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Contents

Federal Register

Vol. 87, No. 74

Monday, April 18, 2022

Separate Parts In This Issue

Part II

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

12 CFR
201.....22811
204.....22812

14 CFR

Proposed Rules:
39 (2 documents) 22816, 22818

17 CFR

Proposed Rules:
240.....23054

33 CFR
165.....22813

40 CFR

Proposed Rules:
52.....22821
80.....22823

48 CFR

Proposed Rules:
726.....22843
729.....22843
731.....22843
752.....22843

49 CFR

Proposed Rules:
223.....22847

50 CFR

Proposed Rules:
648.....22863

Rules and Regulations

Federal Register
Vol. 87, No. 74
Monday, April 18, 2022

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1767]

RIN 7100–AG 27

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its regulations to reflect the Board's approval of an increase in the rate for primary credit at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES:

Effective date: The amendments to part 201 (Regulation A) are effective April 18, 2022.

Applicability date: The rate changes for primary and secondary credit were applicable on March 17, 2022.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Special Counsel (202–452–3565), Legal Division, or Lyle Kumasaka, Lead Financial Institution & Policy Analyst (202–452–2382), or Laura Lipscomb, Deputy Associate Director (202–912–7964), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to review and determination of the Board.

On March 16, 2022, the Board voted to approve a 0.25 percentage point increase in the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 0.25 percent to 0.50 percent the rate that each Reserve Bank charges for extensions of primary credit. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate in effect at each of the twelve Federal Reserve Banks increased by 0.25 percentage points as a result of the Board's primary credit rate action, thereby increasing from 0.75 percent to 1.00 percent the rate that each Reserve Bank charges for extensions of secondary credit. The amendments to Regulation A reflect these rate changes.

The 0.25 percentage point increase in the primary credit rate was associated with a 0.25 percentage point increase in the target range for the federal funds rate (from a target range of zero percent to ¼ percent to a target range of ¼ percent to ½ percent) announced by the Federal Open Market Committee on March 16, 2022, as described in the Board's amendment of its Regulation D published elsewhere in this issue of the **Federal Register**.

Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'') [1] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [2] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for shortened notice and publishes its reasoning with the rule.[3] The APA further provides that the notice, public comment, and delayed effective date requirements of 5 U.S.C. 553 do not apply ''to the extent that there is involved . . . a matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts.'' [4]

Regulation A establishes the interest rates that the twelve Reserve Banks charge for extensions of primary credit and secondary credit. The Board has determined that the notice, public comment, and delayed effective date requirements of the APA do not apply to these final amendments to Regulation A. The amendments involve a matter relating to loans and are therefore exempt under the terms of the APA. Furthermore, because delay would undermine the Board's action in responding to economic data and conditions, the Board has determined that ''good cause'' exists within the meaning of the APA to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to the final amendments to Regulation A.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[5] As noted previously, a general notice of proposed rulemaking is not required if the final rule involves a matter relating to loans. Furthermore, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

[1] 5 U.S.C. 551 *et seq.*

[2] 5 U.S.C. 553(b)(3)(A).

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

[4] 5 U.S.C. 553(a)(2) (emphasis added).

[5] 5 U.S.C. 603, 604.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[6] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

For the reasons set forth in the preamble, the Board is amending 12 CFR chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.,* 347a, 347b, 347c, 348 *et seq.,* 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[3]

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 0.50 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under § 201.4(b) is 1.00 percent.

* * * * *

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

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–08254 Filed 4–15–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1768]

RIN 7100–AG28

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') has adopted final amendments to its regulations to revise the rate of interest paid on balances (''IORB'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORB is 0.40 percent, a 0.25 percentage point increase from its prior level. The amendment is intended to enhance the role of IORB in maintaining the federal funds rate in the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: The amendments to part 204 (Regulation D) are effective April 18, 2022.

Applicability date: The IORB rate change was applicable on March 17, 2022.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Special Counsel (202–452–3565), Legal Division, or Francis Martinez, Lead Financial Institution & Policy Analyst (202–245–4217), or Laura Lipscomb, Deputy Associate Director (202–834–2979), Division of Monetary Affairs; for users of telephone systems via text telephone (TTY) or any TTY-based Telecommunications Relay Services (TRS), please call 711 from any telephone, anywhere in the United States; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D established IORB at 0.15 percent.[6]

II. Amendment to IORB

The Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 0.40 percent. The amendment represents a 0.25 percentage point increase in IORB. This decision was announced on March 16, 2022, with an effective date of March 17, 2022, in the Federal Reserve Implementation Note that accompanied the FOMC's statement on March 16, 2022. The FOMC statement stated that the Committee decided to raise the target range for the federal funds rate to ¼ to ½ percent.

A Federal Reserve Implementation note stated:

> The Board of Governors of the Federal Reserve System voted unanimously to raise the interest rate paid on reserve balances to 0.4 percent, effective March 17, 2022.

As a result, the Board is amending § 204.10(b)(1) of Regulation D to establish IORB at 0.40 percent.

III. Administrative Procedure Act

In general, the Administrative Procedure Act (''APA'') [7] imposes three principal requirements when an agency promulgates legislative rules (rules made pursuant to Congressionally-delegated authority): (1) Publication with adequate notice of a proposed rule; (2) followed by a meaningful opportunity for the public to comment on the rule's content; and (3) publication of the final rule not less than 30 days before its effective date. The APA provides that notice and comment procedures do not apply if the agency for good cause finds them to be ''unnecessary, impracticable, or contrary to the public interest.'' [8] Section 553(d) of the APA also provides that publication at least 30 days prior to a rule's effective date is not required for (1) a substantive rule which grants or recognizes an exemption or relieves a restriction; (2) interpretive rules and statements of policy; or (3) a rule for which the agency finds good cause for

[6] 44 U.S.C. 3506; see 5 CFR part 1320, appendix A.1.

[3] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

[1] 12 U.S.C. 461(b). In March 2020, the Board set all reserve requirement ratios to zero percent. See Interim Final Rule, 85 FR16525 (Mar. 24, 2020); Final Rule, 86 FR 8853 (Feb. 10, 2021).

[2] 12 CFR 204.5(a)(1).

[3] 12 U.S.C. 461(b)(1)(A) & (b)(12)(A).

[4] See 12 U.S.C. 461(b)(1)(A) & (b)(12)(C); see also 12 CFR 204.2(y).

[5] See 12 U.S.C. 461(b)(12)(B).

[6] See 12 CFR 204.10(b)(1).

[7] 5 U.S.C. 551 *et seq.*

[8] 5 U.S.C. 553(b)(3)(A).

shortened notice and publishes its reasoning with the rule.[9]

The Board has determined that good cause exists for finding that the notice, public comment, and delayed effective date provisions of the APA are unnecessary, impracticable, or contrary to the public interest with respect to these final amendments to Regulation D. The rate change for IORB that is reflected in the final amendment to Regulation D was made with a view towards accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. Notice and public comment would prevent the Board's action from being effective as promptly as necessary in the public interest and would not otherwise serve any useful purpose. Notice, public comment, and a delayed effective date would create uncertainty about the finality and effectiveness of the Board's action and undermine the effectiveness of that action. Accordingly, the Board has determined that good cause exists to dispense with the notice, public comment, and delayed effective date procedures of the APA with respect to this final amendment to Regulation D.

IV. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') does not apply to a rulemaking where a general notice of proposed rulemaking is not required.[10] As noted previously, the Board has determined that it is unnecessary and contrary to the public interest to publish a general notice of proposed rulemaking for this final rule. Accordingly, the RFA's requirements relating to an initial and final regulatory flexibility analysis do not apply.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (''PRA'') of 1995,[11] the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. The final rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 204 as follows:

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

[10] 5 U.S.C. 603, 604.

[11] 44 U.S.C. 3506; see 5 CFR part 1320, appendix A.1.

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

■ 1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 461, 601, 611, and 3105.

■ 2. Section 204.10 is amended by revising paragraph (b)(1) to read as follows:

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(1) For balances maintained in an eligible institution's master account, interest is the amount equal to the interest on reserve balances rate (''IORB rate'') on a day multiplied by the total balances maintained on that day. The IORB rate is 0.40 percent.

* * * * *

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

Ann E. Misback,

Secretary of the Board.

[FR Doc. 2022–08255 Filed 4–15–22; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0283]

RIN 1625–AA00

Safety Zone; Waters Surrounding F/V American Challenger, Bodega Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters within a 100-foot radius of F/V American Challenger and a 100-yard radius of salvage vessels, machinery, and personnel when present. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by salvage work on the F/V American Challenger. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Francisco.

DATES: This rule is effective without actual notice from April 18, 2022 through 11:59 p.m. on July 31, 2022. For purposes of enforcement, actual notice will be used from April 13, 2022 until April 18, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0283 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG William K. Harris, Sector San Francisco Waterways Management Division, U.S. Coast Guard; telephone 415–399–7443, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because publishing an NPRM would be impracticable. The complex and large scale salvage operations to the F/V American Challenger require immediate action to respond to the potential safety hazards associated with large scale salvage operations. It is impracticable to publish an NPRM because we must establish this safety zone by April 18, 2022.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with salvage operations to the F/V American Challenger.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The

Captain of the Port San Francisco (COTP) has determined that potential hazards associated with ongoing salvage operations, will be a safety concern for anyone within a 100-foot radius of F/V American Challenger and a 100-yard radius of salvage vessels, machinery, and salvage personnel when present. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while salvage operations are being conducted.

IV. Discussion of the Rule

This rule establishes a safety zone from 12:01 a.m. on April 13, 2022 through 11:59 p.m. on July 31, 2022. The safety zone will cover all navigable waters, surface to bottom, within a 100-foot radius of F/V American Challenger and a 100-yard radius of salvage vessels, machinery, and salvage personnel when present. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while salvage operations are being conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of Bodega Bay. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone, which will cover all navigable waters, surface to bottom, within a 100-foot radius of F/V American Challenger and a 100-yard radius of salvage vessels, machinery, and salvage personnel when present. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T11–092 to read as follows:

§ 165.T11–092 Safety Zone; Waters Surrounding F/V American Challenger, Bodega Bay, CA.

(a) *Location.* The following area is a safety zone: All waters of Bodega Bay, from surface to bottom, within a circle formed by connecting all points 100 feet outwards from 38°16′54″ N, 122°59′37″ W, and within a circle formed by connecting all points 100 yards outward of all salvage vessels, machinery, and salvage personnel when present. These coordinates are based on North American Datum 83 (NAD83).

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except those involved in authorized salvage operations, and as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 12:01 a.m. on April 13, 2022 through 11:59 p.m. on July 31, 2022.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced, in accordance with 33 CFR 165.7.

Dated: April 13, 2022.

Taylor Q. Lam,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2022–08272 Filed 4–14–22; 11:15 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 87, No. 74
Monday, April 18, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0464; Project Identifier MCAI–2021–01290–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by a report of inadvertent auto flight system (AFS) altitude changes on the flight control unit (FCU). This proposed AD would require revising the existing airplane flight manual (AFM) to include a procedure on the use of the AFS control panel ALT knob and replacing any affected FCU with a serviceable FCU, as specified in a European Union Aviation Safety Agency (EASA), which is proposed for incorporation by reference. 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 June 2, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.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.

For material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0464.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0464; 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: Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@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–2022–0464; Project Identifier MCAI–2021–01290–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 *https://www.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 Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0260, dated November 18, 2021 (EASA AD 2021–0260) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. This proposed AD was prompted by a report of inadvertent AFS altitude changes on the FCU; an investigation revealed that, depending on the ring selection, failure of the ALT knob on the FCU could change the target altitude, by either by 100 or 1,000 feet. The erroneous altitude shows in the AFS cockpit panel display and in the primary flight display of the FCU, but the flightcrew might not notice. Further investigation revealed that the cause was an incorrect manufacturing

process of the ALT knob encoder. The FAA is proposing this AD to address erroneous target altitude during descent, climb, or go-around, which could result in an unexpected vertical trajectory deviation and loss of correct situational awareness that could potentially result in uncontrolled impact with the ground. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0260 describes procedures for revising the existing AFM to include a procedure on the use of the AFS control panel ALT knob and replacing any affected FCU having part numbers (P/N) C31006AC01 or C31006AB01 with a serviceable FCU having P/N C31006AD01. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0260 described previously, 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.

EASA AD 2021–0260 requires operators to ''inform all flight crews'' of revisions to the AFM, and thereafter to ''operate the aeroplane accordingly.'' However, this proposed AD would not specifically require those actions as those actions are already required by FAA regulations. FAA regulations require operators furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the existing AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Therefore, including a requirement in this proposed AD to operate the airplane according to the revised AFM would be redundant and unnecessary.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0260 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0260 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0260 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0260. Service information required by EASA AD 2021–0260 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0464 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD would affect 27 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 6 work-hours × $85 per hour = $510	$27,000	Up to $27,510	Up to $742,770.

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:

Airbus SAS: Docket No. FAA–2022–0464; Project Identifier MCAI–2021–01290–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 2, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto Flight.

(e) Unsafe Condition

This AD was prompted by a report of inadvertent auto flight system (AFS) altitude changes on the flight control unit (FCU); an investigation revealed that, depending on the ring selection, failure of the ALT knob on the FCU could change the target altitude. The FAA is issuing this AD to address erroneous target altitude during descent, climb, or go-around, which could result in an unexpected vertical trajectory deviation and loss of correct situational awareness that could potentially result in uncontrolled impact with the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0260, dated November 18, 2021 (EASA AD 2021–0260).

(h) Exceptions to EASA AD 2021–0260

(1) Where EASA AD 2021–0260 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0260 specifies to ''inform all flight crews, and thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(3) The ''Remarks'' section of EASA AD 2021–0260 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (j)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Related Information

(1) For information about EASA AD 2021–0260, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0464.

(2) For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

Issued on April 11, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08219 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0463; Project Identifier MCAI–2021–00895–T]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS 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 Airbus SAS Model A318, A319, A320, and A321 series airplanes. This proposed AD was prompted by a report that damage (including delamination of work deck, and corroded and cracked retainer blocks) was found during inspection of certain galleys. This proposed AD would require repetitive inspections of certain galleys for corrosion of trolley retainer aluminum blocks and delamination of the upper panel of the trolley compartment, and applicable corrective action, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference. This proposed AD would also limit the installation of affected parts under certain conditions. 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 June 2, 2022.

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

- *Federal eRulemaking Portal:* Go to *https://www.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.

For EASA material that will be incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this

material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0463.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0463; 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: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@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–2022–0463; Project Identifier MCAI–2021–00895–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 *https://www.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 Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0183R1, dated September 20, 2021 (EASA AD 2021–0183R1) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report that damage (including delamination of the work deck, and corroded and cracked retainer blocks) was found during inspection of certain galleys. The FAA is proposing this AD to detect and correct damage that could affect the galley's capability to hold the trolley under emergency landing loads, which could lead to trolley detachment, possibly resulting in blocking of an escape path during an emergency exit. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0183R1 specifies procedures for repetitive general visual inspections of certain galleys for discrepancies including corrosion of trolley retainer aluminum blocks and delamination of upper panel of trolley compartment, and corrective action. Corrective actions include repeating the inspection at an earlier interval, repairing the trolley compartment upper panel, and limiting trolley weight. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0183R1 described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also limit the installation of affected parts under certain conditions.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0183R1 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0183R1 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0183R1 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is

not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0183R1. Service information required by EASA AD 2021–0183R1 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0463 after the FAA final rule is published.

Interim Action

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

Costs of Compliance

The FAA estimates that this proposed AD would affect 1,425 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170 per galley, per inspection cycle.	$0	$170 per inspection cycle	$242,250 per inspection cycle.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
1 work-hour × $85 per hour = $85 per galley	Minimal	$85

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:

Airbus SAS: Docket No. FAA–2022–0463; Project Identifier MCAI–2021–00895–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by June 2, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

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

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

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that damage (including delamination of work deck, and corroded and cracked retainer blocks) was found during inspection of certain galleys. The FAA is issuing this AD to detect and correct damage that could affect the galley's capability to hold the trolley under emergency landing loads, which could lead to trolley detachment, possibly resulting in blocking of an escape path during an emergency exit.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation

Safety Agency (EASA) EASA AD 2021–0183R1, dated September 20, 2021 (EASA AD 2021–0183R1).

(h) Exceptions to EASA AD 2021–0183R1

(1) Where EASA AD 2021–0183R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2021–0183R1 refers to ''18 August 2021,'' this AD requires using the effective date of this AD.

(3) The ''Remarks'' section of EASA AD 2021–0183R1 does not apply to this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0183R1 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

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

(k) Related Information

(1) For EASA AD 2021–0183R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*. You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0463.

(2) For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *vladimir.ulyanov@faa.gov.*

Issued on April 11, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–08220 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2022–0112; FRL–9734–01–R1]

Air Plan Approval; New Hampshire; Rules for Particulate Emissions From Open Sources, Sand and Gravel and Related Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions of New Hampshire Code of Administrative Rules Chapters Env-A 1000 and Env-A 2800 submitted by the State of New Hampshire on January 8, 2020, and August 19, 2021, respectively. Env-A 1000 establishes requirements for open burning, fugitive dust, and firefighter instruction and training activities. Env-A 2800 sets particulate matter (PM), visible emissions (VE), and fugitive dust standards for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before May 18, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2022–0112 at *https://www.regulations.gov,* or via email to *maiti.pujarini@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Pujarini Maiti, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1625; *maiti.pujarini@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Table of Contents

I. Background and Purpose

On January 8, 2020, the New Hampshire Department of Environmental Services (NH DES) submitted a revision of New Hampshire Code of Administrative Rules Chapter

Env-A 1000 (Prevention, Abatement, and Control of Open Source Air Pollution) to EPA for approval into the New Hampshire SIP. NH DES withdrew the January 8, 2020, submission of Env-A 1000 to the SIP on July 19, 2021. On August 19, 2021, NH DES submitted another revision of Env-A 1000 to EPA for approval into the New Hampshire SIP. This regulation establishes requirements for open burning, fugitive dust and firefighter instruction and training activities. NH DES submitted this revision to replace the current SIP-approved Env-A 1000 (83 FR 6972; February 16, 2018), which expired at the State level on May 1, 2019. The submittal also includes Appendices A and B, which provide references and definitions that are included in Env-A 1000.

On January 8, 2020, NH DES submitted a revision of New Hampshire Code of Administrative Rules Chapter Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources) to EPA for approval into the New Hampshire SIP. Env-A 2800 sets standards for visible emissions (VE) and particulate matter (PM) emissions. It also sets fugitive-dust requirements for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources. NH DES submitted this revision to replace the current SIP-approved version of Env-A 2800 (81 FR 78052; October 1, 2010), which expired at the State level on October 1, 2018. The submittal also includes Appendix A, which provides a list of referenced State statutes and Federal regulations.

