alternative scenario but notes that the related cost savings estimate has changed given the changes to the financial institution burden estimates throughout the analysis.

FinCEN, however, rejects the commenter's claim that the NPRM's reasoning was nonsensical. As explained in section III.E.ii.d above, FinCEN remains convinced that financial institutions are better situated than FinCEN to obtain and document a reporting company's consent given financial institutions' direct customer relationships. By contrast, FinCEN believes considerable delay could result if it were itself to take on direct management of the consent process. For this reason and as further explained in section III.E.ii.d above, FinCEN declines to adopt the alternative of FinCEN collecting customer consent.

Training. A few commenters stated that the estimated cost of training financial institution employees who will access BOI under the rule was underestimated. A commenter stated that the NPRM estimates did not account for lost productivity to the financial institution while employees are attending training sessions. However, FinCEN notes the use of a wage rate for financial institution employees implicitly accounts for lost productivity to the institution of employees working on the rule's requirements rather than other items.

Commenters stated that in addition to those directly accessing FinCEN's BOI database, all employees that interact with BOI through account opening or customer interactions would also need to participate in training. This training would most likely not be centralized and would be spread over departments and branches in financial institutions. A commenter stated that the increased cost due to training contradicts Congress' intent for the CTA to minimize burden on financial institutions. A commenter stated this burden could be alleviated by keeping the registration and requirements simple. A commenter also stated that training would be necessary to inform financial institution employees on how to treat BOI obtained from FinCEN separately from BOI obtained through other means.

FinCEN has concluded that these comments overstate the burden imposed by the rule. The final rule (31 CFR 1010.955(d)(2)(ii)) requires financial institutions to develop and implement administrative, technical, and physical safeguards reasonably designed to protect BOI as a precondition for receiving BOI. But, as explained in section III.E.ii.c, FinCEN is authorizing financial institutions to satisfy this requirement by applying security and information handling procedures under section 501 of Gramm-Leach-Bliley Act and applicable regulations for nonpublic customer personal information to BOI. The Federal functional regulators have implemented the requirements of the Gramm-Leach-Bliley Act in different ways, but they all generally reference providing related training.[216] Thus, FinCEN does not expect BOI training to be unduly burdensome because training to protect nonpublic customer personal information is already part of a financial institutions' Gramm-Leach-Bliley Act requirements.[217] As explained in section III.E.ii.c, FinCEN thus anticipates that financial institutions will determine how best to train personnel who will have access to BOI but who will not interact with the BO IT system.

Nonetheless, financial institutions will need to provide some training to ensure that relevant financial institution personnel access BOI in a manner consistent with this rule. As part of estimating the cost of this training, the NPRM included an estimate of the number of employees that would access BOI at both small and large financial institutions. Commenters stated that these estimates were too low and depended on many assumptions, including an assumption that the connection to the BO IT system is fast and easy for the user with minimal manual intervention. Commenters proposed alternative estimates. A commenter assumed that banks would have between 5 and 15 percent of employees involved in customer due diligence processes (the percentage varied depending on financial institution size), and used December 2021 FDIC bank data to estimate that 3,586 small banks will have between 1.5 to 10 people, and an average of 4 to 5 people, performing customer due diligence, and 1,263 large banks will have between 5 and 5,000 people, and an average of 26 to 27 people, performing customer due diligence. Another comment from a bank industry representative stated that a member estimated it has hired 50 full-time equivalent employees to address the existing CDD Rule requirements, and additional employees would be needed for the proposed rule. Similarly, another commenter estimated that some large banks will need to hire up to 40 or 50 additional staff to manage the technical process associated with BOI. A financial institution comment stated that they would like to have at least 20 or 25 staff members (out of 40 full-time staff) available to access this data, which would be a minimum of 3 staff per location.

FinCEN appreciates the estimates provided by commenters and has incorporated changes to the analysis based on these comments. However, FinCEN notes that the assumption that connection to the BO IT system is fast and easy for the user is in line with FinCEN's expectations. Financial institutions will also not need to access the BO IT system manually if they access via API.

Requests for BOI and Related Certification Costs. Commenters raised questions about the assumptions related to the NPRM's estimate of the number of annual requests for BOI from financial institutions. The NPRM included this estimate to calculate the cost burden of the proposed rule's requirement that financial institutions certify that each request for BOI meets certain requirements. A commenter stated that FinCEN's reliance on

[215] *See* 87 FR 77427–77428.

[216] *See generally* Interagency Guidelines, *supra* note 91, p. 95.

[217] As discussed, the final rule does not require financial institutions to separate BOI obtained from FinCEN and BOI obtained from customers under their existing customer due diligence processes. Thus, training on how to segregate BOI obtained from different sources should not be necessary, and FinCEN accordingly does not need to account for the costs of such training.

estimates of annual new entity accounts from the 2016 CDD Rule was wrong because: (1) the CDD Rule requires the collection and verification of BOI for every new customer and every existing customer opening a new account; (2) the definition of legal entity customer under the CDD Rule is broader than the definition of reporting company under the CTA; and (3) the use of an average for a diverse set of financial institutions may not be appropriate. Another commenter questioned the assumption that financial institutions will seek to access BOI every time a new legal entity customer that qualifies as a reporting company opens a new account because another part of the NPRM stated that the proposed rule would not impose an obligation to access BOI. Another commenter claimed that most banks expect that the total annual costs of certifying their compliance when making BOI requests will be significantly higher than FinCEN's estimate, but did not provide an alternative cost estimate.

FinCEN retains the methodology used in the NPRM, which results in an estimated range of 5 million to 6 million annual requests for BOI from financial institutions. FinCEN proposed the upper bound of 6 million based on the 2016 CDD Rule's regulatory analysis. The comments identified several reasons why the actual number of requests may differ, but FinCEN maintains it is appropriate to provide an upper bound estimate based on the CDD Rule. FinCEN agrees with commenters that this final rule does not impose an obligation to access BOI. However, FinCEN uses this upper bound estimate to illustrate potential costs to financial institutions if the financial institutions access BOI at the rate estimated in the current CDD Rule. FinCEN also acknowledges the point raised by another commenter regarding differences between the CDD Rule and Reporting Rule. If the future CDD Rule revision includes a different estimate for the number of annual requests for BOI per year, FinCEN will note that change, and its effect on financial institution costs, in that revision.

Other Financial Institution Costs. Commenters recommended that audit and legal review costs to financial institutions be incorporated into the RIA. There are no audit requirements for financial institutions in the rule; however, FinCEN understands that in practice financial institution audits will include reviewing the safeguards implemented to protect accessed BOI. FinCEN clarifies in the analysis that the administrative safeguards burden estimate includes audit and legal review of such safeguards, and increases the burden estimate accordingly. A commenter also stated that the costs to financial institutions should be presented on a per account basis, and that the amount per account would be a few hours of an operations specialist work (at $50 per hour rate) to access BOI, corroborate it, address any remediation of errors in the BOI, and supervise the process, totaling $100–$200 per account opening in maintenance fees. FinCEN believes that the per institution cost estimate methodology used in the NPRM is appropriate and retains it here. The per account cost estimate would not capture fixed costs of establishing new procedures, and other requirements, that are necessary at the institutional level to comply with the rule.

A commenter noted that complying with the rule's security and confidentiality requirements for BOI access will require significant time and resources for small businesses (presumably meaning small financial institutions), and that this will put such small businesses at a disadvantage compared to large companies with more resources. FinCEN considers the cost of the rule to small financial institutions in the Regulatory Flexibility Act section of the analysis, below. A commenter requested that FinCEN publish Small Entity Compliance Guides and FAQs to assist such entities with compliance. FinCEN anticipates issuing a Small Entity Compliance Guide pursuant to section 212 of Small Business Regulatory Enforcement Fairness Act (SBREFA) to assist small entities in complying with the BOI access requirements.

b. Comments Related to Government and Reporting Company Costs

A handful of commenters raised other cost issues outside of those that pertained specifically to financial institutions. Regarding other estimates in the NPRM's RIA, one commenter stated that the cost estimate for State, local, and Tribal law enforcement agencies failed to include the number of hours such agencies would spend on the proposed written justification requirement. FinCEN did consider this burden in the NPRM and estimated that submitting a request to FinCEN for BOI would take one employee approximately 15 minutes, or 0.25 hours, per request. For State, local, and Tribal agencies, FinCEN estimated an additional 20 to 30 hours of burden per request to obtain a court authorization in the NPRM. Therefore, State, local, and Tribal requests were estimated to have 20.25 to 30.25 hours of burden per request because of the court authorization and written certification requirements.[218] FinCEN changed this estimate in the analysis given changes to the final rule's requirements.[219]

A commenter stated that the NPRM RIA did not address significant burdens on reporting companies that would have to provide BOI to both financial institutions and FinCEN. The commenter stated that such a burden would be duplicative and unnecessary. FinCEN expects that consideration of such burden will be included in the future CDD Rule revision, which will discuss the current requirements that financial institutions identify and verify the beneficial ownership information of their legal entity customers. Finally, a commenter agreed with the estimates of FinCEN's costs in the NPRM, noting the estimates appeared reasonable.

c. Comments Related to Benefits

A few commenters stated that access to BOI would not have a benefit for financial institutions. These commenters stated that the requirements would impose additional compliance costs without enhancing customer due diligence processes and could result in duplicative processes. A commenter stated this would result in an inefficient allocation of resources across AML compliance programs. Another commenter stated that resources would be reallocated away from risk-based activities that more effectively mitigate illicit finance risks.

As in the NPRM, FinCEN is not attempting to estimate the benefits of this rule to financial institutions. To do so, FinCEN would need to know how access to BOI under the rule will impact financial institutions' customer due diligence obligations, which FinCEN will not be able to assess until its revises the 2016 CDD Rule. Thus, FinCEN will instead assess the value that BOI access has to financial institutions in the regulatory analysis of FinCEN's upcoming revisions to the 2016 CDD Rule.[220] As explained in section II.B, mandatory revisions to the 2016 CDD Rule include: (1) bringing the rule into conformity with the AML Act as a whole, including the CTA; (2) accounting for financial institutions' access to BOI reported to FinCEN ''in order to confirm the beneficial ownership information provided directly to'' financial institutions for AML/CFT and customer due diligence purposes; and (3) reducing unnecessary

[218] FinCEN clarifies that this requirement is a certification and not a justification.

[219] 31 CFR 1010.955(d)(1)(ii)(B)(2).

[220] CTA, Section 6403(d)(1).

or duplicative burdens on financial institutions and legal entity customers.[221]

d. Comments on Other Topics

A commenter recommended that FinCEN require secretaries of state and similar offices to incorporate collection of BOI into their registration processes, and then submit this information to FinCEN. The commenter noted that while this option was explored and rejected in the Reporting Rule, it could possibly be implemented in the long term and would minimize burden. As noted in the Reporting Rule, FinCEN rejected this alternative in part due to concerns raised by comments from several State authorities.[222] FinCEN will continue to explore other avenues to coordinate with secretaries of state and similar offices on beneficial ownership matters and to minimize burden.

ii. Final Regulatory Impact Analysis

a. Overview of the RIA

The RIA begins with a summary of the rationale for the final rule, three regulatory alternatives to the final rule, and findings from the cost and benefit analysis (sections (b)–(d)). Section (e) describes the type and number of entities expected to be affected by the rule. Section (f) provides a detailed cost analysis (including discussions of each requirement's quantifiable costs) that considers costs to domestic agencies (including SROs), foreign requesters, financial institutions, and FinCEN. Section (g) is a detailed discussion of benefits. Section (h) summarizes the overall impact of the quantifiable portions of the rule.

Changes to the analysis or assumptions are clearly specified, as well as references to comments that are incorporated into the RIA. In the course of this discussion, FinCEN describes its estimates, along with any non-quantifiable costs and benefits.[223] In response to comments, FinCEN has made the following changes to its estimates: increased the number of SROs that may access BOI; increased the hourly burden for financial institutions to establish administrative and physical safeguards by 200 percent; increased the hourly burden for financial institutions to obtain and document customer consent by 400–600 percent in year 1 [224] and an additional 10 to 20 hours in subsequent years; [225] and increased the expected number of financial institution employees requiring training to 4 to 5 for small financial institutions and 25 to 30 for large financial institutions. FinCEN also decreased the hourly burden estimate for written certification of requests by State, local, and Tribal law enforcement agencies, and described additional requirements for financial institutions, consistent with changes made to this requirement in the final rule. FinCEN also made changes to update data, underlying sources, and estimates with more recent information, if available.

b. Rationale for the Final Rule

This rule is necessary to comply with and implement the CTA. As described in section I, this rule is consistent with the CTA's statutory mandate that FinCEN issue regulations regarding access to beneficial ownership information. Specifically, the final rule implements the provisions in the CTA, codified at 31 U.S.C. 5336(c), that authorize FinCEN to disclose identifying information associated with reporting companies, their beneficial owners, and their company applicants (together, BOI) to certain recipients.

c. Discussion of Regulatory Alternatives to the Final Rule

The rule is statutorily mandated, and therefore FinCEN has limited ability to implement alternatives. However, FinCEN considered certain significant alternatives in the NPRM that were available under the statute. FinCEN replicated some of those alternatives here, with adjustments for clarity and for incorporated changes to the RIA, and added another alternative. The sources and analysis underlying the burden and cost estimates cited in these alternatives are explained in the RIA.

1. Change Customer Consent Requirement

FinCEN considered altering the customer consent requirement for financial institutions. Under the final rule, financial institutions are required to obtain and document customer consent once for a given customer. FinCEN considered an alternative approach in which FinCEN would directly obtain the reporting company's consent. Under this scenario, financial institutions would not need to spend time and resources on drafting or modifying customer consent forms, ensuring legal compliance, and testing the forms.[226] Using an hourly wage estimate of $106 per hour for financial institutions, FinCEN estimates this would result in a savings per financial institution of approximately $5,300 to $7,420 in year 1 and $1,060 to $2,120 in subsequent years. FinCEN estimates an aggregate savings of $83.3 to $116.6 million in year 1 and $16.7 to $33.3 million in subsequent years. To estimate the potential range of aggregate savings under this scenario, FinCEN multiplies the respective estimates of yearly savings by the number of financial institutions (*e.g.,* $7,420 per institution × 15,716 financial institutions = $116,612,720, to estimate the upper bound). The cost savings for small financial institutions under this scenario would be approximately $72.6 million ($5,300 per institution × 13,699 small financial institutions = $72,604,700), assuming the lower bound of the estimated time burden applies. Though this alternative results in a savings to financial institutions, including small entities, FinCEN believes that financial institutions are better positioned to obtain consent—and to track consent revocation—given their direct customer relationships and ability to leverage existing onboarding and account maintenance processes, as also discussed in sections III.E.ii.d and V.A.i.a above. Therefore, FinCEN decided not to adopt this alternative.

2. Impose Court Authorization Requirement on Federal Agencies

Another alternative extends the requirement that State, local, and Tribal law enforcement agencies provide a court authorization with each BOI request to 201 Federal agencies. FinCEN estimates that requests submitted by State, local, and Tribal law enforcement agencies have an additional 8 to 10 hours of burden owing to an additional requirement that a court of competent jurisdiction, including any officer of such a court, authorizes the agency to seek the information in a criminal or civil investigation. Therefore, FinCEN applies this additional 8 to 10 hours of burden per BOI request to the estimated BOI requests submitted by Federal

[221] CTA, Section 6403(d)(1)(A)–(C).

[222] 87 FR 59559 (Sept. 30, 2022).

[223] Throughout the analysis, FinCEN rounds estimates for entity counts to the nearest whole number, and any wage and growth estimates to the nearest 1 or 2 decimal places. Calculations may not be precise due to rounding, but FinCEN expects this rounding method produces no meaningful difference in the magnitude of FinCEN's estimates or conclusions.

[224] As discussed in section V above, Year 1 in this analysis is the first year in which all potentially affected parties access a database that includes BOI reports from reporting companies that are in existence as of the Reporting Rule's effective date.

[225] Subsequent years (sometimes referred to as ''Years 2+'') in this analysis are the years after the first year in which all potentially affected parties access a database that includes BOI reports from reporting companies that are in existence as of the Reporting Rule's effective date.

[226] FinCEN expects this process to require approximately 50 to 70 hours in year 1 and 10 to 20 hours in subsequent years for ongoing forms maintenance.

agencies and by State regulators. Using FinCEN's internal BSA request data as a proxy, FinCEN anticipates that Federal agencies could submit as many as approximately 2 million total BOI requests annually.[227] Using an hourly wage estimate of $110 per hour for Federal employees, this requirement would result in additional aggregate annual costs in the first year between approximately $1.76 and $2.2 billion ((2 million Federal requests × 8 hours × $110 per hour = $1.76 billion) and (2 million Federal requests × 10 hours × $110 per hour = $2.2 billion)) and between $1.32 billion and $1.76 billion in subsequent years ((2 million Federal requests × 6 hours × $110 per hour = $1.32 billion) and (2 million Federal requests × 8 hours × $110 per hour = $1.76 billion)). This alternative could minimize the potential for broad or non-specific searches by any agency not currently subject to the requirement because of the higher initial barrier to accessing the data. However, FinCEN believes that imposing this requirement on authorized recipients for whom such a requirement is not statutorily mandated could lead to unnecessary delays for Federal agencies in obtaining BOI and impose unjustified burdens. For these reasons, FinCEN decided not to adopt this alternative.

3. Require Court Order for State, Local, and Tribal Law Enforcement Requests

This alternative would require State, local, and Tribal law enforcement agencies to provide a copy of a court order for each BOI request, which was required in the proposed rule. In the NPRM RIA, FinCEN estimated that State, local, and Tribal law enforcement agencies would have a per request hourly burden between 20 to 30 hours to obtain a court order for each BOI request. Considering comments received, FinCEN changed this requirement in the final rule. The final rule requires that State, local, and Tribal law enforcement agencies obtain authorization from a court of competent jurisdiction to request BOI. FinCEN estimates that State, local, and Tribal law enforcement agencies will have a per request hourly burden of 8 to 10 hours in year 1 and 6 to 8 hours in subsequent years to obtain a court authorization. Thus, in rejecting the alternative proposed in the NPRM, FinCEN estimates a reduction in hourly burden per request between 12 to 20 hours in year 1 and 14 to 22 hours in subsequent years. Using FinCEN's internal BSA request data as a proxy, FinCEN anticipates that State, local, and Tribal law enforcement agencies will submit between 1 and 23,000 BOI requests per agency and, in total, as many as approximately 200,000 BOI requests annually. Using an hourly wage estimate of $80 per hour for State, local, and Tribal agency employees, FinCEN estimates adopting this alternative would result in a range of additional costs per State, local, and Tribal law enforcement agency of approximately $960 to $36.8 million in year 1 ((1 request × 12 hours × $80 per hour = $960) and (23,000 × 20 hours × $80 per hour = $36.8 million)) and $1,120 to $40.48 million in subsequent years ((1 request × 14 hours × $80 per hour = $1,120) and (23,000 × 22 hours × $80 per hour = $40.48 million)). In total, adopting this alternative would have resulted in additional aggregate annual costs in the first year between approximately $192 and $320 million ((200,000 requests × 12 hours × $80 per hour = $192 million) and (200,000 × 20 hours × $80 per hour = $320 million)) and between $224 million and $352 million in subsequent years ((200,000 requests × 14 hours × $80 per hour = $224 million) and (200,000 × 22 hours × $80 per hour = $352 million)). Given the concerns raised by commenters and the reasons outlined in section III.C.ii, FinCEN decided not to adopt this alternative, which results in a burden reduction to State, local, and Tribal law enforcement agencies.

d. Summary of Findings

1. Costs

The cost analysis estimates costs to domestic agencies (including SROs), foreign requesters, financial institutions, and FinCEN. Each of the affected entities will have costs associated with the rule if it elects to access FinCEN BOI. The costs vary based on the access procedures for the authorized recipients. The rule requires different access procedures for domestic agencies, foreign requesters, and financial institutions. Whether the costs of these requirements are one-time, ongoing, or recurring, and whether the costs accrue on a per recipient or per request basis varies from requirement to requirement. Additionally, some requirements are administrative and involve the creation of documents, while others involve IT.

The estimated average per agency cost in year 1 is between $2,888 and $10.1 million per Federal agency, between $2,100 and $.5 million per State and local regulator, between $2,740 and $18.9 million per State, local, and Tribal law enforcement agency, and between $2,783 to $662,500 per SRO. The estimated average per agency cost each year after the first year is between $1,238 and $10 million per Federal agency, between $900 and $.5 million per State and local regulator, between $1,380 and $15.2 million per State, local, and Tribal law enforcement agency, and between $1,193 to $662,500 per SRO. The total estimated aggregate cost to domestic agencies in year 1 is between $190.1 million and $260.4 million, and then between $157.5 million and $197.4 million each year thereafter.

FinCEN is unable to estimate aggregate costs on foreign requesters given the lack of data on the number of foreign requesters that may access BOI, but FinCEN provides partial cost estimates of the requirements on a foreign requester. FinCEN's estimates annual cost to foreign requesters as between approximately $16,600 and $74,700. FinCEN also assumes that Federal agencies that submit BOI requests on behalf of foreign requesters to FinCEN will incur additional costs; FinCEN itself expects to incur costs from the submission of such requests. Therefore, FinCEN estimates that BOI requests on behalf of foreign requesters result in a cost per request of approximately $220 to Federal agencies, and a total annual cost to Federal agencies between approximately $44,000 and $198,000.

The estimated average cost per financial institution in year 1 is between approximately $27,161 and $43,668 and between approximately $10,201 and $12,928 each year thereafter. The estimated aggregate cost for financial institutions is between approximately $426.9 and $686.3 million in the first year, and then between approximately $160.4 and $203.2 million each year thereafter.

In addition to the costs of accessing BOI data as a domestic agency, FinCEN will incur costs from managing the access of other authorized recipients. FinCEN's estimated annual cost for such activities is $13 million.

2. Benefits

The rule will result in benefits for authorized recipients, including through improving the effectiveness and efficiency of U.S. national security, intelligence, and law enforcement activity by providing access to BOI. FinCEN has quantitatively estimated a portion of such benefits in this analysis.

[227] While FinCEN's estimates do not incorporate an estimated growth rate in the number of requests throughout the 10-year time horizon of this analysis, it is nevertheless possible that the number of BOI requests could increase significantly in the years following initial implementation of the BOI reporting requirements as awareness of the ability to access and the utility of BOI increases.

The rule will also have non-quantifiable benefits to authorized recipients of BOI and to society more widely. FinCEN estimates quantifiable benefits attributable to enhanced BOI search efficiency between $33,000 and $2.2 million per Federal agency and similar benefits between $24,000 and $1.6 million per State, local, and Tribal agency. In aggregate, FinCEN estimates quantifiable benefits between $10.6 million and $708.2 million.

e. Affected Entities

In order to analyze cost and benefits, the number of entities affected by the rule must first be estimated. Authorized recipients of BOI are affected by this rulemaking if they elect to access BOI because they are required to meet certain criteria to receive that BOI. The criteria vary depending on the type of authorized recipient.

Federal agencies engaged in national security, intelligence, and law enforcement activity will have access to BOI in furtherance of such activities if they establish the appropriate protocols prescribed for them in the rule. Additionally, Treasury officers and employees who require access to BOI to perform their official duties or for tax administration will have access. The number of agencies that could qualify under these categories is large and difficult to quantify. FinCEN uses the number of Federal agencies that are active entities [228] with BSA data access [229] as a proxy for the number of Federal agencies that may access BOI. FinCEN believes this proxy is apt. While the criteria for access to BSA data are somewhat different outside of the CTA context, Federal agencies that have access to BSA data will generally also meet the criteria for access to BOI under the CTA. FinCEN believes that Federal agencies that have access to BSA data will most likely want access to BOI as well and will generally be able to access it under the parameters specified by the rule. FinCEN includes offices within the U.S. Department of the Treasury, such as FinCEN itself,[230] in this proxy count. As of June 2023, 201 Federal agencies and agency subcomponents are active entities with BSA data access.

State, local, and Tribal law enforcement agencies will have access to BOI for use in criminal and civil investigations if they follow the process prescribed for them in the rule. FinCEN uses the number of State and local law enforcement agencies that are active entities with BSA data access as a proxy for the number of State, local, and Tribal law enforcement agencies that may access BOI, for the reasons discussed in the Federal agency context. As of June 2023, 158 State and local law enforcement agencies and agency subcomponents are active entities with access to BSA data.[231] The process that the rule sets forth involves these agencies obtaining a court authorization for each BOI request. Courts of competent jurisdiction that issue such authorizations may therefore also be affected by the rule; FinCEN has not estimated the burden that may be imposed on such entities because of a lack of relevant data and because such burden will depend on choices made by courts in authorizing BOI requests that they receive from agencies.

Foreign government entities, such as law enforcement, prosecutors, judges or other competent or central authorities, will be able to access BOI after submitting a request as described in the rule. FinCEN does not estimate the number of different foreign requesters that may request BOI, but instead estimates a range of the total number of annual requests for BOI that FinCEN may receive from all foreign requesters. The rule requires that foreign requests be made through an intermediary Federal agency. Therefore, Federal agencies will also be affected by foreign requests.

The six Federal functional regulators that supervise financial institutions with customer due diligence obligations—the FRB, the OCC, the FDIC, the NCUA, the SEC, and the CFTC—may access BOI for purposes of supervising a FI's compliance with those obligations. Additionally, other appropriate regulatory agencies may access BOI under the rule. FinCEN uses the number of regulators that both supervise entities with requirements under FinCEN's CDD Rule and are active entities with access to BSA data as a proxy for the number of regulatory agencies that may access BOI. As of June 2023, 63 regulatory agencies satisfy both criteria.[232] FinCEN adds three SROs to this count, [233] which totals to 66 regulatory agencies. Although SROs are not government agencies and they will not have direct access to the BO IT system under the rule, they may receive BOI through re-disclosure and will be subject to the same security and confidentiality requirements as other regulatory agencies under the rule.

As discussed further in section III.C.iv.a, FinCEN intends to provide access to BOI as an initial matter only to financial institutions that are ''covered financial institutions'' as defined in 31 CFR 1010.230. Assuming that all such financial institutions will access BOI, FinCEN estimates the number of affected financial institutions in Table 1.[234]

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[228] For purposes of this analysis, an agency has active access to BSA data if the official duties of any agency employee or contractor includes authorized access to the FinCEN Query system, a web-based application that provides access to BSA reports maintained by FinCEN.

[229] For purposes of this analysis, BSA data consists of all of the reports submitted to FinCEN by financial institutions and individuals pursuant to obligations that currently arise under the BSA, 31 U.S.C. 5311 *et seq.,* and its implementing regulations. These include reports of cash transactions over $10,000, reports of suspicious transactions by persons obtaining services from financial institutions, reports of the transportation of currency and other monetary instruments in amounts over $10,000 into or out of the United States, and reports of U.S. persons' foreign financial accounts. In fiscal year 2019, more than 20 million BSA reports were filed. *See* Financial Crimes Enforcement Network, ''What is the BSA data?,'' available at *https://www.fincen.gov/what-bsa-data.*

[230] In addition to incurring costs as an authorized recipient of BOI, FinCEN expects to incur costs from administering data to other authorized recipients.

[231] No Tribal law enforcement agencies currently have access to BSA data through the FinCEN Query system.

[232] This includes the six Federal functional regulators. The remaining 57 entities are State regulators that supervise banks, securities dealers, and other entities that currently have customer due diligence obligations under FinCEN regulations. FinCEN did not include State regulatory agencies that have active access to BSA data but do not regulate entities with FinCEN customer due diligence obligations, such as State gaming authorities or State tax authorities.

[233] FinCEN included two SROs in the NPRM but added an additional SRO based on a comment.

[234] To reiterate a point made on this subject in section III.C.iv.b.1 above, this rule does not create an obligation for financial institutions to access BOI. However, for FinCEN's own regulatory compliance purposes, it is necessary to make assumptions about the number of financial institutions that will choose to do so, and FinCEN wishes to avoid inadvertently underestimating that number.

Table 1—Affected Financial Institutions

Financial Institution Type	Count	Small Count
Banks, savings associations, thrifts, trust companies[1]	5,001	3,673[6]
Credit unions[2]	4,787	4,297[6]
Brokers or dealers in securities[3]	3,538	3,450[6]
Mutual funds[4]	1,378	1,341[6]
Futures commission merchants and introducing brokers in commodities[5]	1,012	938[6]
Total	**15,716**	**13,699**

[1] All counts are from Q2 2023 FFIEC Call Report data, available at https://cdr.ffiec.gov/public/pws/downloadbulkdata.aspx. Data for institutions that are not insured, are insured under non-FDIC deposit insurance regimes, or do not have a Federal functional regulator are from the FDIC's Research Information System, available at https://www.fdic.gov/foia/ris/index.html.

[2] Credit union data are from the NCUA for Q2 2023, available at https://www.ncua.gov/analysis/credit-union-corporate-call-report-data.

[3] According to the SEC, the number of brokers or dealers in securities for the fiscal year 2022 is 3,538. *See* Securities and Exchange Commission, *Fiscal Year 2024 Congressional Budget Justification,* p. 32, https://www.sec.gov/files/fy-2024-congressional-budget-justification_final-3-10.pdf.[4] According to the SEC, as of December 2022 (including filings made through Jan 20, 2023) there are 1,378 open-end registered investment companies that report on Form N-CEN.

[5] There are 60 futures commission merchants as of July 31, 2023, according to the CFTC website. *See* Commodity Futures Trading Commission, *Financial Data for FCMs*, https://www.cftc.gov/MarketReports/financialfcmdata/index.htm. According to CFTC, there are 952 introducing brokers in commodities as of October 5, 2023.

[6] The source of all small counts in this table is a FinCEN analysis described in the text below Table 1.

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Totaling these estimates results in 15,716 financial institutions that may access BOI pursuant to the rule. Of these financial institutions, 13,699 are small entities. To identify whether a financial institution is small, FinCEN uses the Small Business Administration's (SBA) latest annual size standards for small entities in a given industry.[235] FinCEN also uses the U.S. Census Bureau's publicly available 2017 Statistics of U.S. Businesses survey data (Census survey data).[236] FinCEN applies SBA size standards to the corresponding industry's receipts in the 2017 Census survey data and determines what proportion of a given industry is deemed small, on average. FinCEN considers a financial institution to be small if it has total annual receipts less than the annual SBA small entity size standard for the FI's industry. FinCEN applies these estimated proportions to FinCEN's current financial institution counts for brokers or dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities to determine the proportion of current small financial institutions in those industries. FinCEN does not apply population proportions to banks or credit unions. Because data accessed through FFIEC and NCUA Call Report data provides information about asset size for banks, trusts, savings and loans, credit unions, etc., FinCEN is able to directly determine how many banks and credit unions are small by SBA size standards. [237] Because the Call Report data does not include institutions that

[235] The SBA currently defines small entity size standards for affected financial institutions as follows: less than $850 million in total assets for commercial banks, savings institutions, and credit unions; less than $47 million in annual receipts for trust companies; less than $47 million in annual receipts for broker-dealers; less than $47 million in annual receipts for portfolio management; less than $40 million in annual receipts for open-end investment funds; and less than $47 million in annual receipts for futures commission merchants and introducing brokers in commodities. *See* U.S. Small Business Administration's *Table of Size Standards, available athttps://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%281%29%20%281%29_0.pdf.*

[236] *See* U.S. Census Bureau, *U.S. & states, NAICS, detailed employment sizes (U.S., 6-digit and states, NAICS sectors)* (2017), available at *https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html.* The Census survey documents the number of firms and establishments, employment numbers, and annual payroll by State, industry, and enterprise every year. Receipts data, which FinCEN uses as a proxy for revenues, is available only once every five years, with 2017 being the most recent survey year with receipt data.

[237] Consistent with the SBA's General Principles of Affiliation, 13 CFR 121.103(a), FinCEN aggregates the assets of affiliated financial institutions using FFIEC financial data reported by bank holding companies on forms Y–9C, Y–9LP, and Y–9SP (available at *https://www.ffiec.gov/npw/FinancialReport/FinancialDataDownload*) and ownership data (available at *https://www.ffiec.gov/npw/FinancialReport/DataDownload*) when determining if an institution should be classified as small. FinCEN uses four quarters of data reported by holding companies, banks, and credit unions because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* U.S. Small Business Administration's *Table of Size Standards,* p. 38 n.8, available at *https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%281%29%20%281%29_0.pdf.* FinCEN recognizes that using SBA size standards to identify small credit unions differs from the size standards applied by the NCUA. However, for consistency in this analysis, FinCEN applies the SBA-defined size standards.

are not insured, are insured under non-FDIC deposit insurance regimes, or that do not have a Federal financial regulator, FinCEN assumes that all such entities listed in the FDIC's Research Information System data are small, unless they are controlled by a holding company that does not meet the SBA's definition of a small entity, and includes them in the count of small banks. Using this methodology and data from the FFIEC and the NCUA, approximately 13,699 small financial institutions could be affected by the proposed rule, as summarized in Table 1.