After reviewing New Hampshire's SIP submittals, EPA has concluded that the revisions to Env-A 1000 and to Env-A 2800 clarify and strengthen the current SIP-approved regulations and therefore EPA is proposing to approve these revised regulations into the New Hampshire SIP. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

II. EPA's Evaluation of New Hampshire's SIP Revisions

Env-A 1000

Env-A 1000 (Prevention, Abatement, and Control of Open Source Air Pollution) establishes requirements for open burning, fugitive dust and firefighter instruction and training activities. The proposed revisions to this rule, submitted to EPA on August 19, 2021, include clarifications and updates to certain provisions. The submittal also includes Appendices A and B, which provide references and definitions of terms used in Env-A 1000. The main proposed changes in the regulation and EPA's evaluation of these changes, are as follows.

The current SIP-approved version of Env-A 1001 authorizes open burning of untreated wood, campfire wood, brush, or charcoal in a campfire, outdoor grill, or outdoor fireplace for recreational purposes or for the preparation of food. The proposed revision to Env-A 1001 adds open burning of untreated pallets to this list. It also adds untreated pallets to the list of materials (untreated wood, campfire wood, or brush) that may be used as fuel for bonfires in conjunction with holiday or festive celebrations.

The current SIP-approved version of Env-A 1001 allows burning of brush or leaves by a landowner of a private, residential property, provided the material originates ''on-site.'' The proposed revision to Env-A 1001 clarifies that originating ''on-site'' may include material that originates on another residential property but does not include material transported to the burning location for commercial purposes or by a commercial entity or its employees.

The current SIP-approved version of Env-A 1002 includes an exemption for leaf blowers from fugitive-dust regulations. The proposed revision to Env-A 1002 expands the exemption to include compressed air, but adds the limitation that, for commercial properties and public ways, this equipment can only be used for the purpose of blowing leaves and vegetation, and cannot be used to blow dirt, sand, or gravel except as incidental and necessary when blowing leaves and vegetation.

The current SIP-approved version of Env-A 1002 includes precautions to prevent, abate, and control fugitive dust. The proposed version of Env-A 1002 retains the previous precautions and adds two additional allowed measures: (1) The construction of wind barriers to material stockpiles; and (2) construction of wind barriers and phasing of work to reduce disturbed surface area for sandblasting or similar operations.

EPA concludes that the proposed revisions to Env-A 1000 strengthen and clarify this regulation, and we agree that the addition of Appendices A and B provides relevant references and definitions for implementing Env-A 1000. Therefore, EPA is proposing to approve the submitted revision of Env-A 1000 into the New Hampshire SIP.

Env-A 2800

On January 8, 2020, NH DES submitted a revision of New Hampshire Code of Administrative Rules Chapter Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources) to EPA for approval into the New Hampshire SIP. Env-A 2800 sets standards for visible emissions (VE) and particulate matter (PM) emissions. It also sets fugitive-dust requirements for sand and gravel sources, non-metallic mineral processing plants, and cement and concrete sources.

The current SIP-approved version of Env-A 2802 includes definitions of terms used in this regulation. The proposed revision to Env-A 2802 retains these definitions and adds the terms ''Electronic means'' and ''Submit in writing'' to the list of defined terms. These added terms bring the regulation up to date with the electronic reporting systems used by NH DES and EPA.

The current SIP-approved version of Env-A 2803 sets Compliance Testing Requirements for Non-Metallic Mineral Processing Plants. The proposed revision to Env-A 2803 retains the visible fugitive emissions or visible stack emissions standard of an average of 20 percent opacity for these plants, as determined by Env-A 807, for any continuous 6-minute period at crushers, transfer points, or screens. The proposed revision updates, but does not substantially change, the requirements for conducting compliance tests at affected facilities. As before, a successful compliance test must be conducted on the affected facility or specific affected equipment in accordance with 40 CFR 60.675 within 60 days of achieving the maximum production rate at which the affected facility or affected equipment will be operated or 180 days after startup, whichever is sooner.

The current SIP-approved version of Env-A 2804 sets a VE standard for cement, ready mix concrete, and cement block sources. The proposed revision to Env-A 2804 retains the visible fugitive emissions or visible stack emissions standard of an average of 20 percent opacity for these sources, as determined by Env-A 807, for any continuous 6-minute period. EPA agrees that an average of 20 percent opacity is a reasonable VE limitation and concurs with retaining the standard.

The current SIP-approved version of Env-A 2805 establishes requirements for fugitive dust control for all sources and plants subject to this regulation. The

proposed revision to Env-A 2805 retains these requirements without modification. EPA considers New Hampshire's fugitive dust control requirements to be reasonable and concurs with retaining the standard.

The current SIP-approved version of Env-A 2806 establishes Permit-By-Notification (PBN) procedures for non-metallic mineral processing plants. The proposed revision to Env-A 2806 updates these procedures to allow owners or operators to notify NH DES within 10 days after initial startup of an affected facility by electronic means as well as traditional hardcopy delivery methods.

EPA concurs with New Hampshire that the proposed revisions to Env-A 1000 and Env-A 2800 serve to strengthen and clarify these regulations and is, therefore, proposing to approve these revised regulations into the New Hampshire SIP. Furthermore, EPA agrees that the addition of Appendix A provides relevant references for implementing Env-A 2800. Therefore, EPA is proposing to approve the submitted revision of Env-A 2800 into the New Hampshire SIP.

III. Proposed Action

EPA is proposing to approve, and incorporate into the New Hampshire SIP, Env-A 1000 and Env-A 2800, which were submitted by the State of New Hampshire on August 19, 2021, and on January 8, 2020, respectively.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference into the New Hampshire SIP two New Hampshire Code of Administrative Rules: Env-A 1000 (Prevention, Abatement, and Control of Open Source Air Pollution), effective August 1, 2019, and Env-A 2800 (Sand and Gravel Sources; Non-Metallic Mineral Processing Plants; Cement and Concrete Sources), effective December 20, 2018.

The EPA has made, and will continue to make, these documents generally available electronically through *https://www.regulations.gov* and/or in hard copy at the appropriate EPA office.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

Dated: April 12, 2022.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–08155 Filed 4–15–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2021–0845; FRL–9075–03–OAR]

RIN 2060–AV55

Renewable Fuel Standard Program: Canola Oil Pathways to Renewable Diesel, Jet Fuel, Naphtha, Liquefied Petroleum Gas and Heating Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this proposed rule, the Environmental Protection Agency (EPA) is providing an opportunity for comment on a proposed analysis of the lifecycle greenhouse gas (GHG) emissions associated with certain biofuels that are produced from canola/rapeseed oil. This assessment considers diesel, jet fuel, heating oil, naphtha, and liquefied petroleum gas (LPG) produced from canola/rapeseed oil via a hydrotreating process, and proposes to find that these pathways would meet the lifecycle GHG emissions reduction threshold of 50 percent required for advanced biofuels and biomass-based diesel under the Renewable Fuel Standard (RFS) program. Based on these analyses, EPA is proposing to approve these fuel pathways, making them eligible to generate Renewable Identification Numbers (RINs), provided they satisfy the other definitional and RIN generation criteria for renewable fuel specified in the RFS regulations.

DATES:

Comments. Comments must be received on or before May 18, 2022.

Public hearing. EPA will not hold a public hearing on this matter unless a request is received by the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by May 3, 2022. If EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for submission of public comments.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2021–0845, 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–2021–0845 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OAR, Docket EPA–HQ–OAR–2021–0845, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations 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 the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to monitor information carefully and continuously from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Christopher Ramig, Office of Air and Radiation, Office of Transportation and Air Quality, Mail Code: 6401A, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: 202–564–1372; email address: *ramig.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol, biodiesel, heating oil, renewable diesel, naphtha and liquified petroleum gas. Potentially regulated categories include:

Category	NAICS [1] code	Examples of potentially affected entities
Industry	111120	Oilseed (except Soybean) Farming.
Industry	324110	Petroleum refineries (including importers).
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Other basic organic chemical manufacturing.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710	Petroleum Bulk Stations and Terminals.
Industry	424720	Petroleum and Petroleum Products Merchant Wholesalers.
Industry	454310	Other fuel dealers.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated or otherwise affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria in the referenced regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Introduction

Section 211(o) of the Clean Air Act (CAA) establishes the Renewable Fuel Standard (RFS) program, under which EPA sets annual percentage standards specifying the total amount of renewable fuel, as well as three subcategories of renewable fuel, that must be used to reduce or replace fossil fuel present in transportation fuel, heating oil, or jet fuel. Non-exempt renewable fuels must achieve at least a

20-percent reduction in lifecycle greenhouse gas (GHG) emissions as compared to a 2005 petroleum baseline. Advanced biofuel and biomass-based diesel must achieve at least a 50 percent reduction, and cellulosic biofuel must achieve at least a 60 percent reduction.[1]

In addition to meeting the applicable lifecycle GHG reduction requirements, RINs may only be generated if the fuel meets the definitional and other criteria for renewable fuel (*e.g.,* produced from renewable biomass as defined in the regulations and used to reduce or replace the quantity of fossil fuel present in transportation fuel, heating oil, or jet fuel) in CAA 211(o) and the RFS regulations at 40 CFR part 80, subpart M.

Only fuels produced using pathways that EPA has approved as meeting all applicable requirements are eligible to generate RINs. There are three critical components of fuel pathways under the RFS program: (1) Fuel type; (2) feedstock; and (3) production process. Each approved pathway is associated with a specific ''D code'' corresponding to whether the fuel meets the requirements for renewable fuel, advanced fuel, cellulosic fuel, or biomass-based diesel.[2] Since the formation of the RFS program, EPA has periodically promulgated rules to add new pathways to the regulations.[3] In addition, EPA has approved facility-specific pathways through the petition process in 40 CFR 80.1416.

EPA's lifecycle analyses are used to assess the overall GHG impacts of a fuel throughout each stage of its production and use. The results of these analyses, considering uncertainty and the weight of available evidence, are used to determine whether a fuel meets the necessary GHG reductions required under the CAA. Lifecycle analysis includes an assessment of emissions related to the full fuel lifecycle, including feedstock production, feedstock transportation, fuel production, fuel transportation and distribution, and tailpipe emissions. Per the CAA definition of lifecycle GHG emissions,[4] EPA's lifecycle analyses also include an assessment of significant indirect emissions, such as those from land use changes and agricultural sector impacts.

EPA conducted lifecycle GHG analyses for several combinations of biofuel feedstocks, production processes, and fuels and promulgated several fuel pathways as part of its March 26, 2010 RFS final rule (75 FR 14670) (the ''March 2010 RFS2 rule''). In the preamble to that final rule, EPA indicated that it intended to add fuel pathways to the regulations via further notice-and-comment rulemakings. EPA subsequently completed a proposed assessment for canola oil biodiesel; this proposed assessment was published in the **Federal Register** for notice and comment on July 26, 2010 (75 FR 43522). This proposed assessment evaluated the GHG emissions associated with biodiesel produced from canola oil through a transesterification process. On September 28, 2010, EPA published a rule finalizing our determination that canola oil biodiesel meets the lifecycle GHG emissions reduction threshold of 50 percent required by the CAA, and added row G to table 1 to 40 CFR 80.1426, making canola oil biodiesel produced through a transesterification process eligible for biomass-based diesel (D-code 4) RINs (75 FR 59622) (September 2010 Canola Oil rule). This final rule did not include determinations for renewable diesel, jet fuel, naphtha, LPG, or heating oil produced from canola oil via a hydrotreating process.[5] In the 2013 Pathways I final rule (78 FR 14190, March 5, 2013) (''2013 Pathways I rule''), EPA added ''rapeseed'' to the existing pathway in row G for renewable fuel made from canola oil because ''we had not intended the supplemental determination to cover just those varieties or sources of rapeseed that are identified as canola'' (78 FR 14214). In that same rule, for clarity EPA also added ''heating oil'' to the rows in Table 1 that already included renewable diesel or biodiesel (78 FR 14201). As in the 2013 Pathways I rule, in this action we are similarly proposing to add new pathways to table 1 for biofuels produced from ''Canola/Rapeseed oil'' but for simplicity we refer to both canola and rapeseed as ''canola.''

In 2020, the United States Canola Association (USCA) submitted a petition to EPA requesting an evaluation of the GHG emissions associated with renewable diesel, jet fuel, naphtha, LPG and heating oil produced from canola oil via a hydrotreating process, and a determination of the renewable fuel categories, if any, for which such biofuels may be eligible.[6] This preamble describes EPA's analysis of the lifecycle GHG emissions associated with these fuel pathways and provides a brief overview of its results.[7]

As described in Section II.C.12 of this preamble, we estimate that the lifecycle GHG emissions associated with the production of renewable diesel via a hydrotreating process are approximately 63 to 69 percent less than the applicable diesel baseline. We estimate that the naphtha and LPG co-produced with the renewable diesel has similar reductions of 64 to 69 percent and 63 to 69 percent compared to baseline GHG emissions, respectively. We estimate that jet fuel produced from canola oil through a hydrotreating process configured to maximize jet fuel output has lifecycle GHG emissions approximately 59 to 67 percent lower than baseline emissions. These ranges of GHG emissions estimates are based on differences in hydrotreating process configurations. Section II.C.9 of this preamble discusses these estimates and our consideration of uncertainty in the analysis.

Based on these estimates, we propose to find that these biofuels meet the 50 percent GHG reduction threshold required for advanced biofuel and biomass-based diesel. In this action, based on our analysis of available data and other input, EPA is proposing to add to table 1 of 40 CFR 80.1426 pathways for the production of renewable diesel, jet fuel, naphtha, LPG and heating oil produced from canola oil via a hydrotreating process. Specifically, we propose to add ''Canola oil'' to the Feedstock column in rows G, H, and I of table 1 to 40 CFR 80.1426. If finalized, these fuel pathways would be eligible for either biomass-based diesel (D-code 4) or advanced biofuel (D-code 5) RINs, depending on the fuel type and whether they are produced through a hydrotreating process that co-processes renewable biomass with petroleum. EPA requests public comment on these proposed pathway approvals.

EPA is also seeking comment on its proposal to add these fuel pathways to rows G, H, and I of table 1 to 40 CFR 80.1426. We note that in addition to approving generally-applicable pathways by adding them to table 1, EPA has also approved fuel pathways

[1] *See generally* 42 U.S.C. 7545(o)(1).

[2] For additional information see: *https://www.epa.gov/renewable-fuel-standard-program/fuel-pathways-under-renewable-fuel-standard.*

[3] See, *e.g.,* 83 FR 37735 (August 2, 2018) approving grain sorghum oil pathways and 78 FR 41703 (July 11, 2013) approving giant reed and Napier grass pathways.

[4] 42 U.S.C. 7545(o)(1)(H).

[5] Hydrotreating, the process used to produce the vast majority of renewable diesel, consists of catalytic reactions in the presence of hydrogen. This process produces a ''drop-in'' fuel with properties virtually identical to petroleum diesel and distinct from biodiesel.

[6] U.S. Canola Association. (2020). Petition for Pathways for Renewable Diesel from Canola Oil as ''Advanced Biofuel'' Under the Renewable Fuel Standard Program.

[7] The full set of modeling results, post-processing spreadsheets and other technical documents describing this analysis are available in the docket for this action.

on a facility-specific basis in cases where the evaluation involved a straightforward application of prior modeling and analysis established through a notice and comment process. Consistent with this practice, EPA may also consider the analysis in this proposed rule and any comments it receives in evaluating facility-specific pathway petitions submitted pursuant to 40 CFR 80.1416 that propose using canola oil as a biofuel feedstock or hydrotreating as a production process.

II. Analysis of GHG Emissions Associated With Production of Biofuels From Canola Oil

A. Overview of Canola Oil

Canola oil is a vegetable oil that contains low concentrations of erucic acid (less than 2 percent), originally bred from cultivars of the Brassica and Sinapis genera.[8] In addition to use as a renewable fuel feedstock, canola oil is a common vegetable oil for food use. In many instances, canola oil is used synonymously with rapeseed oil, or is considered a varietal of it. We propose definitions of canola/rapeseed oil to be included in 40 CFR 80.1401. We request comment on this definition.

In September 2010, EPA evaluated a pathway for biodiesel produced from canola oil using a transesterification process to generate biomass-based diesel (D-code 4) RINs.[9] For that analysis, EPA performed lifecycle analysis using the methodology first described in the March 2010 RFS2 rule.[10] This methodology included the Forest and Agricultural Sector Optimization Model with Greenhouse Gases model (hereafter referred to as ''FASOM'') and the FAPRI–CARD model (Food and Agricultural Policy Research Institute international model; hereafter referred to as ''FAPRI'') developed at the Center for Agriculture and Rural Development at Iowa State University. These frameworks were used to estimate upstream GHG emissions associated with the production and transport of the canola oil feedstock.[11] These upstream emissions were evaluated in concert with a transesterification biodiesel production process using natural gas and electricity for process energy and glycerin as a co-product. Based on that analysis, EPA determined that canola oil biodiesel produced via transesterification meets the 50 percent GHG reduction threshold and added this fuel pathway to row G in table 1 to 40 CFR 80.1426, making this fuel eligible for biomass-based diesel (D-code 4) RINs. The September 2010 Canola Oil rule did not address pathways for renewable diesel, naphtha, LPG, jet fuel or heating oil produced from canola oil through a hydrotreating process.

In addition to the lifecycle GHG analysis, another factor EPA has analyzed in pathway determinations is the invasiveness properties of the feedstock and the appropriateness of requiring associated risk management measures. EPA began evaluating invasiveness concerns in the context of fuel pathway evaluation under the RFS program in the July 11, 2013 rule approving renewable fuel pathways for giant reed (*Arundo Donax*) and Napier grass (*Pennisetum Purpureum*) after receiving comments that these feedstocks present a risk of invasiveness.[12] Commenters stated that EPA should conduct an invasiveness species analysis, citing requirements of Executive Order (E.O.) 13112.[13] E.O. 13112, signed in February 1999, defines ''invasive species'' as ''an alien species whose introduction does or is likely to cause economic or environmental harm or harm to human health.'' In the July 2013 rule (78 FR 41703), we established requirements that producers of renewable fuel using giant reed or napier grass include a Risk Mitigation Plan (RMP) demonstrating measures taken to prevent the spread of these species, or demonstrate that an RMP is not needed because the species do not pose a significant likelihood of spread beyond the planted area. We are not proposing any risk management measures related to potential invasiveness of canola in this rule. Canola is an established feedstock with 89 million acres planted in over 30 countries in 2020.[14] We do not believe canola is an invasive species as defined in E.O. 13112, and we do not believe the approval of additional canola oil-based fuels would have implications for invasiveness. We request comment on this decision and the appropriateness of risk mitigation practices.

B. Petition Overview

The USCA submitted a petition in March 2020, pursuant to the petition process described at 40 CFR 80.1416, requesting EPA's evaluation of the lifecycle GHG emissions associated with producing renewable diesel, jet fuel, naphtha, LPG and heating oil from canola oil feedstock through a hydrotreating process. The petition requested that EPA evaluate these pathways using the same lifecycle analysis modeling approach used to evaluate canola-oil based biodiesel in the September 2010 Canola Oil Rule (75 FR 59622). However, USCA stated in their petition that, in our 2010 analysis of canola oil-based biodiesel, we overestimated the lifecycle GHG emissions associated with canola oil production in four categories: Domestic land use change, domestic crop inputs, international land use change and international crop inputs. USCA supported their statements by comparing data sources underlying parts of our 2010 assessment of canola oil with more recent data. Specifically, the petition referenced more recent data on canola production, yields, trade, and oil extraction. Based on these comparisons, the USCA petition requested that we adjust our 2010 canola oil estimates without conducting new agricultural sector modeling.

The USCA petition requests that we simply adjust the results of our previously completed agricultural sector modeling based on new information. We believe such adjustments would be inappropriate because they would create inconsistencies between the agricultural sector modeling and the results. For example, it would be inappropriate to reduce planted area of canola based on new yield data and simply assume that the rest of the agricultural model results would remain unchanged. Thus, while we are not adjusting or otherwise reopening our 2010 canola oil-based biodiesel analysis or estimates, we do believe that the USCA petition highlights appropriate and significant areas where the data and information considered in the 2010 canola modeling should be updated for purposes of evaluating new fuel pathways that use canola oil feedstock. The petition includes detailed information showing that more recent data on canola oil production and trade patterns differed significantly from the data considered in the 2010 analysis. Based on these significant differences, and since we have not previously published lifecycle GHG emissions estimates for canola oil-based fuels produced through a hydrotreating process, we believe it is important to consider the more recent data highlighted in the USCA petition in a new lifecycle GHG analysis for these

[8] See 21 CFR 184.1555 Rapeseed oil.

[9] 75 FR 59622 (September 28, 2010).

[10] For documentation of this methodology, see Docket Item No. EPA-HQ-OAR-2005–0161–3173.

[11] For further discussion of the scientific reasoning behind the use of these two specific models of this methodology, see Chapter 2 of the Final Regulatory Impact Analysis associated with the March 2010 RFS2 rule (EPA–420–R–10–006).

[12] 78 FR 41703 (July 11, 2013).

[13] 64 FR 6183 (February 3, 1999).

[14] United States Department of Agriculture, Foreign Agricultural Service. PSD Only Query tool. *https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery*. Data queried November 5, 2021.

fuel pathways. This analysis uses the same modeling frameworks and methodology as we have used previously to evaluate agricultural feedstocks but includes updated data inputs as discussed later in this proposal.[15]

C. Analysis of Lifecycle GHG Emissions

1. Overview of Lifecycle Analysis Methodology

For this proposed rule, we evaluated the lifecycle GHG emissions of producing renewable diesel and other biofuels from canola oil. In this section, we describe our methodology for conducting this evaluation, the assumptions and scenarios evaluated using this methodology, and the results of our analysis. We used the same biofuel lifecycle analysis methodology and modeling framework developed for the March 2010 RFS2 rule and that was subsequently used for the September 2010 Canola Oil Rule.[16] The components of this methodology are described further later in this proposal, but generally involve the use of agricultural modeling to estimate emissions from land use change, crop production, livestock, and rice methane, as well as application of coefficients and assumptions from the Greenhouse Gases, Regulated Emissions, and Energy use in Technologies (GREET) model [17] and other sources to evaluate emissions associated with feedstock and fuel transport, processing, and use. This methodology was developed to estimate ''lifecycle greenhouse gas emissions'' as defined at section 211(o)(1)(H) of the Clean Air Act. It was used for the March 2010 RFS2 rule after an extensive peer review and public comment process.

In general, this methodology involves using two agricultural sector models, FASOM and the FAPRI–CARD model, to estimate U.S. and non-U.S. GHG emissions impacts respectively. In this methodology, we model and evaluate a hypothetical canola oil demand shock scenario to estimate changes in agricultural production and land use and associated GHG emissions associated with the biofuel pathway under consideration. In this demand shock scenario, U.S. domestic consumption of a specific biofuel pathway is assumed to increase by some amount relative to the volume of U.S. domestic consumption in a reference scenario.

Following the lifecycle GHG analysis methodology developed for the March 2010 RFS2 rule, the modeling scenarios used in this analysis are designed to isolate the GHG impacts associated with the biofuel pathway being considered. They are not meant to project or forecast future market conditions, or to otherwise predict what will happen in the future if a given biofuel pathway is approved. Some of our assumptions, which are necessary to construct a scenario which appropriately isolates the impacts of a single fuel pathway, intentionally simplify what we would expect to occur in the real world. For example, in these scenarios, we hold U.S. consumption of all biofuels constant throughout the entire modeled period, except for the biofuel being evaluated. In reality, an increase in domestic consumption of one biofuel product would be expected to have some impact on consumption of other biofuel products. However, allowing for such market-balancing behavior would confound our ability to estimate the GHG impacts of one biofuel in isolation. Therefore, such simplifying assumptions are necessary for the purposes of our analysis. For these same reasons, it would be inappropriate to characterize the scenario results presented later in this proposal as a projection or forecast; these results should be interpreted as hypothetical scenarios.

This methodology also includes estimating GHG emissions associated with fuel production, distribution and use based on data from GREET and other sources. All of these GHG emissions estimates are added together and divided by the change in the amount of biofuel produced in the scenarios evaluated to estimate the lifecycle GHG emissions associated with fuel produced through the evaluated pathway, in terms of carbon dioxide-equivalent emissions per megajoule (MJ) of fuel produced. We are not reopening this overall lifecycle analysis methodology and modeling framework in this proposed rule; thus, any comments on the overall methodology and modeling framework are outside the scope of this rulemaking action.

Although we are using the same overall methodology and modeling framework as developed for the March 2010 RFS2 rule, we have updated the data inputs into this analysis in the following areas: (1) Canola/rapeseed oil production, crushing, yields and trade based on historical data from USDA and other sources, (2) GHG emissions factors and transportation and distribution assumptions based on the latest version of the GREET model,[18] (3) the most recent global warming potentials from the Intergovernmental Panel on Climate Change (IPCC), (4) international crop production energy inputs based on historical FAO data, and (5) hydrotreating process assumptions based on literature review and information submitted through new pathway petitions. We request comment on these data input updates. As discussed in Section II.C.9 of this preamble, we also request comment on our use of the energy allocation method to account for co-products from the hydrotreating process, given that prior RFS rules used a displacement approach for some of these co-products. The rest of this section describes the updated data inputs used in our analysis and the scenarios modeled.

The lifecycle analysis for the March 2010 RFS2 rule relied to a relatively large extent on data and GHG emissions factors from the GREET model developed and maintained by Argonne National Laboratory. Version 1.8b of GREET was the most recent version available at the time of the March 2010 RFS2 rule.[19] For the analysis for this proposed rule, we have updated GHG emissions factors based on more recent data in GREET–2020. Some of the emissions factors have not changed substantially, while others have. For example, the carbon dioxide-equivalent emissions factor for natural gas consumed in the U.S. in medium-size industrial boiler increased by only 1% from GREET 1.8b to GREET–2020. Whereas, the emissions factor for U.S. average electricity has decreased by 41% reflecting significant changes to the U.S. grid.[20]

The latest version of GREET was released in October 2021. While the analysis for this proposed rule was almost entirely complete using data and emissions factors from GREET–2020 prior to the release of GREET–2021, we do consider the updated hydrotreating input-output data from GREET–2021 in this proposed rule. A brief review shows that the other relevant changes to emissions factors from GREET–2020 to GREET–2021 are relatively small—for

[15] For documentation of the LCA frameworks and methodology, see Docket Item No. EPA-HQ-OAR-2005–0161–3173.

[16] For information about our 2010 methodology and analysis see Section 2 of the regulatory impact analysis (RIA) for the March 2010 RFS2 rule and the associated lifecycle results (Docket Item No. EPA-HQ-OAR-2005–0161–3173).

[17] See documentation and description available from Argonne National Lab at *https://greet.es.anl.gov.*

[18] Argonne National Laboratory. (2021). Greenhouse gases, Regulated Emissions, and Energy use in Transportation (GREET) Model. *https://greet.es.anl.gov/.*

[19] As noted previously, we are not reopening the 2010 lifecycle GHG analysis for canola oil biodiesel.

[20] Both the natural gas and electricity emissions factor comparisons are weighted with the same 100-year GWP values from the IPCC Fifth Assessment Report.

example, in the latest version of GREET the GHG emissions factors per energy unit for average natural gas did not change, the emissions factor for gaseous hydrogen increased by one percent, and U.S. average grid electricity decreased by two percent. We intend to update these data to GREET–2021 for the final rule, but we do not expect these updates to change our estimates enough to affect our overall finding that the pathways evaluated satisfy the statutory 50 percent GHG reduction threshold for qualification as biomass-based diesel or advanced biofuel.

Another update is that the analysis for the March 2010 RFS2 rule used 100-year global warming potential (GWP) values from the IPCC Second Assessment Report. The analysis for this proposed rule uses 100-year GWP values from the most recent IPCC Fifth Assessment Report.[21] Based on these updates, the GWP for methane increased from 21 to 30, and the GWP for nitrous oxide decreased from 310 to 265.

Our analysis for this proposed rule considers updated data based on information submitted as part of the USCA petition. Global canola acreage has increased over the last decade, from 83 million acres globally in 2010 to 89 million acres in 2020.[22] U.S. canola acreage increased over this time from 1.43 million acres in 2010 to 1.80 million acres in 2020, representing 1.7 percent and 2 percent of global totals respectively. Yields have increased over the same period in several producing regions. Average U.S. yields grew from 1,713 pounds per acre in 2010 to 1,927 pounds per acre in 2020 (12.5 percent increase) while yields improved more substantially in Canada and China over the same period (25 percent and 18 percent increases respectively). Global production of canola oil increased 24 percent between 2010 and 2020 to meet growing demand. This increase in demand was led by China. China's consumption of canola oil grew from 13 billion pounds in 2010 to 18 billion pounds in 2020. The U.S. canola oil consumption grew by 1.9 billion pounds over this timeframe, from 3.7 billion pounds to 5.6 billion pounds, representing a 54 percent increase.[23]

Specifically, for the purpose of this rulemaking we have updated our FASOM and FAPRI input assumptions to include more recent USDA historical data on global canola oil production, yields and trade.[24] Updates were made consistently between the two frameworks, using common data sources and assumption values where applicable (*i.e.,* where both models require the same input assumption). These assumption updates are described in more detail in Sections II.C.2 and 3 later in this proposal. We have also updated the data source for estimating GHG emissions associated with farming energy use for canola oil and other crop production outside of the U.S. For more details, see Section II.C.5 of this preamble. We also consider new data on canola crushing from the USCA petition, feedstock and fuel transport from GREET–2020 and hydrotreating from GREET–2021, as well as data from review of the literature and information provided through RFS new pathway petitions. All these updates taken together decrease our estimates of the lifecycle GHG emission associated with using canola oil as a biofuel feedstock compared to compared to our analysis for the September 2010 Canola Oil Rule. EPA previously determined that biodiesel produced from canola oil via transesterification meets the 50 percent threshold to generate D4 RINs. EPA is not revisiting, revising, or requesting comment on canola oil-based biodiesel or any other existing pathways. Given that most of the updates for this proposed rule pertain specifically to canola oil, we note that it would be inappropriate to draw any conclusions about the lifecycle GHG emissions associated with biofuel pathways that use feedstocks other than canola oil from our estimates for this proposed rule. EPA is therefore not requesting comment on pathways using any other feedstock besides canola oil.

EPA conducted two modeling scenarios in both FASOM and FAPRI for this analysis.[25] The difference in GHG emissions between these two scenarios represents our estimate of the emissions from land use change, agricultural input, livestock, and rice methane associated with using canola oil as a biofuel feedstock (our emissions estimates are described in Table II.C.8–1). First, we ran an updated Control Case that reflected the updated assumptions for global canola oil production, yields, and trade.[26] In this Control Case, we assumed no canola oil-based biofuels were consumed in the U.S. over the period of analysis (2012–2052 in FASOM, 2012–2022 in FAPRI), consistent with our Control Case assumptions for previous analyses. Second, we conducted a shock scenario that assumed a 1.53 billion pound increase in canola oil production for use as feedstock to produce approximately 200 million gallons of canola oil-based renewable diesel, jet fuel, naphtha, LPG and heating oil for U.S. consumption of in 2022 (hereafter the ''Canola Case''), which was assumed to ramp up linearly from 2012 to 2022 (see Table II.C.1–1).[27] According to USDA historical data, annual U.S. consumption of canola oil ranged from about 5.3 to 6.4 billion pounds over the period between 2015 and 2020.[28] In addition, global canola/rapeseed seed annual exports ranged from approximately 32 to 38 billion pounds between 2015 and 2020 and canola/rapeseed oil exports ranged from about 9 to 13 billion pounds over the same period; this suggests substantial quantities of additional feedstock may be available for import to the U.S. market.[29] Based on data from the EPA Moderated Transaction System (EMTS), the U.S. produced approximately 160 million gallons of canola oil biodiesel in 2020, and another 123 million gallons of biodiesel produced from a mix of feedstocks were imported from Canada, which likely included a portion from canola oil. Thus, the volume of hydrotreated canola oil-based fuels in the modeled shock is a similar order of magnitude as the volume of biodiesel currently produced from canola oil. Finally, according to EPA's administrative data from the RFS program, about 1.5 billion RINs were generated for renewable diesel in 2019, equivalent to about 900 million

[21] IPCC, 2014: Climate Change 2014: Synthesis Report. Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change [Core Writing Team, R.K. Pachauri and L.A. Meyer (eds.)]. IPCC, Geneva, Switzerland, 151 pp.

[22] In most of the world, canola is referred to as ''rapeseed''. For consistency, we use ''canola'' throughout to refer to both canola and rapeseed.

[23] United States Department of Agriculture, Foreign Agricultural Service. PSD Only Query tool. *https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery.* Last accessed March 16, 2022.

[24] These are taken from the USDA PSD data cited above and from the USDA National Agricultural Statistical Service QuickStats database (USDA NASS QuickStats). *https://quickstats.nass.usda.gov.* Last accessed March 16, 2022.

[25] Complete sets of results for these FASOM and FAPRI modeling scenarios are available on the docket.

[26] A memorandum describing these updates and referencing their sources is available on the docket.

[27] Depending on the source of hydrotreating process data used, the size of the shock ranges from 187 million gallons of hydrotreated renewable fuel (based on GREET–2021) to 220 million gallons (based on data in petitions submitted pursuant to 40 CFR 80.1416 claimed as confidential business information).

[28] See for reference the USDA Oil Crop Yearbook at *https://www.ers.usda.gov/data-products/oil-crops-yearbook.* Last accessed March 16, 2022.

[29] United States Department of Agriculture, Foreign Agricultural Service. PSD Only Query tool. *https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery.* Data queried March 16, 2022

gallons.[30] Based on these data, we believe the magnitude of the assumed shock in the Canola Case is reasonable and appropriate.

All other assumptions were held constant between the Control Case and the Canola Case. The structure of this shock was designed to be consistent with the shock methodology approach used for EPA's previous lifecycle GHG analyses of agricultural feedstocks under the RFS program.

TABLE II.C.1–1—CANOLA OIL SHOCK SCENARIO [31]

Year	Assumed increase in USA canola oil consumption for biodiesel production (billion pounds of canola oil)
2012	0.25
2017	0.9
2022 through 2057	1.53

2. FASOM Analysis

EPA used FASOM to estimate the GHG emissions from domestic land use change, farm inputs, livestock, and rice methane associated with using canola oil as a biofuel feedstock. This is the same methodology EPA previously used to estimate these GHG emissions sources for soybean oil-based biodiesel and other agricultural feedstocks.[32] EPA updated several aspects of its analysis of the domestic U.S. emissions associated with production of fuels from canola oil for this analysis, building on the version of FASOM used for the analysis of the GHG emissions attributable to the production and transport of sugar beets for use as a biofuel feedstock.[33] In this section, we first review the updates made to model inputs and other assumptions for this analysis. Following this, we present a summary of the FASOM modeling results.[34]

i. Modifications to Model Inputs and Assumptions

For this analysis, EPA updated FASOM assumptions related to market conditions for canola seed, canola meal, and canola oil. This included assumptions about historical U.S. prices; quantities of seed, meal, and oil consumed; planted area; seed yields; and trade quantities and elasticities. Updated assumptions for prices, planted area, and seed yields were primarily taken from USDA National Agricultural Statistical Service (NASS) historical data sets.[35] In some cases, these NASS data were supplemented with additional data taken from the USDA Oil Crop Yearbook and the USCA. These updates replaced previous assumptions in FASOM for the years 2011 through 2020. In the case of canola seed yields, FASOM's baseline trend of future yields was also reprojected using the updated NASS data.[36]

EPA also updated FASOM to reflect differences in historical pricing between U.S. domestically-produced canola seed, oil, and meal and imported canola seed, oil, and meal. Imported canola seed and oil from Canada are important components of the U.S. market, generally representing well over 90 percent of the canola products consumed in the U.S. in any given year.[37] Reflective of this market dynamic, historical data show that Canadian producers exporting to the U.S. were systematically paid less for their canola oil than domestic U.S. producers.[38] In previous modeling analyses, FASOM assumed a single price for both domestic and imported canola oil. This led to a consumption mix that included a greater percentage share of domestically-produced canola products, especially oil, than actually occurred historically. In the updated modeling conducted for this assessment, EPA differentiated the prices at which domestic and imported canola seed and oil could be supplied to the U.S. market and then recalibrated canola trade elasticities to better reproduce historical market shares of domestically-produced canola products and Canadian imported canola products more accurately in FASOM.[39] EPA requests comment on these updates to our modeling assumptions. We are not seeking comment on the overall lifecycle analysis methodology and modeling framework used to conduct this analysis, which were subject to notice and comment in the March 2010 RFS2 rule.[40]

ii. Summary of Results

This section describes the differences in FASOM results between modeled outcomes from the Control Case and the Canola Case (described in Table II.C.1–1). Unless otherwise stated, the data presented in this section are the calculated differences between the Control Case and the Canola Case (*i.e.,* the model output value for a variable reported in the Canola Case minus the output value for that same variable reported in the Control Case). In this summary, we first describe the ways in which FASOM estimates the canola oil feedstock used to supply the biofuel shock would be sourced. We then describe the market adjustments in canola oil prices, supply, demand, and trade which FASOM estimates would be necessary to facilitate this sourcing of canola oil for fuel use. Following this, we describe the shifts in production of other crops, cropland use, and land use which FASOM estimates would occur as a result of the sourcing of canola oil for fuel use.