Table 2 summarizes the counts of entities by category that will have access to BOI data.

Table 2—Affected Entities

Entity Type	Count	Small Count
Federal agencies engaged in national security, intelligence, or law enforcement activity, and Treasury offices	201	0
State, local, and Tribal law enforcement agencies	158	0
Foreign requesters	N/A	N/A
Regulatory agencies	66	0
Financial Institutions	15,716	13,699
Total	16,141	13,699

As shown in Table 2, FinCEN anticipates that as many as 16,141 different domestic agencies and financial institutions could elect to access BOI. Of these, FinCEN believes the only entity category that will have small entities affected is financial institutions.[238]

f. Detailed Discussion of Costs

The rule imposes requirements on domestic agencies, foreign requesters, and financial institutions. To estimate costs, FinCEN assigns an hourly burden to each requirement and uses an estimated wage rate to determine the per entity cost of that requirement. Where appropriate, FinCEN varies the hourly burden and wage according to the entity type and the size of the entity. To estimate total costs, FinCEN multiplies the per entity costs by the number of entities.

In this analysis, FinCEN uses an estimated compensation rate of approximately $110 per hour for Federal agencies and foreign requesters, approximately $80 per hour for State, local, and Tribal agencies, and approximately $106 per hour for financial institutions. This is based on occupational wage data from the U.S. Bureau of Labor Statistics (BLS).[239] The most recent occupational wage data from the BLS corresponds to May 2022, released in May 2023. To obtain these three wage rates, FinCEN calculated the average reported hourly wages of six specific occupation codes assessed to be likely authorized recipients at Federal agencies, State, local, and Tribal agencies, and financial institutions.[240] Included financial industries were identified at the most granular North American Industry Classification System (NAICS) code available and are the types of financial institutions that are subject to regulation under the BSA, even if these financial institutions are not entities that are affected by the rule, including: banks; casinos; money service businesses; brokers or dealers in securities; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; and loan or finance companies. This results in a Federal agency hourly wage estimate of $68.34; a State, local, and Tribal agency hourly wage estimate of $49.61;[241] and a financial institution hourly wage estimate of $74.86. Multiplying these hourly wage estimates by their corresponding benefits factor (1.61[242] for government agencies and 1.42[243] for private industry) produces fully loaded hourly compensation amounts of approximately $110 for

[238] FinCEN provides more detail about this conclusion in the Regulatory Flexibility Act analysis.

[239] *See* U.S. Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates* (May 2022), available at *https://www.bls.gov/oes/current/oessrci.htm.*

[240] To estimate government hourly wages, FinCEN modifies the burden analysis in FinCEN's publication ''Renewal without Change of Anti-Money Laundering Programs for Certain Financial Institutions.'' *See* 85 FR 49418 (Aug. 13, 2020). Specifically, FinCEN uses hourly wage data from the following six occupations to estimate an average hourly government employee wage: chief executives (*i.e.,* agency heads), first-line supervisors of law enforcement workers, law enforcement workers, financial examiners, lawyers and judicial clerks, and computer and information systems managers. FinCEN uses hourly wage data for the following occupations to estimate an average hourly financial institution employee wage: chief executives, financial managers, compliance officers, and financial clerks. FinCEN also includes the hourly wages for lawyers and judicial clerks, as well as for computer and information systems managers.

[241] To estimate a single hourly wage estimate for State, local, and Tribal agencies, FinCEN calculated an average of the May 2022 mean hourly wage estimates for State government agencies and for local government agencies (($47.55 + $51.66)/2 = $49.61), as wages are available for both of these types of government workers in the BLS occupational wage data. BLS data does not include an estimate for Tribal government worker and thus FinCEN does not include a Tribal government worker wage estimate in this average.

[242] The ratio between benefits and wages for State and local government workers is $21.91 (hourly benefits)/$35.69 (hourly wages) = 0.61, as of March 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.61. *See* U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation Historical Listing,* available at *https://www.bls.gov/web/ecec/ececqrtn.pdf.* The State and local government workers series data for March 2023 is available at *https://www.bls.gov/web/ecec/ecec-government-dataset.xlsx.* FinCEN applies the same benefits factor to Federal workers.

[243] The ratio between benefits and wages for private industry workers is $11.86 (hourly benefits)/$28.37 (hourly wages) = 0.42, as of March 2023. The benefit factor is 1 plus the benefit/wages ratio, or 1.42. *See* U.S. Bureau of Labor Statistics, *Employer Costs for Employee Compensation: Private industry dataset* (Mar. 2023), available at *https://www.bls.gov/web/ecec/ecec-private-dataset.xlsx.*

Federal agencies, $80 for State, local, and Tribal agencies, and $106 per hour for financial institutions. These wage estimates are summarized in Table 3:

Table 3—Fully Loaded Wage Estimates

Entity Type	Mean Hourly Wage	Benefits Factor	Fully Loaded Hourly Wage
Federal government agency[1]	$68.34	1.61	$110
State government agency	$47.55	1.61	$77
Local government agency	$51.66	1.61	$83
Equal weighted average for State, local, and Tribal agencies[2]	$49.61	1.61	$80
FI	$74.86	1.42	$106

[1] FinCEN assumes the same hourly wage estimate for foreign requesters as for Federal agencies.
[2] FinCEN calculates a simple average of the hourly wage estimate of State and local agencies. (BLS does not provide any estimates for Tribal agency wages.) Estimating the average State and local agency hourly wage using a value-weighted approached based on the likely proportion of State versus local agency participants using internal FinCEN BSA data resulted in a similar hourly wage estimate.

Each of the affected entities will have costs associated with the rule if it elects to access FinCEN BOI. The costs vary based on the access procedures for the authorized recipients. The costs also vary by institution size and investigation caseload, but for simplicity, FinCEN estimates an average impact by category of authorized recipient throughout the analysis. The rule requires different access procedures for domestic agencies, foreign requesters, and financial institutions. FinCEN will also incur costs for administering access to authorized recipients.

1. Domestic Agencies

Domestic agencies must meet multiple requirements to receive BOI. Whether the costs of these requirements are one-time, ongoing, or recurring, and whether the costs accrue on a per-recipient or per request basis varies from requirement to requirement. Additionally, some requirements are administrative and involve the creation of documents, while others involve IT. To estimate the costs for meeting these requirements, FinCEN consulted with multiple Federal agencies and utilized statistics regarding active entities with BSA data access. Requirements are summarized in Table 4, which is followed by more detailed analysis and cost estimates. Table 4 does not specifically reflect the requirement that domestic agencies shall limit, to the greatest extent practicable, the scope of BOI it seeks. However, FinCEN does not anticipate this limitation to impose meaningful costs, and thus there is no associated cost estimated for this requirement.

Table 4—Requirements for Domestic Agencies

#	Requirement	Timing of Cost	Type of Cost
1	Enter into an agreement with FinCEN and establish standards and procedures	One-time	Administrative
2	Establish and maintain a secure system to store BOI	Ongoing	IT
3	Establish and maintain an auditable system of standardized records for requests	Ongoing	IT
4	Restrict access to appropriate persons within the agency, some of whom must undergo training	Ongoing (Training cost is per recipient)	Administrative
5	Conduct an annual audit and cooperate with FinCEN's annual audit	Annual	Administrative
6	Obtain certification of standards and procedures initially and then semi-annually, by the head of the agency	Semi-annual	Administrative
7	Provide initial and then an annual report on procedures	Annual	Administrative
8	Submit written certification for each request that it meets certain agency requirements	Ongoing (Cost is per request)	Administrative

Enter Into an Agreement with FinCEN and Establish Standards and Procedures. For requirement #1, FinCEN assumes that domestic agencies will incur costs during the first year. In alignment with the feedback FinCEN received during outreach efforts, which is detailed in the NPRM, FinCEN assumes it will take a domestic agency, on average, between 15 and 300 business hours to complete this one-time task. Using an hourly wage estimate of $110 per hour for Federal agencies results in a one-time cost between approximately $1,650 and $33,000 per Federal agency ((15 hours × $110 per hour = $1,650) and (300 hours × $110 per hour = $33,000)). Using an hourly wage estimate of $80 per hour for State, local, and Tribal agencies results in a one-time cost between approximately $1,200 and $24,000 per State, local, and Tribal agency ((15 hours × $80 per hour = $1,200) and (300 hours × $80 per hour = $24,000)). To estimate aggregate costs, FinCEN multiplies these ranges by 207 total Federal agencies [244] and 215 State, local, and Tribal agencies,[245] resulting in a total one-time cost between approximately $0.6 and $12 million ((207 Federal agencies × $1,650 per Federal agency + 215 State, local, and Tribal agencies × $1,200 per State, local, and Tribal agency = $599,550) and (207 Federal agencies × $33,000 per Federal agency + 215 State, local, and Tribal agencies × $24,000 per State, local, and Tribal agency = $11,991,000)).

Establish and Maintain a Secure System to Store BOI. The cost of requirement #2 will vary depending on the existing IT infrastructure of the domestic agency. Some agencies will be able to build upon existing systems that generally meet the security and confidentiality requirements. Other agencies will need to create new systems. Consistent with feedback from agencies that is detailed in the NPRM, FinCEN expects that certain agencies (in particular, Federal agencies) will bear de minimis IT costs because Federal agencies already have secure systems and networks in place as well as sufficient storage capacity in accordance with Federal Information Security Management Act (FISMA) standards.[246] Therefore, FinCEN assumes a range of burden for requirement #2 in year 1 of de minimis to 300 hours, and an ongoing burden of de minimis to 4 hours.

Using an hourly wage estimate of $110 per hour for Federal agencies results in an initial cost between approximately de minimis costs and $33,000 (300 hours × $110 per hour = $33,000), and $440 annually thereafter (4 hours × $110 per hour = $440) per Federal agency. Using an hourly wage estimate of $80 per hour for State, local, and Tribal agencies results in an initial cost between approximately de minimis costs and $24,000 (300 hours × $80 per hour = $24,000), and $320 annually thereafter (4 hours × $80 per hour = $320) per State, local, and Tribal agency. To estimate aggregate costs, FinCEN multiplies these ranges by 207 total Federal agencies, and 215 State, local, and Tribal agencies, resulting in a total year 1 cost between approximately

[244] This is 201 Federal law enforcement, national security, and intelligence agencies and agency subcomponents and six Federal regulators.

[245] This is 158 State and local law enforcement agencies and 57 State regulators that supervise entities with customer due diligence requirements.

[246] Under FISMA, Federal agencies need to provide information security protections commensurate with the risk and magnitude of the harm resulting from unauthorized access, use, disclosure, disruption, modification, or destruction of information collected or maintained by an agency. Federal agencies also need to comply with the information security standards and guidelines developed by NIST. 44 U.S.C. 3553.

de minimis and $12.0 million (207 Federal agencies × $33,000 per Federal agency + 215 State, local, and Tribal agencies × $24,000 per State, local, and Tribal agency = $11,991,000). The ongoing annual cost will be between approximately de minimis and $.2 million (207 Federal agencies × $440 per Federal agency + 215 State, local, and Tribal agencies × $320 per State, local, and Tribal agency = $159,880).

Establish and Maintain an Auditable System of Standardized Records for Requests. As with requirement #2, the ongoing IT costs from requirement #3 will vary depending on the existing IT infrastructure of the domestic agency. FinCEN again expects that certain agencies (in particular, Federal agencies) will bear de minimis IT costs because Federal agencies already have secure systems and networks in place as well as sufficient storage capacity in accordance with FISMA standards. Based on this expectation and agency feedback explained in the NPRM, FinCEN assumes a range of burden for requirement #3 in year 1 of de minimis to 200 hours, and an ongoing burden of de minimis to 20 hours.

Using an hourly wage estimate of $110 per hour for Federal agencies results in an initial cost between approximately de minimis costs and $22,000 (200 hours × $110 per hour = $22,000), and $2,200 annually thereafter (20 hours × $110 per hour = $2,200) per Federal agency. Using an hourly wage estimate of $80 per hour for State, local, and Tribal agencies results in an initial cost between approximately de minimis costs and $16,000 (200 hours × $80 per hour = $16,000), and $1,600 annually thereafter (20 hours × $80 per hour = $1,600) per State, local, and Tribal agency. To estimate aggregate costs, FinCEN multiplies these ranges by 207 total Federal agencies, and 215 State, local, and Tribal agencies, resulting in a total year 1 cost between approximately de minimis and $8.0 million (207 Federal agencies × $22,000 per Federal agency + 215 State, local, and Tribal agencies × $16,000 per State, local, and Tribal agency = $7,994,000). The ongoing annual cost will between approximately de minimis and $.8 million (207 Federal agencies × $2,200 per Federal agency + 215 State, local, and Tribal agencies × $1,600 per State, local, and Tribal agency = $799,400).

Restrict Access to Appropriate Persons Within the Agency, Some of Whom Must Undergo Training. FinCEN assumes that to comply with this requirement, agencies will provide training to certain employees that receive BOI access. The number of authorized recipients that have BOI access at a given agency will vary. Using the active entities with access to BSA data as of June 2023 as a proxy, and consistent with information provided by a number of agencies, FinCEN anticipates that each Federal agency could have anywhere between approximately 1 and 1,900 recipients of BOI data while each State, local, and Tribal agency could have anywhere between 1 and 80 recipients of BOI.[247]

To estimate the cost of this training, FinCEN assumes that each employee that accesses BOI data will undergo 1 hour of training per year. Using an hourly wage estimate of $110 per hour for Federal agencies results in an annual cost between approximately $110 and $209,000 (1 employee × 1 hour × $110 per hour = $110) and (1,900 employees × 1 hour × $110 per hour = $209,000)) per Federal agency. Using an hourly wage estimate of $80 per hour for State, local, and Tribal agencies results in an annual cost between approximately $80 and $6,400 (1 employee × 1 hour × $80 per hour = $80) and (80 employees × 1 hour × $80 per hour = $6,400)) per State, local, and Tribal agency.

To estimate the aggregate annual costs, FinCEN uses aggregate user counts of active BSA data users based on internal FinCEN data from June 2023, which provides a more reasonable estimate of the likely number of authorized recipients than assuming the previously estimated ranges will apply to each domestic agency. Therefore, based on internal data, FinCEN expects that approximately 12,000 Federal employees and 2,000 employees of State, local, and Tribal agencies will undergo annual training to access BOI data.[248] This results in an aggregate annual training cost of approximately $1.5 million ((12,000 Federal employees × 1 hour × $110 per hour) + (2,000 State, local, and Tribal employees × 1 hour × $80 per hour) = $1,480,000).

Conduct an Annual Audit and Cooperate with FinCEN's Annual Audit; Initially and then Semi-Annually Certify Standards and Procedures by the Head of the Agency; Annually Provide a Report on Procedures. Requirements #5–7 are administrative costs that a domestic agency will incur on an annual or semi-annual basis. Specifically, they require an agency to: (1) conduct an annual audit and cooperate with FinCEN's annual audit; (2) certify standards and procedures by the head of the agency semi-annually; and (3) provide an annual report on procedures to FinCEN. Based on feedback from outreach as explained in the NPRM, FinCEN assumes it will take a given agency between 10 hours and 160 hours per year to meet these three requirements.

Using an hourly wage estimate of $110 per hour for Federal agencies results in annual costs between approximately $1,100 and $17,600 per Federal agency ((10 hours × $110 per hour = $1,100) and (160 hours × $110 per hour = $17,600)). Using an hourly wage estimate of $80 per hour for State, local, and Tribal agencies results in annual costs between approximately $800 and $12,800 per State, local, and Tribal agency ((10 hours × $80 per hour = $800) and (160 hours × $80 per hour = $12,800)). To estimate annual aggregate costs, FinCEN multiplies these ranges by 207 total Federal agencies and 215 State, local, and Tribal agencies, resulting in a total annual cost between approximately $.4 million and $6.4 million ((207 Federal agencies × $1,100 per Federal agency + 215 State, local, and Tribal agencies × $800 per State, local, and Tribal agency = $399,700) and (207 Federal agencies × $17,600 per Federal agency + 215 State, local, and Tribal agencies × $12,800 per State, local, and Tribal agency = $6,395,200)).

Submit Written Certification for Each Request that it Meets Certain Agency Requirements. Finally, for requirement #8, domestic agencies are required to submit a written certification for each request for BOI. The written certification will be in the form and manner prescribed by FinCEN. This certification will be submitted to FinCEN via an electronic form. The number of requests for BOI submitted to FinCEN by domestic agencies in any given year will vary.

FinCEN assumes that submitting a request to FinCEN for BOI will take one employee approximately 15 minutes, or 0.25 hours, per request. This is based on FinCEN's experience with submitting requests for BSA data in FinCEN Query, which similarly require a written description for a search request. Certification requirements vary by authorized recipient type under the rule. Federal and regulatory agencies must certify that their request is related

[247] The range provided is an estimate of the lowest and highest number of users for Federal agencies and for State and local agencies respectively as of a given date in June 2023 with access to BSA data through FinCEN's database.

[248] These estimates are based on the number of users that directly access BSA data through FinCEN's internal system; there are a limited number of other ways that users may access BSA data, which are not accounted for here. Furthermore, while FinCEN does not incorporate an anticipated growth rate into the estimate of BOI authorized recipients throughout the 10-year time horizon of this analysis, the number of BOI authorized recipients could increase significantly after the first fully operational year of the BOI reporting requirements as awareness of the ability to access and utility of accessing BOI increases.

to specific activities. State, local, and Tribal law enforcement agencies must certify that a court of competent jurisdiction, including any officer of such a court, has authorized the agency to seek the BOI in a criminal or civil investigation. FinCEN expects that requests submitted by State, local, and Tribal law enforcement agencies will take an additional 8 to 10 hours in year 1 and 6 to 8 hours in subsequent years to the due to the additional court authorization requirement. The hourly burden decline in subsequent years reflects FinCEN's expectation that agencies (and courts) will improve their processes for meeting BOI request requirements. FinCEN expects many agencies will access BOI repeatedly year after year as they do with BSA data. For purposes of estimating the cost of these additional hours of burden, FinCEN applies the hourly wage estimate for State, local, and Tribal employees and assumes that this cost will be incurred by the State, local or Tribal law enforcement agency. In practice, employees within the court system may also incur costs related to this requirement. However, FinCEN has not estimated the burden that may be imposed on such entities because of the lack of relevant data and because such burden will vary depending on how courts choose to authorize BOI requests.

Using an hourly wage estimate of $110 per hour for Federal employees results in a per request cost of approximately $28 per Federal agency (0.25 hours × $110 per hour = $27.50). Using an hourly wage estimate of $80 per hour for State, local, and Tribal employees results in a per request cost of approximately $20 per State and local regulator (0.25 hours × $80 per hour = $20), between approximately $660 and $820 per State, local, and Tribal law enforcement agency in year 1 ((8.25 hours × $80 per hour = $660) and (10.25 hours × $80 per hour = $820)) and $500 and $660 in subsequent years ((6.25 hours × $80 per hour = $500) and (8.25 hours × $80 per hour = $660)).

To estimate a per agency annual cost, FinCEN uses BSA data request statistics from recent years as a proxy. Using these data, FinCEN estimates that each Federal agency could submit between 1 and 350,000 requests for BOI annually while each State, local, and Tribal agency could submit between 1 and 23,000 requests for BOI annually.[249] Therefore, the estimated annual cost is between $28 and $9.8 million (($28 per request × 1 request) and ($28 per request × 350,000 requests = $9,800,000)) per Federal agency. The annual cost is between $20 and $.5 million (($20 per request × 1 request) and ($20 per request × 23,000 requests = $460,000)) per State and local regulator. For State, local, and Tribal law enforcement agencies, the annual cost is between $660 and $18.9 million in year 1 (($660 per request × 1 request = $660) and ($820 per request × 23,000 requests = $18,860,000)) and $500 and $15.2 million in subsequent years (($500 per request × 1 request = $500) and ($660 per request × 23,000 requests = $15,180,000)).

Using FinCEN's internal BSA request data as a proxy, FinCEN anticipates that Federal agencies could submit as many as 2 million total BOI requests annually and that State, local, and Tribal agencies could submit as many as 230,000 total BOI requests annually.[250] The internal number of BSA requests provides a more reasonable estimate of the likely number of aggregate requests than assuming the previously estimated ranges will apply to each domestic agency. This results in aggregate costs in year 1 between $187.6 and $219.6 million ((2 million Federal requests × $28 per request + 30,000 State and local regulatory requests × $20 per request + 200,000 State, local, and Tribal law enforcement requests × $660 per request = $187,600,000) and (2 million Federal requests × $28 per request + 30,000 State and local regulatory requests × $30 per request + 200,000 State, local, and Tribal law enforcement requests × $820 per request = $219,600,000)). In subsequent years, the aggregate annual costs range between $155.6 million and $187.6 million ((2 million Federal requests × $28 per request + 30,000 State and local regulatory requests × $20 per request + 200,000 State, local, and Tribal law enforcement requests × $500 per request = $155,600,000) and ((2 million Federal requests × $28 per request + 30,000 State and local regulatory requests × $20 per request + 200,000 State, local, and Tribal law enforcement requests × $660 per request = $187,600,000)).

Totaling the estimated costs for requirements #1–8, the estimated average per agency cost in year 1 is between $2,888 and $10.1 million per Federal agency, between $2,100 and $.5 million per State and local regulator, between $2,740 and $18.9 million per State, local, and Tribal law enforcement agency, and between $2,783 to $662,500 per SRO.[251] The estimated average per agency cost each year after the first year is between $1,238 and $10 million per Federal agency, between $900 and $.5 million per State and local regulator, between $1,380 and $15.2 million per State, local, and Tribal law enforcement agency, and between $1,193 to $662,500 per SRO. The total estimated aggregate cost to domestic agencies in year 1 is between $190.1 million and $260.2 million, and then between $157.5 million and $197.2 million each year thereafter.

Federal agencies may incur costs related to submitting requests on behalf of foreign requesters. These costs are estimated in the next section. Federal agencies may also bear costs related to enforcement in cases of unauthorized disclosure and use of BOI; however, these costs have not been estimated in this analysis, as the level of compliance with the rule is unknown.

2. Foreign Requesters

Foreign requesters must meet multiple requirements to receive BOI. FinCEN does not have an estimate of the number of foreign requesters that may elect to request and access BOI, or which requesters will do so under an applicable international treaty, agreement, or convention, or through another channel available under the rule. Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention do not have certain requirements under the rule, given that such requesters are governed by standards and procedures under the applicable international treaty, agreement, or convention. However, FinCEN does not differentiate between types of foreign requesters in this analysis, given the lack of data. Though FinCEN is unable to estimate aggregate costs on foreign requesters given the lack of data on the number of foreign requesters that may access BOI, FinCEN provides partial cost estimates of the requirements on a foreign requester. Requirements are summarized in Table 5, which is followed by a more detailed analysis and cost estimates. Table 5 does not specifically reflect the requirement that a foreign requester shall limit, to the greatest extent practicable, the scope of BOI it seeks. However, FinCEN does not expect this

[249] The range is an estimate of the lowest and highest number of BSA data requests received through FinCEN's database from Federal agencies and for State and local agencies respectively during recent years.

[250] Of the 230,000 anticipated total annual State, local, and Tribal BOI requests, approximately 30,000 are expected from State regulators and approximately 200,000 from State, local, and Tribal law enforcement agencies.

[251] To calculate total costs to SROs, FinCEN calculated a ratio that applied the estimated costs to State regulators (which have access requirements similar to SROs) to the wage rate estimated herein for financial institutions, since SROs are private organizations. As noted previously, SROs will not have direct access to the BO IT system, but may receive BOI through re-disclosure.

limitation to impose meaningful costs, and thus there is no associated cost estimated for this requirement.

Table 5—Requirements for Foreign Requesters

#	Requirement	Timing of Cost	Type of Cost
1	Establish standards and procedures	One-time	Administrative
2	Maintain a secure system to store BOI	Ongoing	IT
3	Restrict access to appropriate persons, all of whom must undergo training	Ongoing per requester	Administrative
4	Provide information for each request to an intermediary Federal agency	Ongoing per request	Administrative

Establish Standards and Procedures. For requirement #1, FinCEN assumes that foreign requesters will incur costs during the first year. FinCEN assumes it will take a foreign requester, on average, between one and two full business weeks (or, between 40 and 80 business hours) to establish standards and procedures. This estimate is a FinCEN assumption based on its experience coordinating with foreign partners. Using an hourly wage estimate of $110 per hour for Federal agencies, which FinCEN assumes is a comparable hourly wage estimate for foreign requesters, FinCEN estimates this one-time cost will be between approximately $4,400 and $8,800 per foreign requester ((40 hours × $110 per hour) and (80 hours × $110 per hour)). Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention do not have this requirement under the rule, given that such requesters are governed by standards and procedures under the applicable international treaty, agreement, or convention. However, FinCEN does not differentiate between types of foreign requesters in this analysis, given the lack of data.

Maintain a Secure System to Store BOI. For requirement #2, the cost of the ongoing IT requirement will vary depending on the existing infrastructure of the foreign requester. FinCEN believes that foreign requesters already have secure systems and networks in place as well as sufficient storage capacity, given their ongoing coordination with the U.S. government on a variety of matters, which likely adhere to applicable data security standards. Therefore, FinCEN assumes de minimis IT costs. Foreign requesters that request and receive BOI under an applicable international treaty, agreement, or convention do not have this requirement under the rule, given that such requesters are governed by security standards under the applicable international treaty, agreement, or convention. However, FinCEN does not differentiate between types of foreign requesters in this analysis, given the lack of data.

Restrict Access to Appropriate Persons, Who Will Undergo Training. For requirement #3, FinCEN assumes that each foreign requester that accesses BOI data will undergo 1 hour of training per year; FinCEN does not impose specific requirements on the content or structure of this training. Using an estimated hourly wage amount of $110, this results in an annual training cost of approximately $110 per foreign requester.

Provide Information for Each Request to an Intermediary Federal Agency. For requirement #4, FinCEN assumes that providing information for a BOI request to an intermediary Federal agency will take one foreign requester approximately 45 minutes, or 0.75 hours, per request. This estimate is based on FinCEN's assumption that a request for BOI submitted directly by a Federal agency on its own behalf will take approximately 15 minutes. Given the additional information required for a foreign-initiated request, FinCEN triples that estimate for foreign requests. Using an hourly wage estimate of $110 per hour, this will result in a per request cost of approximately $83 per foreign requester (0.75 hours × $110 per hour = $83). Based on feedback from agencies, FinCEN believes that the total number of foreign requests will range between approximately 200 and 900 per year.[252] This results in an aggregate annual cost to foreign requesters between approximately $16,600 and $74,700 ((200 requests × $83 per request = $16,600) and (900 requests × $83 per request = $74,700)).

FinCEN also assumes that Federal agencies that submit requests on behalf of foreign requesters to FinCEN will incur additional costs; FinCEN itself expects to incur costs from the submission of such requests. Therefore, FinCEN estimates that processing BOI requests on behalf of foreign requesters require approximately two hours of one Federal employee's time, resulting in a cost per request of approximately $220 (2 hours × $110 per hour). This results in a total annual cost to Federal agencies between approximately $44,000 and $198,000 ((200 requests × 2 hours × $110 per hour = $44,000) and (900 requests × 2 hours × $110 per hour = $198,000)).

3. Financial Institutions

Financial institutions must meet multiple requirements to access BOI. Requirements are summarized in Table 6, which is followed by a more detailed analysis and cost estimates. It should be noted that Table 6 includes a training requirement. FinCEN assumes authorized recipients of BOI at financial institutions will undergo training in order to comply with the safeguards in the rule. Additionally, FinCEN anticipates that access to the BO IT system will be conditioned on recipients of BOI undergoing training.

[252] FinCEN recognizes that the number of BOI requests from foreign requesters may be higher, as no such U.S. beneficial ownership IT system currently exists. The existence of a centralized U.S. BOI source may in fact result in a higher number of annual requests by foreign requesters.

Table 6—Requirements for Financial Institutions

#	Requirement	Timing of Cost	Type of Cost
1	Develop and implement administrative and physical safeguards	One-time	Administrative
2	Develop and implement technical safeguards	Ongoing	IT
3	Obtain and document customer consent	Ongoing	Administrative
4	Submit certification for each request that it meets certain requirements	Ongoing per request	Administrative
5	Undergo training	Ongoing per recipient	Administrative
6	Geographic restrictions	Ongoing	Administrative/IT
7	Notification of information demand	Ongoing per demand	Administrative

Develop and Implement Administrative and Physical Safeguards. For requirement #1, FinCEN estimates an average burden per financial institution between 120 and 240 hours to develop and implement administrative and physical safeguards. This estimate increased from the NPRM based on comments that stated that estimate was too low, and those that noted that audit and legal review will be included in the burden for developing and implementing these safeguards. Using an hourly wage estimate of $106 per hour for financial institutions, FinCEN estimates this one-time cost will be between approximately $12,720 and $25,440 per financial institution. To estimate aggregate costs, FinCEN multiplies this range by 15,716 total financial institutions resulting in a total cost between approximately $199.9 and $399.8. million (($12,720 per financial institution × 15,716 financial institutions = $199,907,520) and ($25,440 per financial institution × 15,716 financial institutions = $399,815,040)).

Develop and Implement Technical Safeguards. For requirement #2, the cost of the ongoing IT requirement will vary depending on the existing infrastructure of the financial institution. FinCEN believes that most financial institutions already have secure systems and networks in place as well as sufficient storage capacity, given existing requirements with regard to protection of customers' nonpublic personal information.[253] Therefore, FinCEN assumes de minimis IT costs.

Obtain and Document Customer Consent. For requirement #3, FinCEN estimates that establishing processes to obtain and document customer consent will require between 50 and 70 hours of burden per financial institution. This estimate includes burden of drafting new language regarding customer consent for inclusion in financial institution documents, legal review of the language, and testing to integrate changes into IT systems. This estimate incorporates feedback from commenters that the NPRM estimate was too low and that it does incorporate the full range of activity necessary to complete this requirement. In addition, based on commenter feedback, FinCEN estimates an ongoing annual burden between 10 and 20 hours per financial institution to maintain records of customer consent. Using an hourly wage estimate of $106 per hour for financial institutions, FinCEN estimates the one-time cost is between approximately $5,300 to $7,420 per financial institution in year 1 and between $1,060 to $2,120 in ongoing costs each year thereafter. To estimate aggregate costs, FinCEN multiplies this estimate by 15,716 total financial institutions, resulting in a total cost between approximately $83.3 and $116.6 million in year 1 (($5,300 per financial institution × 15,716 financial institutions = $83,294,800) and ($7,420 per financial institution × 15,716 financial institutions = $116,612,720)) and $16.7 and $33.3 million in ongoing years (($1,060 per financial institution × 15,716 financial institutions = $16,658,960) and ($2,120 per financial institution × 15,716 financial institutions = $33,317,920)).

Submit Certification for Each Request that it Meets Certain Requirements. For requirement #4, the certifications are submitted in the form and manner prescribed by FinCEN via an electronic form. FinCEN estimates that submitting a request to FinCEN for BOI will take one employee approximately 15 minutes, or 0.25 hours, per request.[254] For purposes of this analysis, FinCEN assumes a range of approximately 5 million to 6 million total requests from financial institutions per year. The minimum amount assumes that the number of BOI requests from financial institutions each year equals the number of new entities that qualify as ''reporting company'' required to submit BOI. As estimated in the Reporting Rule's RIA, this is approximately 5 million entities annually.[255] The maximum amount assumes that financial institutions request BOI for each new legal entity customer at the time of account opening, in alignment with the 2016 CDD Rule,[256] resulting in approximately 6 million entities.[257] Therefore, the

[253] As noted in the rule, financial institutions may have established information procedures to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act, and applicable regulations issued thereunder, with regard to the protection of customers' nonpublic personal information. If a financial institution is not subject to section 501 of the Gramm-Leach-Bliley Act, such institutions may be required, recommended, or authorized under applicable Federal or State law to have similar information procedures with regard to protection of customer information.

[254] FinCEN anticipates that financial institutions will also be able to request BOI through an Application Programming Interface (API) which will make this process less burdensome.

[255] In the Reporting Rule's RIA, the analysis assumes 13.1 percent growth in new entities from 2020 through 2024, and then a stable same number of approximately 5 million new entities each year thereafter through 2033.

[256] The CTA requires that the 2016 CDD Rule be revised given FinCEN's BOI reporting and access requirements. Therefore, this estimate and assumption may change after that revision.