The total quantity of canola oil required to produce the assumed marginal volume shock in the Canola Case was assumed to be approximately 1.53 billion pounds. To supply this quantity of canola oil to the biofuel production sector, FASOM made several market adjustments. Of the total 1.53 billion pounds required, FASOM estimated approximately 1.28 billion pounds would be supplied by increasing the total U.S. supply of

[30] See public data from the RFS program at *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rins-generated-transactions.*

[31] Note that, consistent with our existing methodology, the volume shock is implemented slightly differently in FASOM and FAPRI. For FASOM, which operates in 5-year time steps, the values in this table fully represent the assumptions used to implement the shock. For FAPRI, which operates in annual time steps, interim year assumption values are interpolated linearly to create a smooth ''ramp-up'' path for the volume shock. Further description of this methodology can be found in Chapter 2 of the Final Regulatory Impact Analysis associated with the March 2010 RFS2 rule (EPA–420–R–10–006).

[32] See Docket Item No. EPA–HQ–OAR–2005–0161–3173 for details on the version of FASOM used to analyze emissions associated with soybean oil-based biodiesel. See Docket No. EPA–HQ–OAR–2010–0133 for details on the version of FASOM used to analyze emissions associated with canola oil-based biodiesel. See Docket No. EPA–HQ–OAR–2016–0771 for details on the version of FASOM used to analyze emissions associated with sugar beet-based ethanol.

[33] See Docket No. EPA–HQ–OAR–2016–0771 for details on the version of FASOM used to analyze emissions associated with sugar beets.

[34] Further information about our assumptions and the modeling results are available in the docket for this action.

[35] See USDA NASS QuickStats. *https://quickstats.nass.usda.gov.* Last accessed March 16, 2022.

[36] Further information regarding these updated assumptions is detailed in the memorandum, ''Memo on FASOM Assumptions,'' available in the docket for this action.

[37] For detailed data on US imports of canola seed, meal, and oil by trade partner, see the UN Comtrade database at *https://comtrade.un.org/data.*

[38] For U.S. price data see USDA ERS—Oil Crops Yearbook. Canola Seed and Canola Seed Products. *https://www.ers.usda.gov/data-products/oil-crops-yearbook.* Last accessed March 16, 2022. For Canadian price data, see Canola Council of Canada. Canadian canola export statistics. *https://www.canolacouncil.org/markets-stats/exports/#export-values.* Last accessed March 16, 2022.

[39] Further information regarding the assumptions made to conduct the FASOM modeling in support of this analysis is available in the memorandum, ''Memo on FASOM Assumptions,'' available in the docket for this action.

[40] EPA (2010). Renewable fuel standard program (RFS2) regulatory impact analysis. Washington, DC, US Environmental Protection Agency Office of Transportation Air Quality. EPA–420–R–10–006.

canola oil via a combination of increased imports and increased domestic production. These 1.28 billion pounds would represent an approximately 28 percent increase in total domestic supplies of canola oil. FASOM estimates canola oil imports would increase by about 1.18 billion pounds. Domestic crushing of canola seed into meal and oil would produce about 0.1 billion pounds of additional canola oil. Domestic demand for non-fuel uses of canola oil, inclusive of all food uses (*e.g.,* cooking, baking, salad dressings) and non-fuel industrial uses (*e.g.,* industrial lubricants, cleaning products, cosmetics), would decrease by approximately 0.25 billion pounds to provide the remaining canola oil required to meet the 1.53-billion-pound shock. These shares of biofuel feedstock are summarized in Table II.C.2.ii–1.

TABLE II.C.2.ii–1—SOURCES OF CANOLA OIL FOR BIOFUEL FEEDSTOCK IN THE CANOLA CASE

Feedstock source	Quantity (billion pounds)	Percent of total volume shock
Increased Imports	1.18	77
Reduced Domestic Demand for Non-Fuel Uses	0.25	16
Increased Domestic Production	0.1	7
Total Volume Shock	1.53	100

As stated earlier in this proposal, most of the additional supply of biofuel feedstock is expected to come from imported canola oil.[41] FASOM estimates these imports would increase by approximately 40 percent in 2022 in response to the shock. Because modeled non-fuel uses of canola oil are not drawn on as significantly to provide feedstock for this shock, FASOM does not estimate there would be a significant need to backfill the domestic U.S. vegetable oil market. Domestic consumption of other vegetable oils therefore does not change significantly in these results. Following this, FASOM estimates virtually no changes in imports of other vegetable oils in these results. Increased demand for canola oil in response to the volume shock is estimated to cause the average price of canola oil for all uses to increase by approximately 24 percent in the Canola Case. This price increase would put downward pressure on other uses of canola oil, and non-biofuel domestic demand for canola oil is estimated to decrease by approximately 5.6 percent. FASOM estimates these higher prices would also induce domestic U.S. production of canola oil to increase by about 7 percent. Table II.C.2.ii–2 reports changes in supply, demand, and prices for canola oil in the Canola Case relative to the Control case. Changes for other modeled vegetable oils, specifically soybean oil and corn oil, are estimated to be in the range of 0.03 percent or less and are not presented here, though these results are available in the docket.[42]

TABLE II.C.2.ii–2—CANOLA OIL MARKET RESPONSES IN 2022

[In percentage changes]

	Percent change from control case
Total Domestic Demand	−5.6
U.S. Imports	38.9
U.S. Production	7.0
U.S. Price	24.1

FASOM estimates the increase in canola oil production would result in an increase in canola seed crushing of approximately 253.5 million pounds, an increase in domestic canola oil production of about 7 percent compared to the Control Case. Most of this increase in canola crushing would be supplied through increased imports of whole canola seed. Of the total increase in canola seed supply to the crushing market, 87 percent is estimated to come from increased imports and 13 percent is estimated to come from increased domestic U.S. production. As observed above, the U.S. canola product markets are historically import-dependent. Based on this, we believe the response in FASOM is consistent with historical market patterns. However, FASOM estimates the increase in domestic crushing would also induce a response from domestic canola seed demands. FASOM estimates direct domestic uses of canola seed other than crushing would decrease by approximately 16 percent. Domestic canola seed production also responds, and FASOM estimates domestic production would increase by approximately 1 percent. These impacts are summarized in Table II.C.2.ii–3. This increase in U.S. canola seed production would be facilitated in part by a modeled expansion in canola harvested crop area of about 17,600 acres, or about 1.2 percent, in the U.S. in 2022 (see Table II.C.2.ii–4).

TABLE II.C.2.ii–3—CANOLA SEED MARKET RESPONSES IN 2022

[In million pounds]

	Change from control case
Total Domestic Demand	−5.8 (−16%)
U.S. Imports	216.5 (20%)
U.S. Production	31.3 (1%)
U.S. Canola Seed Crushing	253.5 (7%)

These shifts in canola supply, demand, and trade would also have implications for production and consumption of other crops. The modeled increase in canola crushing also produces an additional 156 million pounds of canola meal, all of which FASOM estimates would be supplied to the domestic livestock market. This influx of meal would primarily displace corn in livestock diets. Corn consumption in the domestic feed market is estimated to decrease by about 306 million pounds (about 0.08 percent). This same dynamic can be observed in the FASOM results for commodity trade. As international trade partners increase exports of canola oil to the U.S., these exporters crush additional canola seed. This creates additional supplies of meal for these canola-producing nations, reducing their demands for corn as well. As a result, corn exports from U.S. are estimated to decrease by about 271 million pounds (about 0.28 percent). On net, FASOM estimates that U.S. corn production would decline by about 589 million pounds and that corn harvested area would decline by about 49,100 acres, or about 0.06 percent (see Table II.C.2.ii–4).

Canola and wheat can be produced on the same type of land in high latitude

[41] FASOM is a U.S.-only model and does not disaggregate imports and exports to and from the U.S. by country of origin.

[42] Further information is available in the documents, ''Canola_FASOM results'' and ''FASOM HTML (full results)'' available in the docket for this action.

agricultural systems like Canada and North Dakota, and many farmers rotate the two crops. In response to an increase in production of canola, farmers are likely to respond in one of two ways. One option is that total acres in wheat/canola rotation could increase. The other option is for canola to displace wheat area to some extent as farmers tilt rotations more heavily towards the former (*e.g.,* canola-canola rotations rather than canola-wheat rotations). We observe these complex dynamics in the FASOM results for the Canola Case. To increase canola exports to the U.S. market, FASOM estimates the international market would decrease production of wheat, creating an opportunity for U.S. wheat producers to increase their exports. This impact is relatively marginal in comparison to the shock. However, FASOM estimates U.S. wheat exports would increase by about 174 million pounds, or about 0.18 percent. Domestic wheat production would increase by about 169 million pounds and the harvested area in wheat production (excluding wheat used for grazing) would expand by about 63,000 acres, or about 0.02 percent (see Table II.C.2.ii–4).

The modeling results also show some minor net shifts in other cropland as markets re-equilibrate in response to the shock, totaling about 28,100 harvested acres, or about 0.01 percent. Harvested crop area impacts are summarized in Table II.C.2.ii–4. The shock results in modeled net increase in total domestic harvested crop area of approximately 60,600 acres. This increase would require some shifting of land use from other uses to cropland; as discussed later in this section this land is shifted into cropland from pasture and cropland pasture on net.

TABLE II.C.2.ii–4—HARVESTED CROP AREA RESPONSES IN 2022

[In thousand acres]

	Change from control
Canola	17.6 (1.2%)
Wheat	63 (0.02%)
Corn	−49.1 (−0.06%)
All Else	28.1 (0.01%)
Total	60.6 (0.02%)

Our FASOM results estimate these small shifts in agricultural production volumes would have some modest impact on agricultural prices. In our scenario, canola meal and wheat prices are estimated to decline as production increases, by 0.02 percent and 0.51 percent respectively, while corn prices would rise by 0.44 percent as production decreases. FASOM estimates the livestock market would respond to the increase in corn prices by consuming slightly less corn (0.08 percent compared to baseline consumption). This would be made up in part by a modeled increase in canola meal consumption. However, the modeled increase in corn prices is estimated to create some upward pressure on overall feed prices as well, raising the estimated cost of livestock production. On net in these results, beef slaughter is estimated to decrease by 0.04 percent in response to higher costs and chicken (broiler) slaughter would decrease by 0.05 percent.

Geographically, the modeled domestic response to the shock is concentrated in North Dakota. Canola production is estimated to increase in North Dakota by about 28.9 million pounds (about 1.4 percent) and canola crop area is estimated to expand by 16,300 acres (as discussed later in this section, this acreage comes from a mix of existing and new agricultural land). This accounts for about 92 percent of the total estimated increase in U.S. domestic canola production in the Canola Case. As North Dakota is the dominant producer of canola in the U.S., this modeled impact appears to be consistent with historical agricultural patterns. North Dakota is also a significant producer of wheat. As canola production is estimated to expand in North Dakota, FASOM estimated wheat production would shift to North Dakota region by about 218 million pounds, decreasing on net in all other regions by about 50 million pounds.

Canola is generally crushed near areas of cultivation and a majority of U.S. facilities that process canola seed are located in North Dakota.[43] Following this, as North Dakota canola production is estimated to expand to supply the canola shock, FASOM estimates the additional seed would be crushed into oil and meal in this region as well. This would expand regional supply of livestock feed and would decrease regional feed prices, relative to other regions of the U.S. FASOM estimates that this, in turn, would create incentives to shift livestock production to North Dakota and nearby states. Since livestock feed mixes require several different components, FASOM estimates this shift in livestock production towards North Dakota would also shift production of other feed crops (*e.g.,* corn, soybeans, hay) into North Dakota. Production of these feed crops are estimated to increase by a total of 115,000 acres in 2022. The modeled changes in North Dakota crop area are summarized in Table II.C.2.ii–5. FASOM estimates net cropland in North Dakota would increase by 218,300 acres.[44]

TABLE II.C.2.ii–5—CHANGES IN NORTH DAKOTA CROP AREA IN 2022

[In thousand acres]

	Change from control case
Canola	16.3 (1.39%)
Wheat	86.8 (1.42%)
All Else	115.2 (1.38%)
Total	218.3 (1.39%)

Within North Dakota, FASOM estimates that most this additional cropland (212,000 acres) would be taken from Conservation Reserve Program (CRP) land and a smaller amount (7,000 acres) would be taken from cropland pasture. However, as discussed later in this section, the nationwide net effect on land use from the shock would affect other land types as well.

As crop area expands in North Dakota in response to the shock and livestock production shifts to this region, FASOM estimates total crop area would decrease in the rest of the U.S. FASOM estimates this dynamic would primarily shift production from Iowa and Kansas to North Dakota, suggesting a relatively modest northwesterly shift overall. On net, national crop area is estimated to expand by 60,600 acres in 2022. The modeled state-level changes in total harvested crop area are summarized in Table II.C.2.ii–6.

TABLE II.C.2.ii–6—CHANGES IN REGIONAL HARVESTED CROP AREA IN 2022

[In thousand acres]

	Change from control case
North Dakota	218.3 (1.4%)
Iowa	−82.7 (−0.3%)
Kansas	−60.5 (−0.5%)
All Other Regions	−14.5 (−0.01%)
Total	60.6 (0.02%)

As FASOM estimates cropland would expand in North Dakota, the majority, about 212,000 acres, is estimated to shift into cropland status from land that is placed in CRP in the Control Case. The

[43] National Oilseed Processors Association, ''NOPA Plant Locations'', *https://www.nopa.org/oilseed-processing/nopa-plant-locations/*. Last accessed March 16, 2022.

[44] Note that FASOM does not track conversion of other land types to cropland by crop. This modeled expansion in North Dakota cropland is best understood as an increase in total cropland at the expense of other land uses rather than an expansion cropland for canola, wheat, or any other specific crop into previously uncropped area.

remaining area shifting into cropland status is estimated to shift from cropland pasture. As modeled crop production shifts on the margin out of Iowa and Kansas, FASOM estimates CRP area would increase in these regions to compensate for the decrease in North Dakota CRP area; nationwide CRP area does not change on net in our results. FASOM estimates pasture area would decrease nationwide as greater availability of livestock feed would slightly reduce demand for grazing. In some regions, FASOM estimates this previously grazed pastureland would be forested instead, leading to a modeled increase in forestland. The changes in total regional crop area are summarized in Table II.C.2.ii–7.

TABLE II.C.2.ii–7—CHANGES IN NATIONAL LAND AREA IN 2022
[In thousand acres]

	Change from control case
Cropland[45]	61 (0.02%)
Cropland Pasture	−57 (−0.07%)
Pasture	−36 (−0.04%)
Forest	32 (0.01%)

3. FAPRI Analysis

Like the assessment of domestic impacts using the FASOM model described in Section II.C.2, EPA used FAPRI to estimate the GHG emissions associated with producing canola oil biofuel from international land use change and livestock. This is the same methodology EPA previously used to estimate these emissions sources for soybean oil-based biodiesel and other agricultural feedstocks (*e.g.,* in the March 2010 RFS2 rule, but also in several subsequent pathway determinations). EPA updated several aspects of its analysis of the international GHG emissions associated with canola oil biofuel feedstock production this analysis, building on the FAPRI model used for EPA's analysis of the GHG emissions attributable to the production and transport of sugar beets for use as a biofuel feedstock.[46] In this section, we first review the updates made for this analysis. Following this, we present a summary of the FAPRI modeling results.[47]

i. Modifications to Model Inputs and Assumptions

For this analysis, EPA updated FAPRI assumptions related to market conditions for canola seed, canola meal, and canola oil. This included assumptions about historical U.S. consumption, planted area, seed yields, and trade quantities. Updated assumptions for prices, planted area, and seed yields were primarily taken from NASS historical data sets. In some cases, these NASS data were supplemented with additional data taken from the USDA Oil Crop Yearbook and the USCA. In addition to updated canola yields in the U.S., USDA Foreign Agricultural Service (FAS) Production, Supply and Distribution (PSD) data[48] was used to update the FAPRI baseline trend of future yields in the EU, China, and Canada, regions where real-world yields had diverged most from previous FAPRI baseline assumptions.

Additionally, three elasticities were adjusted to better align the projected international canola market conditions from FAPRI with recent historical data. Notably, the previous FAPRI baseline did not reflect the emergence of Canada as an important producer and exporter of canola and canola oil. Changes were made to align production and trade patterns in Canada, China, and the European (EU) using historical data for the 2009/2010–2021/2022 model periods obtained from the USDA PSD database. The first adjustment made was to increase the crush demand elasticity of canola in Canada from 0.22 to 0.4 to reflect Canada's greater canola oil production and export relative to the previous FAPRI baseline. Increasing this elasticity estimate results in more canola crushed in Canada if the price increases. If Canada produces more canola oil, all else equal, Canadian exports would increase because of this assumption of increased elasticity. Second, we reduced the Chinese canola crush elasticity from 0.26 to 0.18 to reduce the higher-than-observed Chinese canola oil production and export in the FAPRI baseline relative to historical data.[49] As a results of this change, Chinese canola crushing is less responsive to a change in the price of canola. If China crushes less canola, all else equal, Chinese canola exports would decrease. Last, the own-price demand elasticity for rapeseed oil in China was reduced from –0.25 to –0.15. This adjustment was made to further reduce the strong Chinese canola oil export position estimated by the previous FAPRI baseline. Making the Chinese own-price elasticity of demand for canola oil more inelastic has the effect of making Chinese domestic consumption of canola oil less responsive (''stickier'') to changes in price.