[257] The 2016 CDD Rule estimated that each financial institution with customer due diligence requirements will open, on average, 1.5 new legal entity accounts per business day. The rule also assumed there are 250 business days per year. Therefore, FinCEN estimates that financial institutions would need to conduct customer due diligence requirements for a minimum of approximately 6 million legal entities per year (15,716 financial institutions × 1.5 accounts per day × 250 business days per year = 5,893,500 new legal entity accounts opened per year).

estimated aggregate annual cost of this requirement is between approximately $132.5 and $156.2 million ((5 million total requests × 0.25 hours per request × $106 per hour = $132,500,000) and (5,893,500 total requests × 0.25 hours per request × $106 per hour = $156,177,750)). The per institution annual cost of requirement #4 is between approximately $8,431 and $9,938 (($132,500,000/15,716 financial institutions) and ($156,177,750/15,716 financial institutions)).

Undergo Training. Requirement #5 pertains to training for individuals that access BOI. FinCEN assumes authorized recipients of BOI at financial institutions will undergo training in order to comply with the safeguards in the rule. To estimate the cost of this training, FinCEN assumes a range of authorized recipients per financial institution. FinCEN believes a range is appropriate given the variation in institution size, complexity, and business models across the 15,716 financial institutions. Based on information provided by comments, FinCEN assumes 4 to 5 employees per small financial institution and 25 to 30 employees per large financial institution will undergo annual BOI training. This estimate differs from the NPRM because FinCEN integrated feedback from commenters that stated the NPRM estimate was too low. Using an hourly wage rate of $106 per hour, and assuming each authorized recipient has one hour of training each year, FinCEN estimates a per institution annual training cost between approximately $424 and $3,180 ((4 employees × 1 hour × $106 per hour = $424) and (30 employees × 1 hour × $106 per hour = $3,180)). To estimate aggregate costs, FinCEN uses SBA size standards and identifies approximately 13,699 small financial institutions and 2,017 large financial institutions (15,716 total financial institutions − 13,699 small financial institutions). This results in an estimated minimum average annual per-institution cost of $710 ((13,699 small institutions × 4 employees × $106 per hour + 2,017 large institutions × 25 employees × $106 per hour)/15,716 total financial institutions) and a maximum average annual cost of $870 ((13,699 small institutions × 5 employees × $106 per hour + 2,017 large institutions × 30 employees × $106 per hour)/15,716 total financial institutions). The estimated aggregate training cost is between approximately $11.2 and $13.7 million per year ((13,699 small institutions × 4 employees × 1 training hour per person × $106 per hour + 2,017 large institutions × 25 employees × 1 hour × $106 per hour = $11,153,426) and (13,699 small institutions × 5 employees × 1 hour × $106 per hour + 2,017 large institutions × 30 employees × 1 hour × $106 per hour = $13,674,530)).

Geographic Restrictions. Requirement #6 pertains to the final rule's inclusion of certain geographic restrictions for financial institutions on the use and storage of BOI. The proposed rule restricted this use and storage to within the United States; the final rule does not include this limitation, but instead states that BOI cannot be made available or stored in specific jurisdictions. Commenters expressed concern the geographic restrictions in the proposed rule would conflict with existing IT systems and information handling procedures but did not provide quantitative feedback regarding additional burden specific to the geographic restriction.[258] The final rule allows greater flexibility regarding geographic access in only requiring financial institutions to restrict access for select jurisdictions, lowering the burden of this requirement. Because financial institutions already face restrictions to operating in those jurisdictions, FinCEN expects this limitation to impose de minimis costs.

Notification of Information Demand. Requirement #7 obligates financial institutions to notify FinCEN within three business days if they receive a subpoena or legal demand from a foreign government for BOI obtained from FinCEN. FinCEN expects financial institutions to receive zero information demand requests and thus assumes de minimis costs. Foreign governments should request BOI through the available government channels rather than by demanding information from financial institutions; this requirement intends to ensure that foreign governments leverage the proper BOI request channels.

Together, the estimated average cost per financial institution for completing the 7 requirements in Table 6 in year 1 is between approximately $27,161 and $43,668, and between approximately $10,201 and $12,928 each year thereafter. The estimated aggregate costs from requirements #1–7 for financial institutions are between approximately $426.9 and $686.3 million in the first year, and then between approximately $160.3 and $203.2 million each year thereafter.

4. FinCEN

In addition to the costs of accessing BOI data as a domestic agency, FinCEN will incur costs from managing the access of other authorized recipients. To administer BOI access, FinCEN will develop training materials and agreements with domestic agencies; conduct ongoing outreach with authorized recipients on the access requirements and respond to inquiries and notifications from authorized recipients; conduct audits of authorized responsibilities; develop procedures to review authorized recipients' standards and procedures, and requests as needed; and potentially reject requests or suspend access if requirements are not met. FinCEN currently administers access to the FinCEN Query system, which involves similar considerations; therefore, FinCEN will build on its experience to administer BOI access. FinCEN will also incur an initial cost in setting up internal processes and procedures for administering BOI access.[259] FinCEN retains its $10 million annual personnel cost estimate from the NPRM. In addition, FinCEN has determined the volume of activity associated with managing access to BOI requires contract staff to support this new program, which FinCEN estimates will cost approximately $3 million annually. Therefore, FinCEN's estimated annual costs are $13 million.

g. Detailed Discussion of Benefits

The rule is expected to yield benefits for authorized recipients. Currently, authorized recipients may obtain BOI through a variety of means; however, the rule will put in place a centralized system that, by virtue of providing more direct access to the information, is expected to reduce related search costs. FinCEN has quantitatively estimated some such benefits in this analysis. The rule will also have non-quantifiable benefits to authorized recipients of BOI and to society more widely. This rule will facilitate U.S. national security, intelligence, and law enforcement activity by providing access to BOI which, as noted in the Reporting Rule's RIA, will make these activities more effective and efficient. These activities will be more effective and efficient because the improved ownership

[258] One commenter estimated it would cost between $1 million and $3 million to develop new systems or adapt existing systems to comply with the various aspects of the proposed rule, including preventing BOI obtained from FinCEN from ''flowing'' into other financial institution monitoring systems and to affiliates outside of the United States. This commenter, however, did not indicate how much of this estimated $1–3 million in costs was attributable to the geographic restriction as opposed to other aspects of the proposed rule.

[259] FinCEN also is developing the BO IT system that will allow for the varying types of access. The costs associated with developing and maintaining this IT system are addressed in the Reporting Rule's RIA.

transparency will enhance Federal agencies' ability to investigate, prosecute, and disrupt the financing of terrorism, other transnational security threats, and other types of domestic and transnational financial crimes. Additionally, Treasury anticipates that it will gain efficiencies in its efforts to identify the ownership of legal entities, resulting in improved analysis, investigations, and policy decisions on a variety of subjects. The Internal Revenue Service will be able to obtain access to BOI for tax administration purposes, which may provide benefits for tax compliance. Federal regulators may also obtain benefits by accessing BOI in civil law enforcement matters. Similarly, the rule is expected to facilitate and make more efficient investigations by State, local, and Tribal law enforcement agencies. Access to BOI through FinCEN is expected to obviate the need for such agencies to spend additional time and resources identifying BOI using other, potentially costlier, methods. Foreign requesters may also reap similar benefits.

While FinCEN further expects that financial institutions could also benefit from gaining access to key information (including potentially additional beneficial owners, for their customer due diligence processes), given the pending revisions to the CDD Rule, FinCEN is not quantifying expected benefits for financial institutions at this time. FinCEN anticipates that the benefits to financial institutions in meeting their customer due diligence obligations will be discussed in that rulemaking. Additionally, that rulemaking will consider costs and benefits to regulatory agencies that supervise financial institutions' compliance with customer due diligence requirements.

This rule's estimates of benefits to domestic agencies are in alignment with feedback FinCEN has received from a number of agencies as part of the outreach efforts FinCEN conducted in formulating the rule. This feedback on qualitative and quantitative benefits of accessing BOI is summarized in the NPRM. Based on this feedback, FinCEN anticipates a potential quantifiable benefit range attributable to efficiency gains of between 300 and 20,000 hours annually, per domestic agency.[260] This is equivalent to a per Federal agency dollar savings between $33,000 and $2.2 million ((300 hours × $110 per hour = $33,000) and (20,000 hours × $110 per hour = $2,200,000)) and a per State, local, and Tribal agency dollar savings between $24,000 and $1.6 million ((300 hours × $80 per hour = $24,000 and 20,000 hours × $80 per hour = $1,600,000)), depending on the number and complexity of the investigations.

The minimum dollar value of the benefits of the rule implied by these assumptions in year 1 is $10.6 million ((207 Federal agencies × 300 hours per agency × $110 per hour) + (158 State, local, and Tribal law enforcement agencies × 300 hours per agency × $80 per hour) = $10,623,000). The maximum estimated aggregate annual quantified benefit is $708.2 million ((207 Federal agencies × 20,000 hours per agency × $110 per hour) + (158 State, local, and Tribal law enforcement agencies × 20,000 hours per agency × $80 per hour) = 708,200,000). These estimates only pertain to quantifiable benefits in the form of enhanced BOI search efficiency; agencies can also gain other benefits from accessing BOI, such as investigative law enforcement value, that are not quantified in this analysis. Therefore, FinCEN believes the benefits can be greater than the cost savings attributable to enhanced search efficiency estimated here.

FinCEN assumes that no Federal agency or State, local or Tribal law enforcement agency will access BOI unless the benefits of doing so are at least equal to the costs, given that BOI access is optional for these agencies. In cases where quantifiable costs exceed quantified benefits, but a Federal agency or State, local or Tribal law enforcement agency elects to access BOI, certain non-quantifiable benefits must exist that outweigh the quantified net cost. FinCEN takes these kinds of non-quantifiable benefits into consideration, as well as the quantifiable benefits estimated in the analysis. In addition to the direct benefits that will accrue to agencies, such as saving time, accessing BOI will lead to other secondary benefits, as discussed in the Reporting Rule's RIA.[261] BOI will also further the missions of the agencies to combat crime, as well as contribute to national security, intelligence, and law enforcement, and other activities. Therefore, the expected benefits to agencies of accessing BOI are more than just the efficiency gains with respect to search costs; FinCEN expects more streamlined access to BOI will lead to more effective and efficient investigations. Enabling effective and efficient investigations has the additional secondary benefit of making it more difficult to launder money through shell companies and other entities, in turn strengthening national security and enhancing financial system transparency and integrity. Barriers to money laundering encourage a more secure economy and can generate more economic activity when businesses have more trust in the legitimacy of new business partners. Finally, the sharing of BOI with foreign partners, subject to appropriate protocols consistent with the CTA, may further transnational investigations, tax enforcement, and the identification of national and international security threats. These secondary benefits are not accounted for in this analysis since they are accounted for in the Reporting Rule RIA. However, these benefits cannot come to fruition without authorized recipients gaining access to BOI, as implemented by this rule. Therefore, the benefits between the Reporting Rule and this rule are inextricably linked.

h. Overall Impact

Overall, FinCEN estimates the potential quantifiable impact of the rule will be between $78.2 million in quantifiable net benefits and $949.2 million in net costs in the first year of the rule, and then from $377.3 million in quantifiable net benefits to $403.0 million in net costs on an ongoing annual basis. Table 7 summarizes the estimated aggregate yearly impact of the rule.

[260] Regarding Federal regulators, FinCEN assumes that the benefit would relate to civil law enforcement activities rather than examination activities. The estimated direct benefits from reduced investigation time and resources does not account for any potential benefits in the form of efficiency gains to financial institutions that access BOI. Any potential benefits to financial institutions for accessing BOI will be accounted for in the forthcoming CDD Rule revision.

[261] *See* 87 FR 59579–59580 (Sept. 30, 2022).

Table 7—Aggregate Yearly Impact of the Rule (Dollars in millions)

Entity Costs and Benefits	Total Impact Year 1	Total Impact Years 2+
Domestic agency costs[1,2]	$190.1 to $260.4	$157.5 to $197.4
Foreign requester costs	$0.02 to $0.07	$0.02 to $0.07
Financial institution costs	$426.9 to $686.3	$160.4 to $203.2
FinCEN costs[3]	$13	$13
Aggregate costs	*$630.0 to $959.8*	*$330.9 to $413.6*
Aggregate benefits	*-[10.6 to $708.2]*	*-[$10.6 to $708.2]*
Total (net cost)	**- $78.2 to $949.2**	**- $377.3 to $403.0**

[1] This estimate includes aggregate annual costs to Federal agencies engaged in law enforcement, national security, and intelligence activities, offices of the U.S. Department of the Treasury including FinCEN, State, local, and Tribal law enforcement agencies, and both Federal and State regulators. Costs to SROs are also included in this aggregation.

[2] This estimate includes the additional aggregate annual costs between approximately $44,000 and $198,000 to Federal agencies from submitting and coordinating BOI requests on behalf of foreign partners.

[3] This includes only costs to FinCEN associated with managing BOI access. Costs to FinCEN as an authorized recipient of BOI are included in the domestic agencies estimates.

The estimated, quantifiable, aggregate annual benefits of the rule, which only reflect potential quantifiable benefits to agencies, will be between approximately $10.6 and $708.2 million. Likewise, FinCEN expects that the aggregate annual quantifiable costs of the rule will be somewhere between approximately $630.0 and $959.8 million in year 1, and between approximately $330.9 and $413.6 million each year thereafter. FinCEN believes that, in practice, entities will choose to access BOI only if the benefits to the entity's operational needs, which includes both quantifiable and non-quantifiable benefits, outweigh the costs associated with the requirements for accessing BOI. This analysis assumes financial institutions can choose whether or not to access BOI. The question of whether financial institutions are required to access BOI as part of their CDD Rule obligations will be addressed in FinCEN's forthcoming revisions to the 2016 CDD Rule. For other users, there are and will be no requirements to access BOI.

Using the maximum net cost impact estimates from Table 7 as an upper bound of the impact of this rule, FinCEN determines the present value over a 10-year horizon of approximately $4 billion at the three percent discount rate and approximately $3.3 billion at the seven percent discount rate.

B. Final Regulatory Flexibility Act Analysis

When an agency issues a rule proposal, the Regulatory Flexibility Act (RFA) requires the agency to either provide an IRFA or, in lieu of preparing an analysis, to certify that the proposed rule is not expected to have a significant economic impact on a substantial number of small entities.[262] When FinCEN issued its NPRM, FinCEN believed that the proposed rule would have a significant economic impact on a substantial number of small entities, and provided an IRFA.[263] FinCEN received numerous comments related to the RIA. Some of the comments related to the RIA were from small entities and associations representing small entities. FinCEN has discussed those comments relating to specific provisions in the proposed rule in section III above, and those relating to the RIA in section V.A. above.

The RFA requires each Final Regulatory Flexibility Analysis (FRFA) to contain:

- A succinct statement of the need for, and objectives of, the rule;
- A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- A description of and an estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for the preparation of the report or record; and
- A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.[264]

[262] 5 U.S.C. 601–612.

[263] 87 FR 77445–77447.

[264] 5 U.S.C. 604(a).

i. Statement of the Reasons for, and Objectives of, the Rule

The rule is necessary to implement section 6403 of the CTA. The purpose of the rule is to implement the disclosure requirements of section 6403 and to establish appropriate protocols to protect the security and confidentiality of the BOI.

ii. A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

FinCEN has carefully considered the comments received in response to the NPRM. Section III provides a general overview of the comments and discusses the significant issues raised by comments. In addition, section V.A includes a discussion of the comments received with respect to the preliminary RIA and IRFA, including those with respect to the estimated cost that the rule will impose on financial institutions, which will include small entities. FinCEN has considered the comments received from small entities and from associations representing them, regardless of whether the comments referred to the IRFA. Commenters expressed concern about the costs that the rule's requirements for BOI access would impose on financial institutions, which include small entities. FinCEN considered the burden and costs of the specific requirements throughout the final rule and has adjusted the analysis appropriately.

Many comments were critical of FinCEN's interpretation of ''customer due diligence requirements under applicable law'' in the proposed rule and the limited use of BOI by financial institutions that this definition would require. Some comments argued that if financial institutions could only use BOI reported to FinCEN to comply with the 31 CFR 1010.230 instead of the broader purposes, this would add burdens to financial institutions. Commenters noted that financial institutions already use BOI obtained from their customers for broad purposes. Commenters explained that if an financial institution is limited to using BOI obtained from FinCEN merely for purposes of compliance with 31 CFR 1010.230, then the financial institution would need to create a ''firewall'' between the BOI obtained from FinCEN and the BOI that an financial institution obtains directly from its legal entity customers, so that the financial institution could still use the BOI it obtained directly from customers in the range of ways to which it has become accustomed. This firewalling would be a significant additional burden, according to these commenters. Several commenters claimed that if banks can only use BOI from FinCEN for compliance with 31 CFR 1010.230, this would create duplicative requirements for financial institutions.

The final rule revises the proposed rule's definition of ''customer due diligence requirements under applicable law,'' which was limited to the requirements under 31 CFR 1010.230, to allow the use of BOI more broadly to counter money laundering and the financing of terrorism, as well as to comply with certain other measures that safeguard national security. This change reflects FinCEN's conclusion that the phrase should encompass a financial institution's AML/CFT obligations under the BSA, including suspicious activity monitoring and SAR filing, as well as related activities such as sanctions screening, anti-fraud, and anti-bribery controls and other activities pursuant to the financial institution's legal requirements for AML/CFT.

FinCEN found persuasive comments that argued that if BOI from FinCEN could only be used for compliance with 31 CFR 1010.230 instead of the broader purposes for which financial institutions are already using BOI for, this would add burdens to financial institutions that would not be justified by the potential gains in protecting the security and confidentiality of BOI.

Commenters expressed concern that the proposed rule's geographic restrictions limiting access to BOI to within the United States would conflict with existing IT systems and information handling processes but did not provide quantitative feedback regarding additional burden.[265] The final rule allows greater flexibility regarding geographic access in only requiring financial institutions to restrict access for select jurisdictions in which financial institutions already face restrictions, lowering the likelihood a financial institution will be burdened by this requirement.

Comments also suggested options to decrease burden for financial institutions through technological means. A commenter requested that financial institutions submit required certifications and access BOI on a bulk, automated basis. This commenter noted that if access to the BO IT system requires manual submissions on a customer-by-customer basis, this would be unnecessarily cumbersome and would adversely impact the ability of financial institutions to use the information effectively and efficiently for illicit finance risk management.

FinCEN agrees with these comments and notes that financial institutions will have the ability to submit search requests through an automated process, lessening costs associated with manual searches by financial institutions. FinCEN expects that financial institutions will use Application Programming Interfaces (APIs) to access BOI, and that the BO IT system will accommodate the use of APIs for this purpose (including the submission of required certifications).

In addition, more specific information regarding the estimated costs for small entities resulting from the final rule is set forth in section V.B.v below, and other steps FinCEN has taken to minimize the economic impact of the rule on small entities are set forth in section V.B.vi below.

iii. The Response of the Agency to a Comment Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comment

The Chief Counsel for Advocacy of the Small Business Administration (''Advocacy'') filed a comment to the NPRM on February 14, 2023, that acknowledges that the proposed rule will be economically burdensome for small businesses. Advocacy notes that FinCEN prepared an IRFA for the NPRM.

Advocacy urged FinCEN to clarify certain provisions of the proposed rule because small entities claimed the proposed rule was unclear. For example, the IRFA stated that the proposed rule's requirements to access BOI would not be mandatory (because accessing BOI reported to FinCEN is not itself currently mandatory), but small entity groups have stated that the rule itself is unclear as to whether the requirements of the rulemaking are mandatory. Lack of clarity could lead to small entities incurring unnecessary costs in trying to comply with the rulemaking. There are also concerns

[265] One commenter estimated it would cost between $1 million and $3 million to develop new systems or adapt existing systems to comply with the various aspects of the proposed rule, including preventing BOI obtained from FinCEN from ''flowing'' into other financial institution monitoring systems and to affiliates outside of the United States. This commenter, however, did not indicate how much of this estimated $1–3 million in costs was attributable to the geographic restriction as opposed to other aspects of the proposed rule.

about the scope of the proposed rulemaking.

FinCEN clarified with Advocacy that the phrase ''scope of the proposed rulemaking'' refers to the scope of authorized users that will be permitted access to BOI and the permitted uses of that information. Section III.C.iv.a.1 above clarifies that the types of financial institutions that FinCEN will under its discretionary authority permit to access BOI will initially be those that are ''covered financial institutions'' under the 2016 CDD Rule. Section III.C.iv.a.2 clarifies the scope of permitted uses for BOI by those financial institutions.

Advocacy also encourages FinCEN to provide a clear compliance guide for this rulemaking, and references a similar request in Advocacy's February 4, 2022 comment letter to the Reporting Rule. Section 212 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) requires agencies to provide a compliance guide for each rule (or related series of rules) that requires a final regulatory flexibility analysis.[266] Agencies are required to publish the guides with publication of the final rule, post them to websites, distribute them to industry contacts, and report annually to Congress.[267] FinCEN anticipates issuing a Small Entity Compliance Guide, pursuant to section 212 of SBREFA, in order to assist small entities in complying with the BOI access requirements.

iv. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply

To assess the number of small entities affected by the rule, FinCEN separately considered whether any small businesses, small organizations, or small governmental jurisdictions, as defined by the RFA, will be impacted. FinCEN concludes that a substantial number of small businesses will be significantly impacted by the rule, which is consistent with the IRFA.

In defining ''small business,'' the RFA points to the definition of ''small business concern'' from the Small Business Act.[268] This small business definition is based on size standards (either average annual receipts or number of employees) matched to industries.[269] Assuming maximum non-mandated participation by small financial institutions, the rule will affect approximately all 13,699 small financial institutions. All of these small financial institutions will have a significant economic impact in the first year of implementation, which FinCEN believes meets the threshold for a substantial number. Therefore, FinCEN concludes the rule will have a significant economic impact on a substantial number of small entities.

FinCEN assumes the economic impact on an individual small entity is significant if the total estimated impact in a given year is greater than 1 percent of the small entity's total receipts for that year. FinCEN estimates the cost for small financial institutions to comply with the sections of the rule addressing BOI access will be between approximately $26,875 and $43,328 in year 1, and approximately $9,915 and $12,588 annually in subsequent years.[270] FinCEN then compares these per financial institution cost estimates to the average total receipts for the smallest size category for each type of financial institution from the 2017 Census survey data, adjusted for inflation.[271] The analysis indicates that, even when considering the minimum year 1 impact of $26,875, the smallest entities of all types of financial institutions will incur an economic impact that exceeds 1 percent of receipts for that industry. Therefore, FinCEN expects that the rule will have a significant economic impact on a substantial number of small entities.

In defining ''small organization,'' the RFA generally defines it as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.[272] FinCEN assesses that the rule will not affect ''small organizations'' as defined by the RFA.

The RFA generally defines ''small governmental jurisdiction[s]'' as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.[273] While State, local, and Tribal government agencies may be affected by the rule, FinCEN does not believe that government agencies of jurisdictions with a population of less than 50,000 will be included in such agencies.[274] Therefore, no ''small governmental jurisdictions'' are expected to be affected.

v. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirements and the Type of Professional Skills Necessary for the Preparation of the Report or Record

Under the rule, accessing BOI is not currently mandatory; therefore, the rule will not impose requirements in the strictest sense.[275] However, the rule will require those that elect to access BOI to establish standards and procedures or safeguards, and to comply with other requirements. In particular, financial institutions will be required to develop and implement administrative, technical, and physical safeguards reasonably designed to protect the security, confidentiality, and integrity of BOI. Financial institutions will also be required to obtain and document customer consent to access their BOI, as well as maintain a record of such consent for five years after it was last relied upon, which may require updates to existing policies and procedures. Financial institutions will also be required to comply with certain geographic restrictions and notify FinCEN if they receive an information demand from a foreign government. The rule will also require those that access BOI provide a certification for each BOI

[266] Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 212, 110 Stat. 857, 858 (1996).

[267] The Small Business and Work Opportunity Tax Act of 2007 added these additional requirements for agency compliance to SBREFA. *See* Small Business and Work Opportunity Tax Act of 2007, Public Law 110–28, 121 Stat. 190 (2007).

[268] 5 U.S.C. 601(3).

[269] *See* U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes (Mar. 17, 2023), available at *https://www.sba.gov/sites/sbagov/files/2023-03/Table%20of%20Size%20Standards_Effective%20March%2017%2C%202023%20%281%29%20%281%29_0.pdf.*

[270] The minimum and maximum costs for small entities can be determined by using $424 (4 employee × $106 per hour) as the minimum cost for training and using $530 (5 employees × $106 per hour) as the maximum cost for training.

[271] FinCEN inflation adjusted the 2017 Census survey data using *Implicit Price Deflators for Gross Domestic Product* quarterly data from the U.S. Bureau of Economic Analysis, available at *https://apps.bea.gov/iTable/?reqid=19&step=2&isuri=1&categories=survey#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIkNhdGVnb3JpZXMiLCJTdXJ2ZXkiXSxbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJGaXJzdF9ZZWFyIiwiMTk5NSJdLFsiTGFzdF9ZZWFyIiwiMjAyMiJdLFsiU2Nhbk UiLCIwIl0sWyJTZXJpZXMiLCJBll1dfQ==.* FinCEN estimated an inflation factor of approximately 1.18 (the gross domestic product deflator in 2017 is 107.749, while in 2022 it was 127.224; hence, the inflation factor is 127.224/107.749= 1.18). FinCEN then applied this inflation adjustment factor of 1.18 to the 1 percent of average annual receipts in the 2017 Census survey data for each financial industry affected by this proposed rule to estimate the latest inflation-adjusted dollar value threshold of 1 percent of annual receipts.

[272] 5 U.S.C. 601(4).

[273] 5 U.S.C. 601(5).

[274] FinCEN made this assumption in the NPRM and requested public comment; it did not receive any comments that addressed this specific point.

[275] FinCEN anticipates considering whether to require financial institutions to access BOI reported to FinCEN in the future, potentially as part of its revisions to the 2016 CDD Rule.

request, in the form and manner prescribed by FinCEN. FinCEN intends to provide additional detail regarding the form and manner of BOI requests for all categories of authorized recipients through specific instructions and guidance as it continues developing the BO IT system. To the extent required by the PRA, FinCEN will publish for notice and comment any proposed information collection associated with BOI requests.

Small entities affected by the rule, which FinCEN assesses to be small financial institutions, will be required to comply with these requirements if they access BOI. FinCEN assumes that the professional expertise needed to comply with such requirements already exists at small financial institutions with customer due diligence obligations.

vi. Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on the Small Entities Was Rejected

The steps FinCEN has taken to minimize the significant economic impact on small entities and the factual, policy, and legal reasons for selecting the final rule are described throughout section III. This section of the FRFA includes one of the alternative scenarios considered in the RIA. The rule is statutorily mandated, and therefore FinCEN has limited ability to implement alternatives. However, FinCEN considered the following significant alternative which affected the impact on small entities. The sources and analysis underlying the burden and cost estimates cited in this alternative are explained in the RIA.

FinCEN considered altering the customer consent requirement for financial institutions. Under the final rule, financial institutions are required to obtain and document customer consent once for a given customer. FinCEN considered an alternative approach in which FinCEN would directly obtain the reporting company's consent. Under this scenario, financial institutions would not need to spend time and resources on drafting or modifying customer consent forms, ensuring legal compliance, and testing the forms which FinCEN expects to require approximately 50 to 70 hours in year 1 and 10 to 20 hours in subsequent years for ongoing forms maintenance. Using an hourly wage estimate of $106 per hour for financial institutions, FinCEN estimates this would result in an initial savings per financial institution of approximately $5,300 to $7,420 in year 1 and $1,060 to $2,120 in subsequent years. FinCEN estimates an aggregate savings of $83.3 to $116.6 million in year 1 and $16.7 to $33.3 million in subsequent years. To estimate aggregate savings under this scenario, FinCEN multiplies the yearly savings by the number of financial institutions (*e.g.,* $5,300 per financial institution × 15,716 financial institutions = $83,294,800). The cost savings for small financial institutions under this scenario would be approximately $72.6 million ($5,300 per financial institution × 13,699 small financial institutions = $72,604,700). Though this alternative results in a savings to financial institutions, including small entities, FinCEN believes that financial institutions are better positioned to obtain consent—and to track consent revocation—given their direct customer relationships and ability to leverage existing onboarding and account maintenance processes, as also discussed in sections III.E.ii.d and V.A.i.a above. Therefore, FinCEN decided not to adopt this alternative.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Reform Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation. FinCEN believes that the RIA provides the analysis required by the Unfunded Mandates Reform Act.

D. Paperwork Reduction Act

The new reporting and recordkeeping requirements contained in this rule (31 CFR 1010.955) have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* under control number 1506–0077. The PRA imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

As discussed in the RIA, FinCEN revised estimates for the requirements based on comments received in the NPRM and updates to the final rule and underlying data sources. All revisions to the estimates are explained in the RIA.

Reporting and Recordkeeping Requirements: The rule requires State, local, and Tribal agencies and financial institutions that access BOI to conduct the following activities: establish standards and procedures, and develop and implement safeguards. FinCEN assumes authorized recipients of BOI at financial institutions will undergo annual training in order to comply with the safeguards in the rule. Financial institutions are also required to obtain and document customer consent, maintaining a record of such consent for five years after it was last relied upon, which may require updates to existing processes and creation of consent forms. The rule also requires State, local, and Tribal agencies and financial institutions that access BOI to provide a certification for each BOI request. FinCEN intends to provide additional detail regarding the form and manner of BOI requests for all categories of authorized users through specific instructions and guidance as it continues developing the BO IT system. To the extent required by the PRA, FinCEN will publish for notice and comment any proposed information collection associated with BOI requests. The rule also requires financial institutions to comply with certain geographic restrictions and notify FinCEN if they receive an information demand from a foreign government for BOI. In addition, the rule requires State, local, and Tribal agencies to establish and maintain a secure system to store BOI, as well as an auditable system of standardized records for requests, conduct an annual audit, certify standards and procedures by the agency head semi-annually, and provide an annual report on procedures, resulting in additional recordkeeping and reporting requirements. Finally, the rule requires that SROs follow the same security and confidentiality requirements outlined herein for State, local, and Tribal agencies, if they obtain BOI through re-disclosure by a Federal functional regulator or financial institution.

OMB Control Number: 1506–0077.

Frequency: As required; varies depending on the requirement.

Description of Affected Public: State, local and Tribal agencies, SROs, and financial institutions with customer due diligence obligations, as defined in the rule. While others from Federal and foreign requesters are able to access BOI after meeting specific requirements, FinCEN does not include them in the

PRA analysis because the regulations implementing the PRA define ''person'' as an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, Tribal, or local government or a branch of a political subdivision.[276] For foreign requesters in particular, FinCEN assumes that such requests will be made at the national level.

Estimated Number of Respondents: 15,934 entities. This total is composed of an estimated 215 State, local, and Tribal agencies, of which 158 are State, local, and Tribal law enforcement agencies and 57 are State regulatory agencies, 3 SROs, and 15,716 financial institutions.[277] While the requirements in the rule are only imposed on those that optionally access BOI, for purposes of PRA burden analysis FinCEN assumes maximum participation from State, local, and Tribal agencies, SROs, and financial institutions.

Estimated Total Annual Reporting and Recordkeeping Burden: FinCEN estimates that during year 1 the annual hourly burden will be 8,743,781 hours. In year 2 and onward, FinCEN estimates that the annual hourly burden will be 3,616,964 hours. The annual estimated burden hours for State, local, and Tribal entities as well as SROs is 2,268,789 hours in the first year, and 1,699,612 hours in year 2 and onward. As shown in Table 8, the hourly burden in year 1 for State, local, and Tribal entities and SROs includes the hourly burden associated with the following requirements in the rule: enter into an agreement with FinCEN and establish standards and procedures (Action B); establish a secure system to store BOI (Action D); establish and maintain an auditable system of standardized records for requests (Action E); submit written certification for each request that it meets certain requirements (Action G); restrict access to appropriate persons within the entity (Action H); conduct an annual audit and cooperate with FinCEN's annual audit (Action I); obtain certification of standards and procedures, initially and then semi-annually, by the head of the entity (Action J); and provide annual reports on procedures (Action K). The hourly burden in year 2 and onward for State, local, and Tribal entities and SROs is associated with the same requirements as year 1, with the exception of Action B because FinCEN expects this action will result in costs for these entities in year 1 only.

The annual estimated hourly burden for financial institutions is 6,474,992 hours in the first year and 1,917,352 hours in year 2 and onward. The hourly burden for financial institutions in year 1 is associated with the following: develop and implement administrative and physical safeguards (Action A); develop and implement technical safeguards (Action C); obtain and document customer consent (Action F); submit certification for each request that it meets certain requirements (Action G); undergo training (Action H); comply with certain geographic restrictions (Action L); and notify FinCEN if they receive an information demand from a foreign government (Action M). The hourly burden in year 2 and onward for financial institutions is associated only with the requirements for Actions F, G and H because FinCEN expects the other actions will result in costs for these entities in year 1 only.