EPA also updated the representation of canola and canola oil production in the India region to further align FAPRI with historical data. Indian trade of canola and canola oil are fixed in the FAPRI model at historical levels given very low levels of trade activity of these commodities historically.[50] Similarly, the FAPRI modeling for this proposed rule does not allow for any changes in Indian canola or canola oil production in response to increased demand for canola oil-based biofuels. In 2020, global exports of canola oil were 14 billion pounds. Of this total, India exported 11 million pounds, or 0.08 percent. India does not export any canola seed.[51] Therefore, we believe these adjustments are reasonable based on consideration of recent data and generally consistent with observed agricultural trade patterns.[52]

ii. Summary of Results

To meet the 200 million gallons per year shock of canola oil biofuel, FAPRI estimates that the U.S. will import 100 percent of the feedstock required to meet the canola oil biodiesel shock in 2022. The FAPRI modeling results estimate that 48 percent of this canola oil feedstock would come from new production, with the remainder coming from shifts in other end uses. FAPRI estimates that global agricultural markets would provide the U.S. this feedstock in several ways. EU and Canadian net exports are estimated to increase by 750 and 278 million pounds, equivalent to 49 percent and 18 percent of the increase in U.S. net imports respectively. China's net imports of canola oil would be reduced

[45] Note that cropland reported in national land area includes land that is planted but intentionally not harvested, *e.g.,* crops grown for grazing. Land area totals will therefore differ slightly from the harvested crop area data discussed above.

[46] See 82 FR 34656, July 26, 2017 for details on the version of FAPRI used to analyze emissions associated with sugar beets.

[47] Further information about our assumptions and the modeling results are available in the document, ''FAPRI Outputs,'' available in the docket for this action.

[48] USDA, Foreign Agricultural Service. PSD Only Query tool. *https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery.* Last accessed March 16, 2022.

[49] USDA, Foreign Agricultural Service. PSD Only Query tool. *https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery.* Last accessed March 16, 2022.

[50] USDA, Foreign Agricultural Service. Oilseeds and Products Annual. March 31, 2021. Available at *https://apps.fas.usda.gov/newgainapi/api/Report/DownloadReportByFileName?fileName=Oilseeds%20and%20Products%20Annual_New%20Delhi_India_04-01-2021.* Last accessed March 16, 2022.

[51] USDA, Foreign Agricultural Service. PSD Only Query tool. *https://apps.fas.usda.gov/psdonline/app/index.html#/app/advQuery.* Last accessed March 16, 2022.

[52] Further information regarding these updated assumptions is detailed in the memorandum, ''TITLE,'' available in the docket for this action.

by 362 million pounds relative to the baseline, equivalent to 23 percent of the increase in U.S. net imports. The remaining increase in U.S. net imports are modeled to be supplied through increased net exports from other countries.

FAPRI estimates that all of the canola oil to satisfy the shock would be supplied through increased net imports to the U.S. Since we use the FASOM results to estimate U.S. GHG emissions and the FAPRI results for non-U.S. GHG emissions, the effect of this discrepancy likely increases our GHG emissions estimates relative to a case where both models are perfectly aligned on the share of canola oil supplied through increased U.S. canola production. This is because we include the GHG emissions in the U.S. associated with producing 7 percent of the needed canola oil as estimated with FASOM and also the GHG emissions associated with producing 100 percent of the needed canola oil outside of the U.S. as estimated with FAPRI. For this reason, our estimates may be viewed as conservative (*i.e.,* resulting in greater GHG emissions).[53] In the March 2010 RFS2 rule, we considered comments that questioned the benefit of using both FASOM and FAPRI given the inconsistencies in the results and decided that the benefits of FASOM's more detailed representation of the U.S. agricultural and forestry sectors and associated GHG emissions outweighed the inevitable inconsistencies associated with using both models (75 FR 14768). We took steps in the March 2010 RFS2 rule and in the analysis for this proposed rule to reconcile the two model results to the extent possible by applying the same set of scenarios and key input assumptions in both models.[54] Overall, we believe the 7 percent difference in sourcing of U.S. canola oil supplies provides a reasonably aligned and conservative estimate of the lifecycle GHG emissions associated with scenario modeled.

FAPRI results show that canola seed production would increase by 1,743 million pounds and canola oil production by 733 million pounds globally in 2022 in response to the shock. Table II.C.3.ii-1 illustrates the source and amounts of additional canola and canola oil production in 2022.

TABLE II.C.3.ii–1—FAPRI 2022 CANOLA AND CANOLA OIL PRODUCTION RESPONSE BY REGION IN 2022 RELATIVE TO CONTROL CASE

	Canola		Canola oil
	Acreage (thousand acres)	Production (million pounds)	Production (million pounds)
Australia	60	70	4
Canada	207	453	263
China	285	536	173
EU	223	629	234
All Other	43	56	60
Total	819	1,743	733

While FAPRI estimates that the EU will produce the most additional canola (629 million pounds), Canada is estimated to produce the most additional canola oil (263 million pounds). This is because, in addition to increasing of domestic production of canola seed, Canada is also estimated to reduce net exports of canola seed by 146 million pounds, and to crush that additional amount of seed.

The amount and composition of land use change associated with these canola expansions varies by region. While FAPRI estimates that China would experience the largest expansion of canola acres in 2022 (285,000 acres), there would be a relatively small amount of net cropland expansion (12,000 acres) as there would also be reductions in wheat and corn acres. Similarly, is the results show a net reduction of 12,000 acres of cropland in Canada as wheat, corn, and barley production would be reduced due to a change in relative prices stemming from the canola oil shock. In the EU, there would be a net expansion of cropland of 103,000 acres, and in Brazil there would be an increase of 58,000 acres of cropland, led by corn and soybean expansion. FAPRI also estimates a reduction of 232,000 acres of pasture in Brazil, as the infusion of canola meal as a byproduct of additional canola crushing alleviates demand for grazing. In total, FAPRI estimates that cropland would expand by 372,000 acres outside of the U.S. in response to the shock.

TABLE II.C.3.ii–2—NON-U.S. CHANGES IN AGRICULTURAL LAND BY REGION IN 2022 RELATIVE TO CONTROL CASE

[In thousand acres]

	Change in area harvested	Change in pasture acres[55]	Total change in acres
EU	103	NR	103
Brazil	58	−232	−175
Rest of Non-USA	211	NR	211
Total Non-USA	372	−232	140

[53] The purpose of lifecycle assessment for RFS pathway assessments is not to precisely estimate lifecycle GHG emissions associated with particular biofuels, but instead to determine whether or not the fuels satisfy specified lifecycle GHG emissions thresholds to qualify as one or more of the four types of renewable fuel specified in the statute (March 26, 2010, 75 FR 14785). Where there are a range of possible outcomes and the fuel satisfies the GHG reduction requirements when ''conservative'' assumptions are used, then a more precise quantification of the matter is not required for purposes of a pathway determination.

[54] As explained earlier in this section, we are not reopening the overall modeling framework or approach established in 2010 in this rulemaking.

4. Domestic Agricultural and Land Use Change GHG Emissions

We used the results from the FASOM analysis to estimate domestic agricultural GHG emissions following the methodology developed for the March 2010 RFS2 rule. As noted above, for this proposed rule we used emissions factors from GREET–2020 for energy inputs and feedstock and co-product transportation. Domestic agricultural GHG emissions include GHG emissions associated with changes in crop and livestock production. Overall, we estimate that increasing the consumption of hydrotreated canola oil biofuels in the U.S. would result in a net reduction in domestic agricultural GHG emissions of 40 grams of carbon dioxide-equivalent emissions (gCO_2e) per pound of canola oil used as feedstock relative to scenario absent this hydrotreated canola oil biofuel production (''gCO_2e per pound of canola oil'').[56]

The 40 gCO_2e per pound of canola oil reduction in domestic agricultural GHG emissions has a handful of components. As discussed in Section II.C.2.ii, the FASOM results estimate a small shift away from corn production towards canola and wheat. This leads to a small net decline in farm input usage, resulting in a small estimated reduction in GHG emissions of about 1 gCO_2e per pound of canola oil. The estimated net decrease in beef and chicken slaughter discussed in Section II.C.2.ii of this preamble is associated with a GHG emissions decrease of about 40 gCO_2e per pound of canola oil. There is also a small increase in rice production in the U.S. (about 0.02 percent), leading to an increase of about 1 gCO_2e per pound of canola oil from rice methane. As discussed above, our FASOM modeling results estimate that almost all the canola oil feedstock would be sourced outside of the U.S., and the relatively small effects on the domestic agricultural sector reflect this result.

Domestic land use change GHG emissions are reported separately from domestic agricultural emissions. Based on the FASOM modeling discussed in Section IV.C.2 of this preamble, we estimate a net reduction in domestic land use change emissions of 77 gCO_2e per pound of canola oil. It is based on the same methodology used for the March 2010 RFS rule whereby the land use change GHG emissions estimates from FASOM are considered over a 30-year period and then annualized (*i.e.,* divided by 30 years). For a detailed description of how FASOM estimates land use change GHG emissions see Section 2.4.4.1 (''Evaluation of Domestic Land Conversion GHG Emissions Impacts'') of the Regulatory Impact Analysis for the March 2010 RFS2 rule.[57] FASOM estimates land conversions and associated changes in the biomass and soil carbon stocks. Given the many interactions simulated in FASOM it is difficult to summarize why domestic land use change GHG emissions are estimated to decline as a result of the modeled scenario. However, the reduction in emissions is consistent with the overall land use changes summarized in Table II.C.2.ii–7. Cropland area increases by 61 thousand acres, which is usually associated with increased land use change GHG emissions, but this is offset by an increase of 32 thousand acres of forest area, which is associated with a net reduction in GHG emissions.

5. International Agricultural and Land Use Change GHG Emissions

We used the results from the FAPRI analysis to estimate international (*i.e.,* non-U.S.) agricultural and land use change GHG emissions following the methodology developed for the March 2010 RFS2 rule, except that, as described in this section, we updated our estimates of the GHG emissions associated with changes in international on-farm energy use. International agricultural sector GHG emissions are associated with estimated changes in crop and livestock production outside of the U.S. International land use change emissions are primarily changes in biomass and soil carbon associated with land use changes, but they also include non-CO_2 emissions some cases (*e.g.,* when land is cleared with fire). Overall, we estimate a small reduction of 5 gCO_2e per pound of canola oil associated with changes in international agriculture.

The small reduction in GHG emission associated with international agriculture is the result of counterbalancing effects. We estimate that the modeled canola oil shock increases GHG emissions associated with international farm inputs (*e.g.,* fertilizer, pesticide, energy) by 70 gCO_2e per pound of canola oil. The canola shock is associated with changes in livestock production that reduce GHG emissions by 72 gCO_2e per pound of canola oil. Changes in rice production results in a small decreased of 3 gCO_2e per pound of canola oil. These changes largely balance each other out and result in an overall reduction in international agricultural emissions, not including land use change, of 5 gCO_2e per pound of canola oil. These estimates are summarized along with the domestic estimates in Table II.C.8–1. The rest of this section describes our updates to estimate GHG emissions associated with changes in international on-farm energy use and then discusses the estimated international land use change GHG emissions.

Based on our assessment of the information provided in the USCA petition, we updated the data sources used to estimate the changes in energy inputs and associated GHG emissions corresponding with changes in international crop production as estimated with the FAPRI model. The USCA petition stated, ''For countries except Canada, EPA used International Energy Agency (IEA) data for energy use for the forest and agriculture sector and then divided that by the crop area. The energy use, based on this data, is overstated because it includes forestry energy use.'' We confirmed that the IEA data used in our 2010 analysis to estimate changes in non-U.S. on-farm energy use included forestry energy use along with crop production energy use, and these data were then rolled into our estimates of energy use per acre of crop production for each region. We also found that the IEA data are aggregated so that forestry could not be excluded.

We reviewed other available sources on energy use and found that the Food and Agriculture Organization of the United Nations (FAO) reports emissions data on the amount of energy used within the farm gate to operate machinery.[58] The FAO also reports GHG emissions from aquaculture and fishing, but we exclude these data in order to exclusively estimate emissions from on-farm energy use energy use. The FAO data are available annually from 1970–2019 for over 200 countries. FAO reports emissions of carbon dioxide, methane, and nitrous oxide for seven different energy products (*i.e.,* coal, electricity, fuel oil, gas-diesel oil, LPG, motor gasoline, and natural gas including LNG). After reviewing the

[55] NR stands for ''not reported''. Pasture acreage is only reported for Brazil in the FAPRI model.

[56] Consistent with the methodology developed for the March 2010 RFS2 rule, for purposes of this lifecycle GHG analysis we use 100-year global warming potential (GWP) weighed emissions of carbon dioxide, methane, and nitrous oxide to calculated CO_2e emissions.

[57] EPA (2010). Renewable fuel standard program (RFS2) regulatory impact analysis. Washington, DC, US Environmental Protection Agency Office of Transportation Air Quality. EPA–420–R–10–006.

[58] FAO, 2021. FAOSTAT Energy Use domain, FAO, Rome, Italy. Available at: *http://www.fao.org/faostat/en/#data/GN.* Last accessed March 16, 2022. FAOSTAT Analytical Briefs can be found at: *http://www.fao.org/food-agriculture-statistics/data-release/environment/en.* Last accessed March 16, 2022.

FAO farm energy use GHG emissions data, we believe they are an improvement compared to the IEA data used previously for the purposes of this analysis because they are more recent and exclude forestry energy use. For these reasons, we have updated our assumptions to use the FAO data for this analysis of canola oil renewable diesel.

The FAO data report energy GHG emissions within the farm gate, including off-farm GHG emissions associated with generating electricity. Although the FAO estimates include off-farm GHG emissions associated with electricity generation, they exclude GHG emissions associated with producing the energy products and feedstocks for this electricity generation. For example, they exclude GHG emissions associated with natural gas production and distribution. In prior analyses, we adjusted the IEA estimates to include these upstream GHG emissions based on estimates from the GREET Model (version 1.8b) on the ratio of total lifecycle emissions to fuel use (or generation for electricity) emissions for each production. For this analysis of canola oil, we used the same approach but updated these ratios based on data from GREET–2020.[59]

The rest of this section discusses the international land use change GHG estimates. We estimate international land use change GHG emissions of 316 gCO_2e per pound of canola oil. We consider the uncertainty in the types of land converted and the emissions associated with those conversions and estimate a 95% confidence interval for international land use change emissions ranging from 131 to 529 gCO_2e per pound of canola oil.

International land use change GHG emissions were estimated following the methodology developed for the March 2010 RFS2 rule. The FAPRI model estimates changes in harvested crop area by region as a result of the modeled canola oil biofuel scenarios. FAPRI also estimates changes in pasture area for five sub-regions of Brazil. For other regions, changes in pasture area are estimated based on FAPRI's estimated changes in livestock production and FAO data on stocking rates (*i.e.,* grazing animals per acre of pasture). In regions where the sum of changes in cropland or pasture are non-zero, we estimate changes in the areas of other land types based on land use change patterns in each region as estimated with satellite data. The estimated land use changes are then converted to GHG emissions based on land use change emissions factors estimated from a number of data sources following IPCC guidelines. International land use changes are estimated over 30 years and then annualized (*i.e.,* divided by 30 years). For details on this methodology see Section 2.4.4.2 (''International Land Conversion GHG Emissions Impacts'') of the Regulatory Impact Analysis for the March 2010 RFS2 rule.

Following the approach developed for the March 2010 RFS2 rule, we consider the uncertainty in the international land use change GHG estimates to produce a 95% confidence interval. This uncertainty analysis considers two major components: (1) Uncertainty in the classification of land transitions with satellite data to determine the types of land affected by changes in cropland and pasture area in each region, and (2) uncertainty in the emissions factors used to translate the land conversions to GHG emissions. For more information about our evaluation of the uncertainty in international land use change GHG emissions see Section 2.4.4.2.8 (''Uncertainty Assessment for International Land Conversion GHG Emissions Impacts'') of the RIA for the March 2010 RFS2 rule.

We recognize that there are other uncertainties that could theoretically be estimated, for example uncertainties in the areas of cropland estimated by the FAPRI model. However, quantifying additional sources of uncertainty was not part of the modeling framework or methodology developed for the March 2010 RFS2 rule, and would require the development of new methodologies and modeling approaches. Running multiple scenarios with the FAPRI model in order to systematically quantify parameter uncertainty would take a very long time and be impractical for this rule. As discussed in Section III., we consider the weight of available evidence when proposing RIN D-code eligibility for the evaluated pathways. In weighing the available evidence, we put the most weight on the quantified range of lifecycle GHG estimates but also recognize qualitatively that there are unquantified sources of uncertainty.

6. Feedstock Processing

After the canola seeds are harvested, they are transported to a crushing facility to separate the canola oil and meal. The most common process uses the solvent hexane. The canola seeds are first cleaned, heated, and flaked. The seeds are then cooked and screw-pressed to remove most of the oil. To remove the remaining oil, the meal is saturated with hexane solvent, which is removed and then recycled back into the process. The oil is further refined to remove free fatty acids and other impurities.

We estimate canola crushing GHG emissions following the methodology developed for the March 2010 RFS2 rule. We estimate the total GHG emissions associated with canola crushing with no allocation to the canola meal co-product that is primarily used as livestock feed. The effects of using canola meal as feed are considered in the FASOM and FAPRI modeling described above. In lifecycle analysis terminology, this would be described as a system expansion approach as opposed to allocating emissions to the meal.

The USCA petition included annual canola crushing input-output data from Canada that we used in our analysis. We believe these data are appropriate for our analysis because a large share of canola oil feedstock for the U.S. is likely to be sourced in Canada, and the Canadian extraction process is representative of extraction processes in other regions that are likely to crush canola to supply canola oil biofuel feedstock to the U.S. For example, data compiled by the United Nations International Civil Aviation Organization (ICAO) for canola crushing in Canada, Europe and the U.S. shows similar but smaller amounts of natural gas and electricity use per pound of canola oil extracted. [60] The USCA data reports average energy use of 1,310 Btu of per pound of canola oil extracted in Canada. For comparison the ICAO reports energy use of 790 to 1,220 Btu per pound of canola oil extracted. Based on this comparison, we believe that using the USCA data for canola crushing energy use is reasonable and somewhat conservative.

Based on the USCA crushing data, we assume approximately 40 percent yield of canola oil per seed on a mass basis, and that natural gas and electricity are used for heat and power. We estimated the GHG emissions associated with the natural gas based on GREET–2020 estimates for average North American natural gas production and use. For electricity, we used the GREET–2020 emissions factor for average Canadian electricity. GREET includes 2012 data for the Canadian grid mix, which we updated based on 2018 data from Natural Resources Canada.[61] Based on

[59] For more information on these estimates see the memo to the docket titled, ''Memo on Hydrotreated Canola Lifecycle GHG Calculation Workbooks.''

[60] ICAO (2021). CORSIA Eligible Fuels—Lifecycle Assessment Methodology. CORSIA Supporting Document. March 2021. Version 3. Table 43. Page 65.

[61] Natural Resources Canada. Last updated October 6, 2020. ''Electricity Facts.'' *https://www.cer-rec.gc.ca/en/data-analysis/energy-*

Continued

these assumptions, we estimate GHG emissions from canola oil extraction of 87 gCO2e per pound of canola oil.

Recognizing that canola may be crushed in other regions, we considered the effects of canola crushing in the U.S., Europe and China to determine if crushing in other regions would affect our proposed determination that hydrotreated canola oil meets the 50% GHG reduction threshold. To evaluate this question, we used the same crushing input-output data from the USCA petition and considered regional differences in grid average electricity GHG emissions factors and GHG emissions associated with additional canola oil shipping. Although the U.S. grid is more GHG intensive than the Canadian grid, the effect of crushing in the U.S. compared to Canada is less than one gram CO_2e per pound canola oil and we assume there would be no significant change in GHG emissions associated with canola oil transport. The average European grid is less GHG intensive than the Canadian grid but the effect on crushing in Europe compared to Canada is also less than on gram CO_2e per pound of canola oil. If we consider canola oil shipping from Europe of 4,000 nautical miles (*e.g.,* Rotterdam to Houston) via ocean tanker fueled with bunker fuel, that adds approximately 13 gCO_2e per pound of canola oil, equivalent to approximately a one percent increase in GHG emissions relative to the petroleum baseline. Crushing in China and shipping 5,500 nautical miles (*e.g.,* Beijing to Los Angeles) would add approximately 18 gCO_2e per pound of canola oil, which is still equivalent to approximately a one percent increase in GHG emissions relative to the baseline. As an extremely conservative scenario, if we assume crushing in China with coal instead of natural gas for process energy and 5,500 nautical miles of shipping, this adds approximately 139 gCO_2e per pound of canola oil, or approximately 9% relative to the petroleum baseline. Even with these extremely conservative assumptions, renewable diesel and jet fuel still satisfy the 50% GHG reduction threshold when we use our mean estimate of international land use change GHG emissions (*i.e.,* 55% to 61% reduction for renewable diesel and 51% to 59% reduction for renewable jet fuel). Overall, this shows that our proposed determinations are not sensitive to our assumption about where canola is crushed, and we believe that assuming canola crushing occurs in Canada is a reasonable approach for this analysis.

7. Feedstock Transport

There are three stages of feedstock transport considered in our lifecycle analysis. The transportation modes and distances for canola seed and oil in our analysis are from the GREET–2020 model. First canola seeds are assumed to be transported 10 miles from the farm field to a collection point by medium-duty truck. The model then assumes seeds are then transported 40 miles to the crushing facility by heavy duty truck. After crushing, the oil is transported 80 miles by tanker truck to a hydrotreating facility. The trucks in this transportation chain are assumed to consume diesel fuel and we estimated the associated GHG emissions based on the GREET–2020 emissions factor for conventional diesel. Overall, we estimate GHG emissions of 15 gCO_2e per pound of canola oil for seed transport and 13 gCO_2e per pound of canola oil for canola oil transport. As discussed in Section IV.C.7, importing canola oil from Europe or China would increase oil shipping emissions but not to a large enough extent to change our proposed determinations that biofuels produced from hydrotreated canola oil meet the 50 percent GHG reduction requirement.

8. Summary of Upstream GHG Emissions

Based on all of the modeled effects discussed above associated with producing canola oil feedstock including effects on domestic and international crop production, livestock production and land use, we can summarize the estimated lifecycle GHG emissions per pound of canola oil delivered to a hydrotreating production facility. These upstream GHG emissions (*i.e.,* upstream of feedstock conversion to fuel) are summarized in Table II.C.8–1. A range of GHG emissions is presented based on our evaluation of the uncertainty associated with international land use change GHG emissions, as discussed in Section IV.C.5 of this preamble.

TABLE II.C.8–1—ESTIMATED UPSTREAM GHG EMISSIONS ASSOCIATED WITH PRODUCING CANOLA OIL USED FOR BIOFUEL PRODUCTION

[In grams of CO_2-equivalent per pound canola oil]

Emissions category	Estimate		
Domestic farm inputs	−1		
Domestic Livestock	−40		
Domestic Rice Methane	1		
Domestic Land Use Change	−77		
International Farm Inputs	70		
International Livestock	−72		
International Rice Methane	−3		
Seed transport	15		
Crushing	87		
Oil Transport	13		
International Land Use Change Estimate	Mean	Low	High
International Land Use Change	316	131	529
Total	305	118	517

Note: The ''Low'' international land use change estimate represents the low-end of the 95% confidence interval and the ''High'' estimate represents the high-end of the 95% confidence interval.

markets/provincial-territorial-energy-profiles/provincial-territorial-energy-profiles-canada.html#:~:text=More%20than%20half%20of%20the,and%20petroleum%20(Figure%202). Last Accessed March 16, 2022.

9. Fuel Production

Canola oil is converted to renewable diesel, jet fuel, naphtha, and LPG through a hydrotreating process, also sometimes referred to as hydroprocessing. The renewable diesel may also be used as heating oil, although this is unlikely based on recent market conditions such as strong demand for renewable diesel to satisfy low carbon fuel standards in California, Oregon and Washington.[62] The process consists of catalytic reactions in the presence of hydrogen. The steps in a typical hydrotreating process often include a combination of hydrogenation, hydro-deoxygenation, decarboxylation and decarbonylation. The primary output of hydrotreating is renewable diesel, with estimates ranging from approximately 75 to 100 percent of the output based on the data sources discussed later in this proposal. Other outputs include jet fuel, naphtha, LPG, and propane. Hydrotreating facilities can process a wide range of vegetable oil feedstocks without significant operational changes.

The hydrotreating process can be configured to maximize renewable jet fuel output instead of renewable diesel, but this requires additional hydrogen and other energy inputs. To maximize jet fuel output, the renewable diesel is subjected to additional refining, namely hydro-isomerization and hydrocracking. These processes involve the addition of more hydrogen to crack the longer carbon chain length diesel to shorter length jet fuel. Essentially, the diesel is cracked to produce jet fuel and naphtha. Overall, maximizing hydrotreating processes for jet fuel output results in higher production costs and GHG emissions per gallon relative to processes that are maximized for diesel output.[63] As described later in this proposal, these effects are considered in our analysis.

Several hydrotreating pathways have been evaluated and approved under the RFS program. In the March 2010 RFS2 rule, we approved multiple pathways for renewable diesel produced from hydrotreated vegetable oils and biogenic waste fats, oils, and greases (FOG) as meeting the 50 percent GHG reduction requirement to qualify as biomass-based diesel and advanced biofuel. In the 2013 Pathways I rule (78 FR 14190), we evaluated renewable diesel from camelina oil and reported the GHG emissions associated with the hydrotreating process used to convert the camelina oil to renewable diesel. That analysis relied on data published in Pearlson et al. (2013), a study that modeled the emissions and fuel production costs associated with of a commercial scale hydrotreating process.[64] We also used the Pearlson et al. (2013) data in our analysis of hydrotreating for the 2018 distillers sorghum oil rule (83 FR 37735).

In addition to evaluating generally applicable hydrotreating pathways, we have approved several facility-specific pathways for hydrotreating facilities. For the facility-specific analyses, we relied on data from the individual facilities, submitted under claims of CBI on their energy use and fuel yields. In October 2013, we approved a facility-specific petition for renewable LPG and naphtha co-products produced from distillers' corn oil at Diamond Green Diesel's hydrotreating facility in Louisiana.[65] In 2017 and 2018, we also approved pathways for LPG and naphtha produced from distillers' corn oil and waste FOG at Renewable Energy Group's hydrotreating facility in Louisiana.[66] In July 2021, we approved a facility specific pathway for jointly filed petition from Koole and Neste for renewable diesel and jet fuel produced from waste FOG.[67] We have also received additional facility-specific petitions for hydrotreating processes that are currently under review. In total, we have received hydrotreating data, claimed as CBI, from five different facilities through the petition process for new RFS pathways at 40 CFR 80.1416.

We estimated hydrotreating GHG emissions based on 12 sources of vegetable oil hydrotreating input-output data. Eight of the modeled processes primarily produce renewable diesel with co-products, varying by process, of naphtha, LPG, and jet fuel. Four of the modeled processes are configured to maximize jet fuel output with co-products, varying by process, of renewable diesel, naphtha, and LPG.

The eight data sources for hydrotreating processes that primarily produce renewable diesel include Pearlson et al. (2013), GREET–2021, aggregated data provided by the California Air Resources Board (CARB), and five facilities that submitted data under claims of CBI pursuant to the petition process. As mentioned above, Pearlson et al. (2013) is a peer-reviewed study that modeled a commercial scale hydrotreating process. The renewable diesel production data have been updated in the GREET–2021 model with operational data from 2018 and 2019 from a survey of domestic renewable diesel producers conducted by Argonne National Laboratory and the National Biodiesel Board.[68] The CARB provided data are the average inputs and outputs associated with the hydrotreating processes used to produce renewable diesel for use under the California Low Carbon Fuel Standard Program, as of June 2021. The data for five hydrotreating facilities submitted through new pathway petitions and claimed as CBI were submitted between 2018 and 2020.

The four data sources used to model hydrotreating processes configured to maximize jet fuel output are Pearlson et al. (2013), GREET–2021 and two from an analysis published by the International Civil Aviation Organization (ICAO) in 2021. The first data source is the ''maximum jet fuel'' scenario from Pearlson et al. (2013). The data in GREET–2021 for renewable jet fuel production through hydrotreating is unchanged from previous versions of GREET. We also evaluated two scenarios from ICAO (2021): One that is representative of U.S. hydrotreating and one that is representative of European hydrotreating.

To estimate the GHG emissions associated with these hydrotreating processes, we used energy allocation to account for the fuel coproducts from the hydrotreating process. We estimated the total GHG emissions from the

[62] U.S. Energy Information Administration. (2021). ''U.S. renewable diesel capacity could increase due to announced and developing projects.'' July 29, 2021; U.S. Energy Information Administration. (2018). ''Renewable diesel is increasingly used to meet California's Low Carbon Fuel Standard.'' November 13, 2021.

[63] Wang, W.C., Tao, L., Markham, J., Zhang, Y., Tan, E., Batan, L., Warner, E., & Biddy, M. (2016). Review of Biojet Fuel Conversion Technologies. Report prepared by National Renewable Energy Laboratory.

[64] Pearlson, M., et al. (2013). ''A techno-economic review of hydroprocessed renewable esters and fatty acids for jet fuel production.'' Biofuels, Bioproducts and Biorefining 7(1): 89–96.

[65] EPA. (2013). ''Diamond Green Diesel Request for Fuel Pathway Determination under the RFS Program.'' Office of Transportation and Air Quality. October 28, 2013. *https://www.epa.gov/renewable-fuel-standard-program/diamond-green-diesel-llc-approval.* Last Accessed March 16, 2022.

[66] EPA (2017). ''Evaluation of Renewable Energy Group, Inc. Request for Fuel Pathway Determination under the RFS Program'' April 13, 2017. *https://www.epa.gov/renewable-fuel-standard-program/reg-geismar-approval.* Last Accessed March 16, 2022. EPA (2018). ''Renewable Energy Group, Inc. Fuel Pathway Determination under the RFS Program'' February 23, 2018. *https://www.epa.gov/renewable-fuel-standard-program/reg-geismar-approval-0.* Last Accessed March 16, 2022.

[67] EPA. (2021). ''Koole-Neste Fuel Pathway Determination under the RFS Program.'' Office of Transportation and Air Quality. July 12, 2021. *https://www.epa.gov/system/files/documents/2021-08/koole-neste-deter-ltr-2021-07-12.pdf.* Last Accessed March 16, 2022.

[68] Wang et al. 2021. ''Summary of Expansions and Updates in GREET 2021.'' October 2021. ANL/ESD–21/16.

hydrotreating process and allocated them to the renewable diesel, jet fuel, naphtha, LPG, and propane co-products on an energy basis. The propane is treated as a co-product in these calculations but is unlike the other co-products because we do not expect it to be exported from the facility. For data sources that reported propane as an output, we assume that this propane is used at the facility as process fuel, and that this propane use is reflected in the input data reducing the amount of purchased natural gas. As a result of this energy allocation approach, all the co-products are assigned equivalent emissions from the fuel production stage on a gCO_2e per MJ basis. To translate energy use into GHG emissions, we used emissions factors for natural gas, electricity, and hydrogen from the GREET–2020 model representing the GHG emissions associated with the supply of these energy inputs in the U.S.[69]

In previous GHG analyses of hydrotreating processes, we assumed that some of the co-products (propane and in some cases LPG and naphtha) would not be used as RIN-generating fuels, and we included GHG reductions associated with these renewable co-products displacing the use of equivalent conventional fuels.[70] In contrast, the analysis for this proposed rule does not include GHG reductions associated with hydrotreating co-products displacing other fuels. Instead, we use energy allocation for all the co-products. We are taking this approach for four reasons. One, the USCA petition requests RIN eligibility for all of the co-products except propane, so propane is the only co-product for which a displacement approach would be considered. Second, we believe that using energy allocation for all of the co-products, including propane, provides a reasonably conservative estimate (*i.e.,* tends to result in higher GHG estimates). Third, using energy allocation for co-products the estimates do not depend on which co-products generate RINs, which is subject to change based on market and regulatory conditions. Fourth, we also note that the energy allocation approach results in GHG estimates that are more consistent across facilities compared to the displacement approach due to the variation in co-product outputs across facilities. As an illustrative example of how much this assumption influences the estimates, if we assumed the propane co-product displaces natural gas the fuel production emissions for renewable diesel would decrease by an average of 2.1 gCO_2e per MJ, and up to 5.9 gCO_2e per MJ, relative to the estimates in Table II.C.9–1 that are based on energy allocation for propane. For renewable jet fuel, the same displacement approach for propane co-product would reduce fuel production emissions by an average of 3 gCO_2e per MJ, and up to 4.7 gCO_2e per MJ, relative to the estimates in Table II.C.9–2 that are based on energy allocation for propane. We request comment on the use of energy allocation to evaluate co-products from hydrotreating processes.

Hydrogen is major energy input to hydrotreating processes. We used the GREET–2020 emissions factor representing hydrogen produced from natural gas through a stream methane reforming process at central plants. Central plants are large hydrogen production facilities that produce greater than 50,000 kilograms of hydrogen per day.[71] This is a conservative choice as GREET has lower GHG estimates for other sources of hydrogen. We believe this choice is reasonable and appropriate for this analysis as the proposed pathway would be available to renewable diesel plants irrespective of their hydrogen sources.

The estimated lifecycle GHG emissions associated with hydrotreating processes that primarily produce renewable diesel are summarized in Table II.C.9–1. As shown in the table, the highest and lowest estimates are based on data from two of the facility-specific petitions. The estimates based on data from Pearlson et al. (2013), GREET–2021 and CARB are within 1.2 gCO_2e/MJ of each other and between the estimates for individual facilities.

TABLE II.C.9–1—GHG EMISSIONS ASSOCIATED WITH RENEWABLE DIESEL PRODUCTION VIA HYDROTREATING

[In grams of CO_2 equivalent per MJ]

Hydrotreating data source	Estimate
Pearlson et al. (2013)	10.8
GREET–2021	11.8
CARB (2021)	12.0
Facility 1	15.0
Facility 2	10.4
Facility 3	13.7
Facility 4	10.9
Facility 5	14.4
Range	10.4–15.0

The estimated lifecycle GHG emissions associated with hydrotreating processes configured to maximize jet fuel output are summarized in Table II.C.9–2. The estimate based on GREET–2021 is significantly greater than the other sources because it includes greater natural gas and hydrogen use per unit of jet fuel output.

TABLE II.C.9–2—GHG EMISSIONS ASSOCIATED WITH RENEWABLE JET FUEL PRODUCTION VIA HYDROTREATING

[In grams of CO_2 equivalent per MJ]

Hydrotreating data source	Estimate
Pearlson et al. (2013) Maximized Jet	12.9
ICAO (2021) EU Jet	14.7
ICAO (2021) U.S. Jet	12.7
GREET–2021 Jet	20.7
Range	12.7–20.7

Based on the analysis and data sources discussed above, we estimate the GHG emissions associated with the hydrotreating stage range from 10.4 to 15.0 gCO_2e/MJ for renewable diesel and 12.7 to 20.7 gCO_2e/MJ for jet fuel. As discussed in Section III, we consider the full range of hydrotreating GHG estimates in this proposal to approve these canola oil-based biofuel pathways.

10. Fuel Distribution

We estimated the GHG emissions associated with transporting the renewable diesel, jet fuel, naphtha, and LPG products to end users based on transportation and distribution data in GREET–2020. The renewable diesel and jet fuel are assumed to be transported by truck, rail, and barge. The naphtha and LPG are assumed to be transported primarily by pipeline and rail. The fuel distribution GHG estimates are 0.4 gCO_2e/MJ for renewable diesel and jet fuel and 0.6 gCO_2e/MJ for renewable naphtha and LPG.

11. Fuel Use

For this analysis, we applied non-CO_2 fuel use GHG emissions factors from

[69] As discussed above, although we have evaluated the updated hydrotreating data from the GREET–2021 model, the rest of our analysis had already been conducted using emissions factors from the GREET–2020 model. We will update these emissions factors for the final rule, but we do not expect this to have a large enough impact on our estimates to affect the pathway approvals proposed in this rule.

[70] See for example the March 2013 Pathways I rule (78 FR 14190) and the August 2018 sorghum oil rule (83 FR 37735).

[71] U.S. Department of Energy. ''The Hydrogen Analysis (H2A) Project.'' *https://www.hydrogen.energy.gov/h2a_analysis.html.* Last accessed March 16, 2022.

GREET–2020.[72] For renewable diesel, we used the factors for renewable diesel used in a compression ignition direct injection vehicle. For renewable jet fuel, we used the factors for hydrotreated renewable jet fuel consumed in a single aisle passenger aircraft. For renewable naphtha, we used the factors for renewable gasoline consumed in a spark-ignition vehicle and for LPG we used factors for a dedicated LPG vehicle. The fuel use GHG estimates are 0.9 gCO_2e/MJ for renewable diesel, 0.1 gCO_2e/MJ for renewable jet fuel, and 0.5 gCO_2e/MJ for renewable naphtha and LPG.