Annual estimated burden declines in year 2 and onward because State, local, and Tribal agencies, SROs, and financial institutions no longer need to complete Actions A and B, and have a lower hourly burden for Actions E and F. State, local, and Tribal law enforcement agencies have a lower hourly burden for Action G. Table 8 lists the type of entity, the number of entities, the hours per entity, and the total hourly burden by action. For Actions A, B, C, D, E, F, I, J, K, L, and M the hours per entity are the maximum of the range estimated in the cost analysis of the RIA. For Action G and H, the hours per entity calculations are specified in footnotes to Table 8. Total annual hourly burden is calculated by multiplying the number of entities by the hours per entity for each action. In each subsequent year after initial implementation, FinCEN estimates that the total hourly annual burden is 3,616,964. This results in a 5-year average burden estimate of approximately 4,642,327 hours.[278]

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[276] *See* 5 CFR 1320.3(k).

[277] *See* Table 1 for the types of financial institutions covered by this notice.

[278] The 5-year average equals the sum of (Year 1 burden hours of 8,743,781 + Year 2 burden hours of 3,616,964 + Year 3 burden hours of 3,616,964 + Year 4 burden hours of 3,616,964 + Year 5 burden hours of 3,616,964) divided by 5.

Table 8—Annual Hourly Burden Associated with Rule Requirements

Action	Type of Entity	Number of Entities	Hours per Entity	Total Annual Hourly Burden
A. Develop and implement administrative and physical safeguards	Financial institutions	15,716	240 in Year 1; 0 in Years 2+	3,771,840 in Year 1; 0 in Years 2+
B. Enter into an agreement with FinCEN and establish standards and procedures	State, local, and Tribal agencies and SROs	218	300 in Year 1; 0 in Years 2+	65,400 in Year 1; 0 in Years 2+
C. Develop and implement technical safeguards	Financial institutions	15,716	0 in Year 1; 0 in Years 2+	0 in Year 1; 0 in Years 2+
D. Establish a secure system to store BOI	State, local, and Tribal agencies and SROs	218	300 in Year 1; 4 in Years 2+	65,400 in Year 1; 872 in Years 2+
E. Establish and maintain an auditable system of standardized records for requests	State, local, and Tribal agencies and SROs	218	200 in Year 1; 20 in Years 2+	43,600 in Year 1; 4,360 in Years 2+
F. Obtain and document customer consent	Financial institutions	15,716	70 in Year 1; 20 in Years 2+	1,100,120 in Year 1; 314,320 in Years 2+
G. Submit certification for each request that it meets certain requirements[1]	Financial institutions	15,716	94 in Year 1; 94 in Years 2+	1,474,161 in Year 1; 1,474,161 in Years 2+

Action	Type of Entity	Number of Entities	Hours per Entity	Total Annual Hourly Burden
G. Submit written certification for each request that it meets certain requirements, including court authorization	State, local, and Tribal law enforcement	158	12,975 in Year 1; 10,443 in Years 2+	2,050,003 in Year 1; 1,649,994 in Years 2+
G. Submit written certification for each request that it meets certain requirements	State regulatory agencies and SROs	60	125 in Year 1; 125 in Years 2+	7,500 in Year 1; 7,500 in Years 2+
H. Undergo training[2]	Financial institutions	15,716	8 in Year 1; 8 in Years 2+	128,871 in Year 1; 128,871 in Years 2+
H. Restrict access to appropriate persons within the entity, which specifies that appropriate persons will undergo training[3]	State, local, and Tribal agencies and SROs	218	9 in Year 1, 9 in Years 2+	2,006 in Year 1; 2,006 in Years 2+
I. Conduct an annual audit and cooperate with FinCEN's annual audit	State, local, and Tribal agencies and SROs	218	160 in Year 1; 160 in Years 2+	34,880 in Year 1; 34,880 in Years 2+
J. Obtain certification of standards and procedures initially and then semi-annually, by the head of the entity	State, local, and Tribal agencies and SROs	218	Included in I.	Included in I.
K. Provide initial and then an annual report on procedures	State, local, and Tribal agencies and SROs	218	Included in I.	Included in I.
L. Comply with certain geographic restrictions	Financial institutions	15,716	0 in Year 1; 0 in Years 2+	0 in Year 1; 0 in Years 2+
M. Notify FinCEN of information demand from foreign government	Financial institutions	15,716	0 in Year 1; 0 in Years 2+	0 in Year 1; 0 in Years 2+
Total Annual Hourly Burden				8,743,781 in Year 1; 3,616,964 in Years 2+

Action	Type of Entity	Number of Entities	Hours per Entity	Total Annual Hourly Burden
[1] For all types of entity, the hours per entity for Action G is the per entity share of the aggregate burden estimated in the RIA. [2] For financial institutions, the hours per entity for Action H equals the weighted average of the large and small financial institutions' maximum burden estimated in the RIA. [3] For State, local, and Tribal agencies and SROs, the hours per entity for Action H equals the per entity share of the aggregate burden.				

Estimated Total Annual Reporting and Recordkeeping Cost: As describd in Table 3, FinCEN calculated the fully loaded hourly wage for each type of affected entity type. Using these estimated wages, the total cost of the annual bureden in year 1 is $868,200,270. In year 2 and onward, FinCEN estimates that the total cost of the annual burden is $339,309,502, owing to Actions A and B only imposing burens in year 1, Actions D and E having lower annual per entity burdens, and Actions G having lower burden per request for State, local and Tribal law enforcement agencies. The annual estimated cost for State, local, and Tribal agencies and SROs is $181,851,118 in the first and $13,070,190 in year 2 and onward. The annual estimated cost for financial institutions is $686,349,152 in the first year and $203,239,312 in year 2 and onward. The 5-year average annual cost estimate is $445,087,656.[279]

Table 9 – Annual Cost Associated with Rule Requirements

Action	Type of Entity	Hourly Wage	Total Annual Hourly Burden	Total Annual Cost
A. Develop and implement administrative and physical safeguards	Financial institutions	$106	3,771,840 in Year 1; 0 in Years 2+	$399,815,040 in Year 1; $0 in Years 2+
B. Enter into an agreement with FinCEN and establish standards and procedures	State, local, and Tribal agencies	$80	65,400 in Year 1; 0 in Years 2+	$5,232,000 in Year 1; $0 in Years 2+

[279] The 5-year average equals the sum of (year 1 costs of $868,200,270 + Year 2 costs of $339,309,502 + Year 3 costs of $339,309,502 + Year 4 costs of $339,309,502 + Year 5 costs of $339,309,502) divided by 5.

Action	Type of Entity	Hourly Wage	Total Annual Hourly Burden	Total Annual Cost
C. Develop and implement technical safeguards	Financial institutions	$106	0 in Year 1; 0 in Years 2+	$0 in Year 1; $0 in Years 2+
D. Establish a secure system to store BOI	State, local, and Tribal agencies	$80	65,400 in Year 1; 872 in Years 2+	$5,232,000 in Year 1; $69,760 in Years 2+
E. Establish and maintain an auditable system of standardized records for requests	State, local, and Tribal agencies	$80	43,600 in Year 1; 4,360 in Years 2+	$3,488,000 in Year 1; $348,800 in Years 2+
F. Obtain and document customer consent	Financial institutions	$106	1,100,120 in Year 1; 314,320 in Years 2+	$116,612,720 in Year 1; $33,317,920 in Years 2+
G. Submit certification for each request that it meets certain requirements	Financial institutions	$106	1,474,161 in Year 1; 1,474,161 in Years 2+	$156,261,066 in Year 1; $156,261,066 in Years 2+
G. Submit written certification for each request that it meets certain requirements, including court authorization	State, local, and Tribal law enforcement	$80	2,050,003 in Year 1; 1,649,994 in Years 2+	$164,000,240 in Year 1; $131,999,520 in Years 2+
G. Submit written certification for each request that it meets certain requirements	State regulatory agencies	$80	7,500 in Year 1; 7,500 in Years 2+	$600,000 in Year 1; $600,000 in Years 2+
H. Undergo training	Financial institutions	$106	128,871 in Year 1; 128,871 in Years 2+	$13,660,326 in Year 1; $13,660,326 in Years 2+
H. Restrict access to appropriate persons within the agency, which specifies that appropriate persons will undergo training	State, local, and Tribal agencies	$80	2,006 in Year 1; 2,006 in Years 2+	$160,480 in Year 1; $160,480 in Years 2+

Action	Type of Entity	Hourly Wage	Total Annual Hourly Burden	Total Annual Cost
I. Conduct an annual audit and cooperate with FinCEN's annual audit	State, local, and Tribal agencies	$80	34,880 in Year 1; 34,880 in Years 2+	$2,790,400 in Year 1; $2,790,400 in Years 2+
J. Obtain certification of standards and procedures initially and then semi-annually, by the head of the entity	State, local, and Tribal agencies	$80	Included in I.	Included in I.
K. Provide initial and then an annual report on procedures	State, local, and Tribal agencies	$80	Included in I.	Included in I.
L. Comply with certain geographic restrictions	Financial institutions	$106	0 in Year 1; 0 in Years 2+	$0 in Year 1; $0 in Years 2+
M. Notify FinCEN of information demand from foreign government	Financial institutions	$106	0 in Year 1; 0 in Years 2+	$0 in Year 1; $0 in Years 2+
Actions B, D, E, G, H, I-K	SRO	$106	3,283 in Year 1; 955 in Years 2+	$347,998 in Year 1; $101,230 in Years 2+
Total Annual Cost				**$ 868,200,270 in Year 1; $339,309,502 in Years 2+**

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E. Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA)), OMB's Office of Information and Regulatory Affairs has determined that this action meets the criteria set forth in 5 U.S.C. 804(2).[280]

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Aliens, Authority delegations (Government agencies), Banks and banking, Brokers, Business and industry, Commodity futures, Currency, Citizenship and naturalization, Electronic filing, Federal savings associations, Federal-States relations, Federally recognized tribes, Foreign persons, Holding companies, Indian law, Indians, Insurance companies, Investment advisers, Investment companies, Investigations, Law enforcement, Penalties, Reporting and recordkeeping requirements, Small businesses, Securities, Terrorism, Tribal government, Time.

Authority and Issuance

For the reasons set forth in the preamble, the U.S. Department of the Treasury and Financial Crimes Enforcement Network amend 31 CFR part 1010 as follows:

PART 1010—GENERAL PROVISIONS

■ 1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5336; title III, sec. 314, Pub. L. 107–56, 115 Stat. 307; sec. 2006, Pub. L. 114–41, 129 Stat. 458–459; sec. 701, Pub. L. 114–74, 129 Stat. 599.

■ 2. In § 1010.950, revise the section heading and paragraph (a) to read as follows:

§ 1010.950 Availability of information—general.

(a) The Secretary has the discretion to disclose information reported under this chapter, other than information reported pursuant to § 1010.380, for any reason consistent with the purposes of the Bank Secrecy Act, including those set forth in paragraphs (b) through (d) of this section. FinCEN may disclose information reported pursuant to § 1010.380 only as set forth in § 1010.955, and paragraphs (b) through (f) of this section shall not apply to the disclosure of such information.

* * * * *

■ 3. Add § 1010.955 to read as follows:

[280] 5 U.S.C. 804(2) *et seq.*

§ 1010.955 Availability of beneficial ownership information reported under this part.

(a) *Prohibition on disclosure.* Except as authorized in paragraphs (b), (c), and (d) of this section, information reported to FinCEN pursuant to § 1010.380 is confidential and shall not be disclosed by any individual who receives such information as—

(1) An officer, employee, contractor, or agent of the United States;

(2) An officer, employee, contractor, or agent of any State, local, or Tribal agency; or

(3) A director, officer, employee, contractor, or agent of any financial institution.

(b) *Disclosure of information by FinCEN*—(1) *Disclosure to Federal agencies for use in furtherance of national security, intelligence, or law enforcement activity.* Upon receipt of a request from a Federal agency engaged in national security, intelligence, or law enforcement activity for information reported pursuant to § 1010.380 to be used in furtherance of such activity, FinCEN may disclose such information to such agency. For purposes of this paragraph (b)(1)—

(i) National security activity means activity pertaining to the national defense or foreign relations of the United States, as well as activity to protect against threats to the safety and security of the United States;

(ii) Intelligence activity means all activities conducted by elements of the United States Intelligence Community that are authorized pursuant to Executive Order 12333, as amended, or any succeeding executive order; and

(iii) Law enforcement activity means investigative and enforcement activities relating to civil or criminal violations of law. Such activity does not include the routine supervision or examination of a financial institution by a Federal regulatory agency with authority described in paragraph (b)(4)(ii)(A) of this section.

(2) *Disclosure to State, local, and Tribal law enforcement agencies for use in criminal or civil investigations.* Upon receipt of a request from a State, local, or Tribal law enforcement agency for information reported pursuant to § 1010.380 to be used in a criminal or civil investigation, FinCEN may disclose such information to such agency if a court of competent jurisdiction has authorized the agency to seek the information in a criminal or civil investigation. For purposes of this section—

(i) A court of competent jurisdiction is any court with jurisdiction over the investigation for which a State, local, or Tribal law enforcement agency requests information under this paragraph.

(ii) A State, local, or Tribal law enforcement agency is an agency of a State, local, or Tribal government that is authorized by law to engage in the investigation or enforcement of civil or criminal violations of law.

(3) *Disclosure for use in furtherance of foreign national security, intelligence, or law enforcement activity.* Upon receipt of a request for information reported pursuant to § 1010.380 from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, or on behalf of a foreign central authority or foreign competent authority (or like designation) under an applicable international treaty, agreement, or convention, FinCEN may disclose such information to such Federal agency for transmission to the foreign law enforcement agency, prosecutor, judge, foreign central authority, or foreign competent authority who initiated the request, provided that:

(i) The request is for assistance in a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the foreign country; and

(ii) The request is:

(A) Made under an international treaty, agreement, or convention; or

(B) Made, when no such treaty, agreement, or convention is available, as an official request by a law enforcement, judicial, or prosecutorial authority of a foreign country determined by FinCEN, with the concurrence of the Secretary of State and in consultation with the Attorney General or other agencies as necessary and appropriate, to be a trusted foreign country.

(iii) For purposes of this paragraph (b)(3), a national security activity authorized under the laws of a foreign country is an activity pertaining to the national defense or foreign relations of a country other than the United States, as well as activity to protect against threats to the safety and security of that country.

(iv) For purposes of this paragraph (b)(3), an intelligence activity authorized under the laws of a foreign country is an activity conducted by a foreign government agency that is authorized under a foreign legal authority comparable to Executive Order 12333 that is applicable to the agency.

(4) *Disclosure to facilitate compliance with customer due diligence requirements*—(i) *Financial institutions.* Upon receipt of a request from a financial institution subject to customer due diligence requirements under applicable law for information reported pursuant to § 1010.380 to be used in facilitating compliance with such requirements, FinCEN may disclose the information to the financial institution for that use, provided that the reporting company that reported the information to FinCEN consents to such disclosure. For purposes of this paragraph, customer due diligence requirements under applicable law mean any legal requirement or prohibition designed to counter money laundering or the financing of terrorism, or to safeguard the national security of the United States, to comply with which it is reasonably necessary for a financial institution to obtain or verify beneficial ownership information of a legal entity customer.

(ii) *Regulatory agencies.* Upon receipt of a request by a Federal functional regulator or other appropriate regulatory agency, FinCEN shall disclose to such agency any information disclosed to a financial institution pursuant to paragraph (b)(4)(i) of this section if the agency—

(A) Is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of such financial institution with customer due diligence requirements under applicable law;

(B) Will use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in paragraph (b)(4)(ii)(A) of this section; and

(C) Has entered into an agreement with FinCEN providing for appropriate protocols governing the safekeeping of the information.

(5) *Disclosure to officers or employees of the Department of the Treasury.* Consistent with procedures and safeguards established by the Secretary—

(i) Information reported pursuant to § 1010.380 shall be accessible for inspection or disclosure to officers and employees of the Department of the Treasury whose official duties the Secretary determines require such inspection or disclosure.

(ii) Officers and employees of the Department of the Treasury may obtain information reported pursuant to § 1010.380 for tax administration as defined in 26 U.S.C. 6103(b)(4).