12. Results of GHG Lifecycle Analysis

Table II.C.12–1 reports our estimates of the lifecycle GHG emissions associated with renewable diesel produced from canola oil through a hydrotreating process, and the corresponding percent reduction relative to the petroleum baseline. Three sets of estimates are presented for canola oil renewable diesel. The emissions categories are aggregated to simplify the presentation of the table. Domestic and international agricultural emissions include emissions associated with changes in crop and livestock production. Feedstock processing (*i.e.,* canola seed crushing) and feedstock seed and oil transport emissions are reported together. Downstream and use includes emissions from fuel distribution and fuel use. Land use change emissions include emissions from domestic and international land use changes.

Our evaluation considers uncertainty in international land use change emissions based on the methodology used for the March 2010 RFS2 rule. The table includes a range of land use change estimates based on our analysis of this uncertainty. The first column includes results based on our average estimate of international land use change GHG emissions. We also report results for the low and high ends of our 95 percent confidence interval for international land use change emissions. Ranges for domestic agriculture, international agriculture, feedstock transport and crushing, and fuel production are based on estimated ranges in the yield of finished fuel (in MJ of fuel produced per pound of canola oil feedstock).

TABLE II.C.12–1—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH RENEWABLE DIESEL PRODUCED FROM CANOLA OIL THROUGH A HYDROTREATING PROCESS

[In grams of CO_2 equivalent per MJ]

Emissions category	2005 Diesel baseline	Canola oil renewable diesel		
Domestic Agriculture	18	−2.5 to −2.2		
International Agriculture		−0.33 to −0.28		
Feedstock Transport & Crushing		6.2 to 7.3		
Fuel Production		10.4 to 15.0		
Downstream & Use	75	1.3		
Land Use Change Estimate		Mean	Low	High
Land Use Change		13.0 to 15.2	3.0 to 3.5	24.6 to 28.7
Net Emissions	93	28.9 to 34	18.6 to 23.4	40.7 to 46.4
% GHG Reduction Relative to Baseline		63% to 69%	75% to 80%	50% to 56%

In many cases, when vegetable oils are hydrotreated to produce renewable diesel, there are co-product outputs of naphtha, LPG, and jet fuel. The GHG estimates for these co-product fuels differ slightly from the renewable diesel estimates presented in the table above based on differences in how they are transported to end users and end use emissions. The results for naphtha and LPG, based on the mean international land use change estimates, are summarized in Table II.C.12–2.

TABLE II.C.12–2—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH NAPHTHA AND LPG PRODUCED FROM CANOLA OIL THROUGH A HYDROTREATING PROCESS

[In grams of CO_2 equivalent per MJ]

	Naphtha	LPG
Lifecycle GHG Emissions	28.7 to 33.9	28.7 to 33.9
Percent Reduction Relative to Baseline	64% to 69%	63% to 69%

We do not present separate results of heating oil as it is not reported as an output for any of the hydrotreating processes evaluated. However, renewable diesel could be used as heating oil if market conditions change substantially. The GHG emissions associated with heating oil are therefore very similar to renewable diesel, although there may be small differences in GHG emissions associated with fuel distribution and use.

As discussed above, canola oil hydrotreating processes that are set up to maximize jet fuel output require more processing and hydrogen, resulting in greater lifecycle GHG emissions. For example, our lifecycle GHG estimates

[72] Following the methodology developed for the March 2010 RFS2 rule after notice, public comment, and peer review, the carbon in the finished fuel derived from renewable biomass is treated as biologically derived carbon originating from the atmosphere. In the context of a full lifecycle analysis, the uptake of this carbon from the atmosphere by the renewable biomass and the CO_2 emissions from combusting it cancel each other out. Therefore, instead of presenting both the carbon uptake and tailpipe CO_2 emissions, we leave both out of the results. Note that our analysis also accounts for all significant indirect emissions, such as from land use changes, meaning we do not simply assume that biofuels are ''carbon neutral.''

using hydrotreating input-output data from GREET–2021 are 31.0 gCO_2e/MJ for renewable diesel and 38.2 gCO_2e/MJ for renewable jet fuel, and our estimates based on hydrotreating data from Pearlson et al. (2013) are 29.5 gCO_2e/MJ for renewable diesel and 30.5 gCO_2e/MJ for renewable jet fuel. The range of lifecycle GHG estimates for canola oil renewable jet fuel are reported in Table II.C.12–3.

TABLE II.C.12–3—LIFECYCLE GHG EMISSIONS ASSOCIATED WITH RENEWABLE JET FUEL PRODUCED FROM CANOLA OIL THROUGH A HYDROTREATING PROCESS

[In grams of CO_2 equivalent per MJ]

Emissions category	2005 Diesel baseline	Canola oil renewable jet fuel		
Domestic Agriculture	18	−2.4 to −2.2		
International Agriculture		−0.31 to −0.28		
Feedstock Transport & Crushing		6.3 to 7.0		
Fuel Production		12.7 to 20.7		
Downstream & Use	75	0.5		
Land Use Change Estimate		Mean	Low	High
Land Use Change (LUC)		13.2 to 14.5	3.0 to 3.3	24.9 to 27.5
Net Emissions	93	30.5 to 38.2	20.2 to 28	42.2 to 49.9
% GHG Reduction Relative to Baseline		59% to 67%	70% to 78%	46% to 54%

III. Consideration of Lifecycle Analysis Results

We evaluated the lifecycle GHG emission associated with renewable diesel, jet fuel, naphtha and LPG produced from canola oil through a hydrotreating process. The purpose of this analysis was to determine whether these fuel pathways satisfy the statutory 50 percent GHG reduction threshold under the RFS program for advanced biofuel and biomass-based diesel. Our approach to considering the lifecycle GHG estimates for purposes of threshold determinations is consistent with the ''weight of evidence'' approach that we used for the March 2010 RFS2 rule. In the preamble to the March 2010 RFS2 rule we said, ''because of the inherent uncertainty and the state of the evolving science on this issue, EPA is basing its GHG threshold compliance determinations for this rule on an approach that considers the weight of evidence currently available.'' 75 FR 14785. In this section we consider the weight of the evidence and propose to make threshold determinations on this basis.

Based on the range of lifecycle GHG emissions estimates presented above, the weight of available evidence, and our technical judgments, we propose to find that all the pathways evaluated would meet the 50 percent GHG reduction threshold required for advanced biofuel and biomass-based diesel. Our evaluation considers variability in hydrotreating processes and uncertainty in land use change emissions.

When we consider the mean land use change GHG estimates, the entire range of GHG reduction results exceeds the 50 percent GHG reduction requirement for all of the pathways evaluated. When we consider the high-end of the 95-percent confidence interval for international land use change GHG emissions and the hydrotreating process data with the highest GHG emissions, all the pathways evaluated except for jet fuel still exceed the 50 percent GHG reduction threshold. Thus, based on the range of estimated GHG reduction results and the weight of available evidence, we judge that there is a reasonable basis to be confident that the 50% GHG reduction threshold will be achieved for renewable diesel, naphtha and LPG produced from canola oil through a hydrotreating process.

When we consider the high-end of the 95-percent confidence interval for international land use change GHG emissions and the hydrotreating process data with the highest GHG emissions, we estimate that jet fuel produced from canola oil results in a 46 percent reduction relative to the petroleum baseline. That is, the entire range of lifecycle GHG estimates for jet fuel does not exceed the 50 percent threshold. We follow the approach taken in the March 2010 RFS2 rule for considering such information for purposes of proposing a threshold determination for jet fuel produced from canola oil. In that rule we said, ''In making the threshold determinations for this rule, EPA weighed all of the evidence available to it, while placing the greatest weight on the best estimate value for the base yield scenario. In those cases where the best estimate for the potentially conservative base yield scenario exceeds the reduction threshold, EPA judges that there is a good basis to be confident that the threshold will be achieved and is determining that the bio-fuel pathway complies with the applicable threshold. To the extent the midpoint of the scenarios analyzed lies further above a threshold for a particular biofuel pathway, we have increasingly greater confidence that the biofuel exceeds the threshold.'' 75 FR 14785.

When we consider our mean estimates of international land use change GHG emissions, the estimated range of GHG reductions for canola oil-based jet fuel produced through hydrotreating is a 59% to 67% GHG reduction relative to the petroleum baseline. Given that this range, which is already based on reasonably conservative assumptions, exceeds the 50% GHG reduction threshold, and considering the weight of evidence across all the available results, we judge that there is a reasonable basis to be confident that the 50% GHG reduction threshold will be achieved for canola oil jet fuel produced through a hydrotreating process.

Based on the evaluation and results described above, we propose to add ''Canola/Rapeseed oil'' to the Feedstock columns in rows G and I of table 1 to 40 CFR 80.1426. This addition to row G would make renewable diesel, jet fuel, and heating oil produced through a hydrotreating process eligible for biomass-based diesel (D-code 4) RINs if the hydrotreating process does not co-process renewable biomass and petroleum. This addition to row I would make naphtha and LPG produced from canola oil through a hydrotreating process eligible for advanced biofuel (D-code 5) RINs. The RFS regulatory definition of biomass-based diesel at 40

CFR 80.1401 excludes naphtha and LPG.

The GHG estimates reported in Section II.C.12 of this preamble are based on our evaluation of standalone hydrotreating processes that process only vegetable oil. While there is substantial hydrotreating capacity at refineries that is potentially suitable for co-processing canola oil or other vegetable oils with petroleum, there is currently relatively little production or detailed input-output data for co-processing vegetable oil and petroleum in hydrotreating units.[73] For example, a co-processing module was added to GREET for the first time with the release of GREET–2021, but it currently contains ''placeholder parametric assumptions'' that Argonne National Laboratory is planning to replace after additional research.[74] The information that is available suggests that co-processing vegetable oil in hydrotreating units will require relatively minor adjustments compared to hydrotreating units that do not co-process with petroleum. There are also very few lifecycle GHG estimates of this process in peer-reviewed journals. The one study we found in the literature evaluated a hydrotreating unit of a Colombian refinery with four different feed rates of soybean oil (8.1 to 12.5 percent by mass) and reported similar input-output ratios as the standalone processes evaluated above in terms of hydrogen input, natural gas input, and fuel outputs per pound of feed.[75] Given that the large majority of our GHG reduction estimates significantly exceed the 50 percent reduction threshold for biofuels produced from canola oil hydrotreated without co-processing (see Section II.C.12 of this preamble), we believe our estimates support a finding that canola oil-based fuels from hydrotreating processes that co-process canola oil with petroleum also meet the 50 percent threshold. Thus, we propose to add ''Canola/Rapeseed oil to the feedstock column of row H in table 1 to 40 CFR 80.1426, which would make, if finalized, renewable diesel, jet fuel, naphtha, LPG and heating oil produced from canola oil through a hydrotreating process that includes co-processing with petroleum eligible for advanced biofuel (D-code 5) RINs. Note that based on the definition of biomass-based diesel at CAA 211(o), fuels produced through co-processing renewable biomass and petroleum do not qualify as biomass-based diesel, but these fuels may qualify as advanced biofuels if they meet the GHG reduction and other statutory requirements. We request data and information on producing renewable fuel through hydrotreating processes that co-process canola oil and petroleum. We request comments on our proposal to make these co-processed fuels eligible for advanced biofuel (D-code 5) RINs.

IV. Summary

Based on our GHG lifecycle evaluation described above, we propose to find that renewable diesel, jet fuel, naphtha, LPG, and heating oil produced from canola oil via a hydrotreating process meet the 50 percent GHG reduction threshold. This finding would support a determination that renewable diesel, jet fuel and heating oil produced from canola oil are eligible for biomass-based diesel (D-code 4) RINs if they are produced through a hydrotreating process that does not co-process renewable biomass and petroleum, and for advanced biofuel (D-code 5) RINs if they are produced through a process that does co-process renewable biomass and petroleum. This finding would also support a determination that naphtha and LPG production from canola oil through a hydrotreating process are eligible for advanced biofuel (D-code 5) RINs. EPA requests comment on these proposed pathways.

V. Statutory & Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The GHG lifecycle analysis conducted for this proposed determination, ''Renewable Fuel Standard Program: Canola Oil Pathways to Renewable Diesel, Jet Fuel, Naphtha, Liquefied Petroleum Gas and Heating Oil,'' is available in the docket.

B. Paperwork Reduction Act (PRA)

This proposed action would not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0725. This proposed action would create new pathways by which to generate RINs for renewable fuels under the RFS program but creates no new information collection requirements for these additional pathways.

C. Regulatory Flexibility Act (RFA)

I certify that this proposed action would not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this proposed rule is any significant adverse economic impact on small entities and that the agency is certifying that this proposed rule would not have a significant economic impact on a substantial number of small entities if the proposed rule would have no net burden. This proposed rule would enable canola oil producers and producers of biofuels from canola oil to participate in the RFS program, see CAA section 211(o), if they choose to do so to obtain economic benefits. We have therefore concluded that this proposed action would have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This proposed action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and would not significantly or uniquely affect small governments. The proposed action would impose no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This proposed action does not have tribal implications as specified in Executive Order 13175. This proposed

[73] Freeman, C.J., et al. (2013). Initial assessment of US refineries for purposes of potential bio-based oil insertions, Pacific Northwest National Lab. (PNNL), Richland, WA; van Dyk, S., et al. (2019). ''Potential synergies of drop-in biofuel production with further co-processing at oil refineries.'' Biofuels, Bioproducts and Biorefining 13(3): 760–775; Bezergianni, S., et al. (2018). ''Refinery co-processing of renewable feeds.'' Progress in Energy and Combustion Science 68: 29–64.

[74] ANL (2021). Summary of Expansions and Updates in GREET 2021, Energy Systems Division: 58.

[75] Garraín, D., et al. (2014). ''Well-to-Tank environmental analysis of a renewable diesel fuel from vegetable oil through co-processing in a hydrotreatment unit.'' Biomass and Bioenergy 63: 239–249.

rule would affect only producers of canola oil and producers of biofuels made from canola oil. Thus, Executive Order 13175 does not apply to this proposed action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This proposed action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This proposed rule would enable canola oil producers and producers of biofuels from canola oil to participate in the RFS program, see CAA section 211(o), if they choose to do so. This may create additional supplies of energy, potentially leading to positive impacts on the energy system. This proposed rule would create no new burdens on the distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this proposed action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This proposed rule would give renewable fuel producers the ability to generate credits under the RFS program for the production of specified biofuels from canola oil. This proposed rule does not affect the level of protection provided to human health or the environment by applicable air quality standards. Future actions to set biofuel volume requirements may take into consideration the availability of this renewable fuel pathway for the production of biofuel from canola oil and thus may affect GHG emissions, air quality, water or soil quality, or fuel and food prices.[76] However, this proposed action does not modify biofuel volume requirements and thus the EPA believes that the proposed rule to approve a new pathway, in and of itself, will not affect human health or the environment.

VI. Statutory Authority

Statutory authority for this action comes from CAA sections 114, 208, 211, and 301.

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, the EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Amend § 80.1401 by adding in alphabetical order the definition of ''Canola/rapeseed oil'' to read as follows:

§ 80.1401 Definitions.

* * * * *

Canola/Rapeseed oil means either of the following:

(1) *Canola oil* is oil from the plants *Brassica napus, Brassica rapa, Brassica juncea, Sinapis alba, or Sinapis arvensis* which typically contains less than 2 percent erucic acid in the component fatty acids obtained.

(2) *Rapeseed oil* is the oil obtained from the plants *Brassica napus, Brassica rapa,* or *Brassica juncea.*

* * * * *

■ 3. Amend § 80.1426 by:

■ a. Removing the text ''Table 1 to this section'' wherever it appears and adding, in its place, the text ''table 1 to paragraph (f)(1) of this section'';

■ b. Removing the text ''Table 1 to § 80.1426'' wherever it appears and adding, in its place, the text ''table 1 to paragraph (f)(1) of this section'';

■ c. In paragraph (f)(1), removing the text ''Tables 1 and 2 to this section'' and adding in its place the text ''tables 1 and 2 to this paragraph (f)(1)'';

■ d. Redesignating table 1 to § 80.1426 as table 1 to § 80.1426(f)(1);

■ e. In newly redesignated table 1 to § 80.1426(f)(1), revising the entries ''G,'' ''H,'' and ''I'';

■ f. Redesignating table 2 to § 80.1426 as table 2 to § 80.1426(f)(1).

The revisions read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel?

* * * * *

(f) * * *

(1) * * *

TABLE 1 TO § 80.1426(f)(1)—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type		Feedstock	Production process requirements	D-code
*	*	*	*	*
G	Biodiesel, renewable diesel, jet fuel, and heating oil.	Canola/Rapeseed oil	One of the following: Transesterification with or without esterification pre-treatment, or Hydrotreating; excludes processes that co-process renewable biomass and petroleum.	4

[76] For a recent discussion of such potential impacts, see Chapter 8 of the Draft Regulatory Impact Analysis for the RFS ''Proposed Volume Standards for 2020, 2021, and 2022''. EPA–HQ–OAR–2021–0324.

TABLE 1 TO § 80.1426(f)(1)—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

	Fuel type	Feedstock	Production process requirements	D-code
H	Biodiesel, renewable diesel, jet fuel, and heating oil.	Soy bean oil; Oil from annual covercrops; Oil from algae grown photosynthetically; Biogenic waste oils/fats/greases; Non-food grade corn oil; *Camelina sativa* oil; Distillers sorghum oil; Canola/Rapeseed oil.	One of the following: Transesterification with or without esterification pre-treatment, or Hydrotreating; includes only processes that co-process renewable biomass and petroleum.	5
I	Naphtha, LPG	*Camelina sativa* oil; Distillers sorghum oil; Canola/Rapeseed oil.	Hydrotreating	5
	* *	* *	* * *	

* * * * *

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BILLING CODE 6560–50–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Parts 726, 729, 731 and 752

RIN 0412–AB04

United States Agency for International Development (USAID) Acquisition Regulation (AIDAR): Foreign Tax Reporting, Conference Planning, and Trade and Investment Activities

AGENCY: U.S. Agency for International Development.

ACTION: Proposed rule.

SUMMARY: The United States Agency for International Development (USAID) proposes to amend its Acquisition Regulation (AIDAR) regarding contractor requirements on foreign tax reporting, conference planning, and trade and investment activities. These revisions are intended to bring the AIDAR into compliance with revised Agency policies and procedures and statutory requirements.

DATES: Interested parties should submit written comments at one of the addresses shown below on or before June 17, 2022 to be considered in the formation of the final rule.