(c) *Use of information*—(1) *Use of information by authorized recipients.* Except as permitted under paragraph (c)(2) of this section, any person who receives information disclosed by FinCEN under paragraph (b) of this section shall not further disclose such information to any other person, and

shall use such information only for the particular purpose or activity for which such information was disclosed. A Federal agency that receives information pursuant to paragraph (b)(3) of this section shall only use it to facilitate a response to a request for assistance pursuant to that paragraph.

(2) *Disclosure of information by authorized recipients.* (i) Any officer, employee, contractor, or agent of a requesting agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(1) or (2) or (b)(4)(ii) of this section may disclose such information to another officer, employee, contractor, or agent of the same requesting agency for the particular purpose or activity for which such information was requested, consistent with the requirements of paragraph (d)(1)(i)(F) of this section, as applicable. Any officer, employee, contractor, or agent of the U.S. Department of the Treasury who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(5) of this section may disclose such information to another Treasury officer, employee, contractor, or agent for the particular purpose or activity for which such information was requested consistent with internal Treasury policies, procedures, orders or directives.

(ii) Any director, officer, employee, contractor, or agent of a financial institution who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(4)(i) of this section may disclose such information to another director, officer, employee, contractor, or agent of the same financial institution for the particular purpose or activity for which such information was requested, consistent with the requirements of paragraph (d)(2) of this section.

(iii) Any director, officer, employee, contractor, or agent of a financial institution that receives information disclosed by FinCEN pursuant to paragraph (b)(4)(i) of this section may disclose such information to the financial institution's Federal functional regulator, a self-regulatory organization that is registered with or designated by a Federal functional regulator pursuant to Federal statute, or other appropriate regulatory agency, provided that the Federal functional regulator, self-regulatory organization, or other appropriate regulatory agency meets the requirements identified in paragraphs (b)(4)(ii)(A) through (C) of this section. A financial institution may rely on a Federal functional regulator, self-regulatory organization, or other appropriate regulatory agency's representation that it meets the requirements.

(iv) Any officer, employee, contractor, or agent of a Federal functional regulator that receives information disclosed by FinCEN pursuant to paragraph (b)(4)(ii) of this section may disclose such information to a self-regulatory organization that is registered with or designated by the Federal functional regulator, provided that the self-regulatory organization meets the requirements of paragraphs (b)(4)(ii)(A) through (C) of this section.

(v) Any officer, employee, contractor, or agent of a Federal agency that receives information from FinCEN pursuant to a request made under paragraph (b)(3) of this section may disclose such information to the foreign person on whose behalf the Federal agency made the request.

(vi) Any officer, employee, contractor, or agent of a Federal agency engaged in a national security, intelligence, or law enforcement activity, or any officer, employee, contractor, or agent of a State, local, or Tribal law enforcement agency, may disclose information reported pursuant to § 1010.380 that it has obtained directly from FinCEN pursuant to a request under paragraph (b)(1) or (2) of this section to a court of competent jurisdiction or parties to a civil or criminal proceeding.

(vii) Any officer, employee, contractor, or agent of a requesting agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(1), (b)(4)(ii), or (b)(5) of this section may disclose such information to any officer, employee, contractor, or agent of the United States Department of Justice for purposes of making a referral to the Department of Justice or for use in litigation related to the activity for which the requesting agency requested the information.

(viii) Any officer, employee, contractor, or agent of a State, local, or Tribal law enforcement agency who receives information disclosed by FinCEN pursuant to a request under paragraph (b)(2) of this section may disclose such information to any officer, employee, contractor, or agent of another State, local, or Tribal agency for purposes of making a referral for possible prosecution by that agency, or for use in litigation related to the activity for which the requesting agency requested the information.

(ix) A law enforcement agency, prosecutor, judge, foreign central authority, or foreign competent authority of another country that receives information from a Federal agency pursuant to a request under paragraph (b)(3)(ii)(A) of this section may disclose and use such information consistent with the international treaty, agreement, or convention under which the request was made.

(x) FinCEN may by prior written authorization, or by protocols or guidance that FinCEN may issue, authorize persons to disclose information obtained pursuant to paragraph (b) of this section in furtherance of a purpose or activity described in that paragraph.

(d) *Security and confidentiality requirements*—(1) *Security and confidentiality requirements for domestic agencies*—(i) *General requirements.* To receive information under paragraph (b)(1), (2), or (3) or (b)(4)(ii) of this section, a Federal, State, local, or Tribal agency shall satisfy the following requirements:

(A) *Agreement.* The agency shall enter into an agreement with FinCEN specifying the standards, procedures, and systems to be maintained by the agency, and any other requirements FinCEN may specify, to protect the security and confidentiality of such information. Agreements shall include, at a minimum, descriptions of the information to which an agency will have access, specific limitations on electronic access to that information, discretionary conditions of access, requirements and limitations related to re-disclosure, audit and inspection requirements, and security plans outlining requirements and standards for personnel security, physical security, and computer security.

(B) *Standards and procedures.* The agency shall establish standards and procedures to protect the security and confidentiality of such information, including procedures for training agency personnel on the appropriate handling and safeguarding of such information. The head of the agency, on a non-delegable basis, shall approve these standards and procedures.

(C) *Initial report and certification.* The agency shall provide FinCEN a report that describes the standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section and that includes a certification by the head of the agency, on a non-delegable basis, that the standards and procedures implement the requirements of this paragraph (d)(1).

(D) *Secure system for beneficial ownership information storage.* The agency shall, to the satisfaction of the Secretary, establish and maintain a secure system in which such information shall be stored.

(E) *Auditability.* The agency shall establish and maintain a permanent,

auditable system of standardized records for requests pursuant to paragraph (b) of this section, including, for each request, the date of the request, the name of the individual who makes the request, the reason for the request, any disclosure of such information made by or to the requesting agency, and information or references to such information sufficient to reconstruct the reasons for the request.

(F) *Restrictions on personnel access to information.* The agency shall restrict access to information obtained from FinCEN pursuant to this section to personnel—

(*1*) Who are directly engaged in the activity for which the information was requested;

(*2*) Whose duties or responsibilities require such access;

(*3*) Who have received training pursuant to paragraph (d)(1)(i)(B) of this section or have obtained the information requested directly from persons who both received such training and received the information directly from FinCEN;

(*4*) Who use appropriate identity verification mechanisms to obtain access to the information; and

(*5*) Who are authorized by agreement between the agency and FinCEN to access the information.

(G) *Audit requirements.* The agency shall:

(*1*) Conduct an annual audit to verify that information obtained from FinCEN pursuant to this section has been accessed and used appropriately and in accordance with the standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section;

(*2*) Provide the results of that audit to FinCEN upon request; and

(*3*) Cooperate with FinCEN's annual audit of the adherence of agencies to the requirements established under this paragraph to ensure that agencies are requesting and using the information obtained under this section appropriately, including by promptly providing any information FinCEN requests in support of its annual audit.

(H) *Semi-annual certification.* The head of the agency, on a non-delegable basis, shall certify to FinCEN semi-annually that the agency's standards and procedures established pursuant to paragraph (d)(1)(i)(B) of this section are in compliance with the requirements of this paragraph (d)(1). One of the semi-annual certifications may be included in the annual report required under paragraph (d)(1)(i)(I) of this section.

(I) *Annual report on procedures.* The agency shall provide FinCEN a report annually that describes the standards and procedures that the agency uses to ensure the security and confidentiality of any information received pursuant to paragraph (b) of this section.

(ii) *Requirements for requests for disclosure.* A Federal, State, local, or Tribal agency that makes a request under paragraph (b)(1), (2), or (3) or (b)(4)(ii) of this section shall satisfy the following requirements in connection with each request that it makes and in connection with all such information it receives.

(A) *Minimization.* The requesting agency shall limit, to the greatest extent practicable, the scope of such information it seeks, consistent with the agency's purposes for seeking such information.

(B) *Certifications and other requirements.* (*1*) The head of a Federal agency that makes a request under paragraph (b)(1) of this section or their designee shall make a written certification to FinCEN, in the form and manner as FinCEN shall prescribe, that:

(*i*) The agency is engaged in a national security, intelligence, or law enforcement activity; and

(*ii*) The information requested is for use in furtherance of such activity, setting forth specific reasons why the requested information is relevant to the activity.

(*2*) The head of a State, local, or Tribal agency, or their designee, who makes a request under paragraph (b)(2) of this section shall submit to FinCEN a written certification, in the form and manner as FinCEN shall prescribe, that:

(*i*) A court of competent jurisdiction has authorized the agency to seek the information in a criminal or civil investigation; and

(*ii*) The requested information is relevant to the criminal or civil investigation, setting forth a description of the information the court has authorized the agency to seek.

(*3*) The head of a Federal agency, or their designee, who makes a request under paragraph (b)(3)(ii)(A) of this section shall:

(*i*) Retain for the agency's records the request for information under the applicable international treaty, agreement, or convention;

(*ii*) Submit to FinCEN, in the form and manner as FinCEN shall prescribe: the name, title, agency, and country of the foreign person on whose behalf the Federal agency is making the request; the title of the international treaty, agreement, or convention under which the request is being made; and a certification that the requested information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country.

(*4*) The head of a Federal agency, or their designee, who makes a request under paragraph (b)(3)(ii)(B) of this section shall submit to FinCEN, in the form and manner as FinCEN shall prescribe:

(*i*) A written explanation of the specific purpose for which the foreign person is seeking information under paragraph (b)(3)(ii)(B) of this section, along with an accompanying certification that the information is for use in furtherance of a law enforcement investigation or prosecution, or for a national security or intelligence activity, that is authorized under the laws of the relevant foreign country and that the foreign person seeking information under paragraph (b)(3)(ii)(B) has been informed that the information may only be used only for the particular purpose or activity for which it is requested and must be handled consistent with the requirements of paragraph (d)(3) of this section;

(*ii*) The name, title, agency, and country of the foreign person on whose behalf the Federal agency is making the request; and

(*iii*) Any other information that FinCEN requests in order to evaluate the request.

(*5*) The head of a Federal functional regulator or other appropriate regulatory agency, or their designee, who makes a request under paragraph (b)(4)(ii) of this section shall make a written certification to FinCEN, in the form and manner as FinCEN shall prescribe, that:

(*i*) The agency is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of a relevant financial institution with customer due diligence requirements under applicable law; and

(*ii*) The agency will use the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in paragraph (b)(4)(ii)(A) of this section.

(2) *Security and confidentiality requirements for financial institutions.* To receive information under paragraph (b)(4)(i) of this section, a financial institution shall satisfy the following requirements:

(i) *Geographic restrictions on information.* The financial institution shall not make information obtained from FinCEN under paragraph (b)(4)(i) of this section available to persons physically located in, and shall not store such information in, any of the following jurisdictions:

(A) The People's Republic of China;

(B) The Russian Federation; or

(C) A jurisdiction:

(*1*) That is a state sponsor of terrorism, as determined by the U.S. Department of State;

(*2*) That is the subject of comprehensive financial and economic sanctions imposed by the Federal Government, *i.e.,* is a jurisdiction with a government whose property and interests in property within U.S. jurisdiction are blocked pursuant to U.S. sanctions authorities, or a jurisdiction subject to broad-based prohibitions on transactions by U.S. persons involving that jurisdiction, such as prohibitions on importing or exporting goods, services, or technology to the jurisdiction or dealing in goods or services originating from the jurisdiction, pursuant to U.S. sanctions authorities; or

(*3*) To which the Secretary has determined that allowing information obtained from FinCEN under paragraph (b)(4)(i) of this section to be made available would undermine the enforcement of the requirements of paragraph (d)(2) of this section or the national security of the United States.

(ii) *Safeguards.* The financial institution shall develop and implement administrative, technical, and physical safeguards reasonably designed to protect the security, confidentiality, and integrity of such information. These shall include:

(A) *Information procedures.* The financial institution shall:

(*1*) Apply such information procedures as the institution has established to satisfy the requirements of section 501 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 *et seq.*), and applicable regulations issued thereunder, with regard to the protection of its customers' nonpublic personal information, modified as needed to account for any unique requirements imposed under this section; or

(*2*) If the institution is not subject to section 501 of the Gramm-Leach-Bliley Act, apply such information procedures with regard to the protection of its customers' nonpublic personal information as are required, recommended, or authorized under applicable law and are at least as protective of the security and confidentiality of customer information as procedures that satisfy the standards of section 501 of the Gramm-Leach-Bliley Act.

(B) *Notification of information demand.* The financial institution shall notify FinCEN within three business days of receipt of any foreign government subpoena or legal demand under which the financial institution would have to disclose any information the financial institution has received pursuant to a request under paragraph (b)(4)(i) of this section.

(iii) *Consent to obtain information.* Before making a request for information regarding a reporting company under paragraph (b)(4)(i) of this section, the financial institution shall obtain and document the consent of the reporting company to request such information. The documentation of the reporting company's consent shall be maintained for 5 years after it is last relied upon in connection with a request for information under paragraph (b)(4)(i) of this section.

(iv) *Certification.* For each request for information regarding a reporting company under paragraph (b)(4)(i) of this section, the financial institution shall make a certification to FinCEN in such form and manner as FinCEN shall prescribe that the financial institution:

(A) Is requesting the information to facilitate its compliance with customer due diligence requirements under applicable law;

(B) Has obtained and documented the consent of the reporting company to request the information from FinCEN; and

(C) Has fulfilled all other requirements of paragraph (d)(2) of this section.

(3) *Security and confidentiality requirements for foreign recipients of information.* (i) To receive information under paragraph (b)(3)(ii)(A) of this section, a foreign person on whose behalf a Federal agency made the request under that paragraph shall comply with all applicable handling, disclosure, and use requirements of the international treaty, agreement, or convention under which the request was made.

(ii) To receive information under paragraph (b)(3)(ii)(B) of this section, a foreign person on whose behalf a Federal agency made the request under that paragraph shall ensure that the following requirements are satisfied:

(A) *Standards and procedures.* A foreign person who receives information pursuant to paragraph (b)(3)(ii)(B) of this section shall establish standards and procedures to protect the security and confidentiality of such information, including procedures for training personnel who will have access to it on the appropriate handling and safeguarding of such information.

(B) *Secure system for beneficial ownership information storage.* Such information shall be maintained in a secure system that complies with the security standards the foreign person applies to the most sensitive unclassified information it handles.

(C) *Minimization.* To the greatest extent practicable, the scope of information sought shall be limited, consistent with the purposes for seeking such information.

(D) *Restrictions on personnel access to information.* Access to such information shall be limited to persons—

(*1*) Who are directly engaged in the activity described in paragraph (b)(3) of this section for which the information was requested;

(*2*) Whose duties or responsibilities require such access; and

(*3*) Who have undergone training on the appropriate handling and safeguarding of information obtained pursuant to this section.

(e) *Administration of requests*—(1) *Form and manner of requests.* Requests for information under paragraph (b) of this section shall be submitted to FinCEN in such form and manner as FinCEN shall prescribe.

(2) *Rejection of requests.* (i) FinCEN will reject a request under paragraph (b)(4) of this section, and may reject any other request made pursuant to this section, if such request is not submitted in the form and manner prescribed by FinCEN.

(ii) FinCEN may reject any request, or otherwise decline to disclose any information in response to a request made under this section, if FinCEN, in its sole discretion, finds that, with respect to the request:

(A) The requester has failed to meet any requirement of this section;

(B) The information is being requested for an unlawful purpose; or

(C) Other good cause exists to deny the request.

(3) *Suspension of access.* (i) FinCEN may permanently debar or temporarily suspend, for any period of time, any individual requester or requesting entity from receiving or accessing information under paragraph (b) of this section if FinCEN, in its sole discretion, finds that:

(A) The individual requester or requesting entity has failed to meet any requirement of this section;

(B) The individual requester or requesting entity has requested information for an unlawful purpose; or

(C) Other good cause exists for such debarment or suspension.

(ii) FinCEN may reinstate the access of any individual requester or requesting entity that has been suspended or debarred under this paragraph (e)(3) upon satisfaction of any terms or conditions that FinCEN deems appropriate.

(f) *Violations*—(1) *Unauthorized disclosure or use.* Except as authorized by this section, it shall be unlawful for any person to knowingly disclose, or knowingly use, the beneficial ownership information obtained by the person, directly or indirectly, through:

(i) A report submitted to FinCEN under § 1010.380; or

(ii) A disclosure made by FinCEN pursuant to paragraph (b) of this section.

(2) For purposes of paragraph (f)(1) of this section, unauthorized use shall include accessing information without authorization, and shall include any violation of the requirements described in paragraph (d) of this section in connection with any access.

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

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