ADDRESSES: Submit comments, identified by the title of the action and Regulatory Information Number (RIN) through the Federal eRulemaking Portal at *https://www.regulations.gov* by following the instructions for submitting comments. Please include your name, company name (if any), and ''0412–AB04'' on any attachments. If your comment cannot be submitted using *https://www.regulations.gov,* please email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

FOR FURTHER INFORMATION CONTACT: Kelly Miskowski, USAID/M/OAA/P, *policymailbox@usaid.gov*.

SUPPLEMENTARY INFORMATION:

A. Instructions

All comments must be in writing and submitted through the method specified in the **ADDRESSES** section above. All submissions must include the title of the action and RIN for this rulemaking. Please include your name, title, organization, postal address, telephone number, and email address in the text of the message.

All comments will be made available at *http://www.regulations.gov* for public review without change, including any personal information provided. We recommend that you do not submit information that you consider Confidential Business Information (CBI) or any information that is otherwise protected from disclosure by statute.

USAID will only address substantive comments on the rule. USAID may not consider comments that are insubstantial or outside the scope of the proposed rule.

B. Background

Several parts in the AIDAR are outdated and no longer comply with statutory requirements or current agency policies and procedures. USAID proposes to amend the AIDAR as follows:

1. 48 CFR part 726, subpart 726.71 Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights refers to agency Policy Determination (PD) 20, ''Guidelines to Assure USAID Programs do not Result in the Loss of Jobs in the U.S.'' PD 20 was replaced in agency policy by Automated Directives System (ADS) Chapter 225, Program Principles for Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights.'' ADS 225 is available at *https://www.usaid.gov/ads/policy/200/225.* USAID proposes amending the AIDAR to revise subpart 726.71 to prescribe when to include a new clause in section 752.226–70 in a solicitation and contract.

ADS 225 mandates that requiring offices and planners perform the necessary analyses to ensure that USAID-funded ''trade and investment'' activities do not: (a) Provide financial incentives and other assistance for U.S. companies to relocate operations abroad if it is likely to result in the loss of U.S. jobs; (b) Contribute to violations of internationally recognized workers' rights defined in 19 U.S.C. 2467(4); (c) Provide financial incentives for entities located outside the United States to relocate or transfer jobs from the United States to other countries or provide financial incentives that would adversely affect the labor force in the United States; and/or (d) Provide assistance for enforcement of certain rules if the enforcement would prohibit certain coal-fired or other power-generation projects. If the analyses conclude that the activity is a ''gray-area'' as described in that chapter, and the contract statement of work includes either gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS Chapter 225, then the requiring office will provide the contracting officer with a clause substantially the same as new section 752.226–70 to include in the solicitation and resulting contract.

2. USAID proposes to amend AIDAR Section 729.402–70 and the corresponding clause in 752.229–71 to update them to comply with current statutory requirements. The annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA) mandates that agencies take certain actions to prevent taxation of foreign assistance provided with funds appropriated in an SFOAA, or to obtain full reimbursement of all taxes paid.

Consistent with the statutory requirements, the AIDAR includes a clause requiring contractors to annually report the amount of foreign taxes assessed against foreign assistance funding during the preceding fiscal year and not reimbursed. The AIDAR reporting requirement has not been updated to reflect the changes Congress made to the foreign tax provision in 2014, specifically the revisions to the definition of ''foreign taxes'' and the types of transactions subject to the reporting requirements. The statutory definition of that term now includes all types of taxes imposed by the foreign government, including but not limited to value added taxes (VAT) and customs duties, but excluding individual income taxes assessed to local staff. Consistent with the current version of the SFOAA, the types of reportable transactions are expanded from ''commodity purchase transactions'' to all taxes assessed, with the exception of any foreign tax of a de minimis nature.

3. Section 731.205–43 and the corresponding clause in 752.231–72 are amended to include the current agency policy and procedures for funding conference costs in USAID contracts. USAID proposes adding new sections 731.374 and 731.775 to include these approval policies and procedures in the cost principles for contracts with educational institutions and nonprofit organizations, respectively. USAID policy on conferences is in ADS 580 Conference Planning and Attendance, which is available at *https://www.usaid.gov/ads/policy/500/580.* USAID has revised ADS 580 several times since the AIDAR was initially amended to add these two sections; the most recent revision was in February 2021 and reduced the number of USAID employees attending a conference that triggers the requirement for the contractor to obtain the agency's prior approval from 20 to 10. This proposed rule includes this number, retains the current requirement for the contractor to obtain approval when the net conference expenses by USAID will exceed $100,000, and revises both sections for clarity.

C. Regulatory Planning and Review

Executive Orders (E.O.s) 12866, Regulatory Planning and Review, and 13563, Improving Regulation and Regulatory Review, 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 rule has been determined ''nonsignificant'' under E.O. 12866. This rule is not a major rule under 5 U.S.C. 804.

D. Regulatory Flexibility Act

USAID does not expect this 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.* Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

E. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) applies. The proposed rule contains information collection requirements. Accordingly, USAID has submitted a request for approval of a new information collection requirement concerning this rule to the Office of Management and Budget.

The outlined information collections are an element of a proposed rule that implements USAID requirements for reporting foreign tax and conference planning. The proposed rule will amend AIDAR Section 729.402–70 and the corresponding clause in 752.229–71 to align foreign tax reporting requirements with relevant statutory requirements (Collection 1); Section 731.205–43 and the corresponding clause in 752.231–72; and add new sections 731.374 and 731.775 (Collection 2). These last two revisions are to align the AIDAR with USAID's conference planning policy.

1. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than June 17, 2022 using the method specified in the **ADDRESSES** section above.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the AIDAR, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement by contacting *policymailbox@usaid.gov.* Please cite RIN Number 0412–AB04 in all correspondence.

2. Abstract for Collection

Collection 1

The public reporting burden for this collection of information is estimated as follows:

Respondents: 900.
Responses per respondent: 1.
Total annual responses: 900.
Preparation hours per response: 1.
Total response burden hours: 900.

Collection 2

The public reporting burden for this collection of information is estimated as follows:

Respondents: 20.
Responses per respondent: 1.
Total annual responses: 20.
Preparation hours per response: 2.
Total response burden hours: 40.

List of Subjects in 48 CFR Chapter 7 Parts 726, 729, 731 and 752

Government procurement.

For the reasons discussed in the preamble, USAID proposes to amend 48 CFR Chapter 7 as set forth below:

■ 1. The authority citation for 48 CFR Chapter 7 parts 726, 729, 731, and 752 continues to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

■ 2. The authority citation for 48 CFR Chapter 7 part 729 is revised to read as follows:

Authority: Sec. 621, Pub. L. 87–195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; and 3 CFR 1979 Comp., p. 435.

PART 726–OTHER SOCIOECONOMIC PROGRAMS

Subpart 726.71—Trade and Investment Activities, the ''Impact on U.S. Jobs'' and ''Workers' Rights''.

■ 3. Revise § 726.7101 to read as follows:

726.7101 Trade and Investment Activities and the ''Impact on U.S. Jobs''.

(a) *Policy.* USAID policy and required procedures in ADS 225 Program Principles for Trade and Investment Activities and the ''Impact on U.S. Jobs'' and ''Workers' Rights'' implement statutory prohibitions on obligation and expenditure of appropriated funds. ADS 225 requires Agency operating units to analyze a project or activity to ensure

compliance with U.S. foreign policy objectives as stated in Section 601 of the Foreign Assistance Act (FAA) of 1961, as amended; the U.S. Government's trade and development objectives set forth in trade legislation; and related policy documents. If the analysis concludes that the project or activity meets the criteria for what the ADS chapter describes as ''gray-area activities'' or if the contract statement of work has the potential to evolve into what the chapter defines as a prohibited activity, then the planner must include in the procurement request language appropriately tailored to the specific circumstances for the contract statement of work.

(b) *Special contract requirement.* The contracting officer must insert in Section H of the uniform contract format a clause substantially the same as the clause in 752.226–70 when informed by the requesting operating unit that the statement of work or statement of objectives includes gray-area activities or investment-related activities where specific activities are not identified at the time of obligation but could be for investment-related activities, as described in ADS Chapter 225.

§ 726.7102 [Removed]

■ 4. Remove § 726.7102.

PART 729—TAXES

Subpart 729.4—Contract Clauses

■ 5. Revise § 729.402–70 to read as follows:

729.402–70 Foreign contracts.

(a) The annual Department of State, Foreign Operations, and Related Programs Appropriations Act (SFOAA) requires USAID to take certain steps to prevent countries from imposing taxes, including value added tax (VAT) and customs duties, on U.S. foreign assistance, or if imposed, requires the countries to reimburse the assessed taxes or duties. The SFOAA also requires certain reporting to Congress on host country taxation. Because countries imposing such taxes assess them directly on contractors, USAID requires contractors to report annually on whether taxes have been imposed and, if so, whether the foreign government reimbursed the taxes.

(b) The contracting officer must insert the clause at § 752.229–71, Reporting of Foreign Taxes in solicitations and resulting contracts when:

(1) A contract is fully or partially funded with funds appropriated under titles III through VI of an SFOAA making appropriations for the Department of State, foreign operations, and related programs, and

(2) the contract is to be performed wholly or partly in a foreign country.

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.2—Contracts with Commercial Organizations

■ 6. Revise § 731.205–43 to read as follows:

731.205–43 Trade, business, technical and professional activity costs—USAID conference approval requirements.

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

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

Net conference expense means the total conference expenses excluding: Any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

Personal Services Contractor (PSC) means any individual who is awarded a personal services contract in accordance with AIDAR appendices D or J.

Temporary duty (TDY) travel means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

USAID employee means a USAID direct-hire employee or a direct-hire federal employee from another U.S. government agency detailed to USAID.

(b) *Prior Approval.* USAID policy requires contractors to obtain contracting officer approval of the following, unless an exception in paragraph (c) of the clause at 752.231–72 applies:

(1) A conference funded in whole, or in part, by USAID when ten (10) or more USAID employees or personal services contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole, or in part, by USAID when the net conference expense funded by USAID is expected to exceed $100,000, regardless of the number of USAID employees or USAID personal services contractors who will participate in the conference.

(c) *Allowability of Cost.* Costs associated with a conference that meets the criteria above, incurred without USAID prior written approval, are unallowable.

(d) *Solicitation Provision and Contract Clause.* Contracting officers must insert the clause at 752.231–72 in all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference.

Subpart 731.3—Contracts With Educational Institutions

■ 7. Add § 731.374 to read as follows:

731.374 Conference approval requirements.

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205–43. These policies are also applicable to contracts with an educational institution.

Subpart 731.7—Contracts With Nonprofit Organizations

■ 8. Add § 731.775 to read as follows:

731.775 Conference approval requirements.

USAID's policies regarding conference approval requirements are set forth in (48 CFR) AIDAR 731.205–43. These policies are also applicable to contracts with an educational institution.

PART 752—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 752.2—Text of Provisions and Clauses

■ 9. Add § 752.226–70 to read as follows:

752.226–70 Trade and Investment. Activities, the ''Impact on U.S. Jobs'' and ''Workers' Rights''.

As prescribed in 48 CFR 726.7101(b), insert a clause substantially as follows:

Trade and Investment Activities and the ''Impact on U.S. Jobs'' (Date TBD)

(a) Except as specifically set forth in this contract or otherwise authorized by USAID in writing, no funds or other support provided under this contract may be used for any activity that: Provides financial incentives and other assistance for U.S. companies to relocate operations abroad if it is likely to result in the loss of U.S. jobs; contributes to violations of internationally recognized workers' rights defined in 19 U.S.C. 2467(4); or provides financial incentives for entities located outside the United States to relocate or transfer jobs from the United States to other countries or provide financial incentives that would adversely affect the labor force in the United States.

(b) In the event the Contractor is requested to provide services in any of

the above areas or requires clarification from USAID as to whether an activity would be consistent with the limitation set forth above, the Contractor must notify the contracting officer and provide a detailed description of the expected impact of the proposed activity. The Contractor must not proceed with the activity until advised by USAID in writing that it may do so.

(c) The Contractor must ensure that its employees and subcontractors providing trade and investment support services are made aware of the restrictions set forth in this clause and must include this clause in all subcontracts.

[END OF CLAUSE]

■ 10. Revise § 752.229–71 to read as follows:

752.229–71 Reporting of Foreign Taxes.

As prescribed in (48 CFR) AIDAR 729.402–70(b), insert the following clause in applicable solicitations and resulting contracts. The contracting officer must insert the address and point of contact at the Embassy, Mission, or M/CFO/CMP as appropriate under paragraph (d) of this clause.

Reporting of Foreign Taxes (Date TBD)

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

Foreign government includes any foreign governmental entity.

Foreign taxes include value-added taxes and customs duties but not individual income taxes assessed to local staff.

Local Staff means Cooperating Country National employees.

(b) *Annual report.* (1) The Contractor must submit a report detailing foreign taxes assessed under this contract during the prior U.S. government fiscal year. The report must be submitted annually by April 16.

(2) A report is required even if the Contractor did not pay any foreign taxes during the reporting period. A cumulative report may be provided if the Contractor is performing more than one award in the foreign country.

(c) *Contents of report.* The report must contain:

(1) Contractor name.

(2) Contact name with phone number and email address.

(3) Contract number(s).

(4) Amount of foreign taxes assessed by each foreign government (listed separately) under this contract during the prior U.S. Government fiscal year.

(i) Taxes assessed on any individual transaction of less than $500 should not be reported.

(ii) The contractor must report only foreign taxes assessed by a foreign government receiving U.S. assistance under this contract. The Contractor must not report on foreign taxes assessed by a third-party foreign government.

(5) Any reimbursements of foreign taxes received by the Contractor on the taxes reported in paragraph (c)(4) of this clause received through the date of the report.

(d) *Submission of report.* The Contractor must submit the report to: [*Contracting Officer must insert address and point of contact at the Embassy or Mission in the country in which the contract will be performed, or CFO/CMP for USAID/W-issued contracts, as appropriate*], with a copy to the Contracting Officer's Representative.

(e) *Subcontracts.* The Contractor must include this reporting requirement in all subcontracts issued under this contract. The Contractor shall collect and incorporate into the Contractor's report all information received from subcontractors pursuant to this clause.

(End of clause)

■ 11. Revise § 752.231–71 to read as follows:

752.231–72 Conference planning and required approval.

As prescribed in (48 CFR) AIDAR 731.205–43(d), insert the following clause in section H of all USAID-funded solicitations and contracts anticipated to include a requirement for a USAID-funded conference.

Conference Planning and Required Approval (Date TBD)

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

Conference means a seminar, meeting, retreat, symposium, workshop, training activity or other such event that is funded in whole or in part by USAID.

Net conference expense means the total conference expenses excluding: Any fees or revenue received by the Agency through the conference, costs to ensure the safety of attending governmental officials, and salary of USAID employees and USAID personal services contractors.

Personal Services Contractor (PSC) means any individual who is awarded a personal services contract in accordance with AIDAR appendices D or J.

Temporary duty (TDY) travel means official travel at least fifty (50) miles from both the traveler's home and duty station for a period exceeding twelve (12) hours.

USAID employee means a USAID direct-hire employee or a direct-hire federal employee from another U.S. government agency detailed to USAID.

(b) *Prior Approval.* Unless an exception in paragraph (c) applies, the Contractor must obtain prior written approval from the contracting officer at least 30 days prior to committing costs, for the following:

(1) A conference funded in whole or in part by USAID when ten (10) or more USAID employees or Personal Services Contractors are required to travel on temporary duty status to attend the conference; or

(2) A conference funded in whole or in part by USAID and attended by USAID employees or USAID Personal Services Contractors, when the net conference expense funded by USAID is expected to exceed $100,000, regardless of the number of USAID participants.

(c) *Exceptions.* Prior USAID approval is not required for the following:

(1) Co-creation conferences to facilitate the design of programs or procurements.

(2) Events funded and scheduled by the Center for Professional Development within the USAID Office of Human Capital and Talent Management.

(3) A single course presented by an instructor conducted at a U.S. Government training facility (including the Washington Learning Center or other USAID training facilities), a commercial training facility, or other venue if a U.S. Government training facility is not available.

(4) Conferences conducted at a U.S. Government facility or other venue not paid directly or indirectly by USAID, when travel of USAID employees or USAID Personal Services Contractors, light refreshments and, if applicable, costs associated with participation of the contractor's staff are the only direct costs associated with the event.

(d) *Allowability of Cost.* Costs associated with a conference that meet the criteria above, incurred without USAID prior written approval, are unallowable.

(e) *Post-Award.* Conferences approved at the time of award will be incorporated into the contract. The contractor must submit subsequent requests for approval of conferences on a case-by-case basis, or requests for multiple conferences may be submitted at one time.

(f) *Documentation.* Requests for approval of a conference that meets the criteria in paragraphs (b) of this section must include:

(1) A brief summary of the proposed event;

(2) A justification for the conference and alternatives considered, *e.g.,* teleconferencing and video-conferencing;

(3) The estimated budget by line item (*e.g.,* travel and per diem, venue, facilitators, meals, equipment, printing, access fees, ground transportation);

(4) A list of USAID employees or PSCs attending and a justification for each, and the number of other USAID-funded participants (*e.g.,* contractor personnel);

(5) A cost comparison for at least three potential venues (including a U.S. Government owned or leased facility) and a justification if the lowest cost facility is not selected;

(6) If meals will be provided to local USAID employees or PSCs (a local employee would not be in travel status), a statement on whether the meals are a necessary expense to support the conference objectives; and

(7) A statement signed by an employee of the Contractor with authority to bind the Contractor, confirming that strict fiscal responsibility has been exercised in making decisions regarding conference expenditures, the proposed costs are comprehensive and represent the greatest cost advantage to the U.S. Government, and that the proposed conference representation has been limited to the minimum number necessary to support the conference objectives.

(End of clause)

Luis Rivera,

Acting Senior Procurement Executive, U.S. Agency for International Development.

[FR Doc. 2022–07786 Filed 4–15–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 223

[Docket No. FRA–2020–0058; Notice No. 1]

RIN 2130–AC76

Safety Glazing Standards; Codifying Existing Waivers and Adding Test Flexibility

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA proposes to amend its Safety Glazing Standards for exterior windows on railroad equipment to codify long-standing waivers, add a new testing option to improve consistency of glazing testing, and revise outdated section headings. The proposed changes would update and clarify existing requirements to maintain and, in some cases, enhance safety, while reducing unnecessary costs. Codification of the waivers as proposed is also consistent with the Infrastructure Investment and Jobs Act, and would enable FRA to more efficiently use its inspection resources.

DATES: Comments on the proposed rule must be received by June 17, 2022. Comments received after that date will be considered to the extent practicable.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2020–0058 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *https://www.regulations.gov*; this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Gary Fairbanks, Staff Director, Office of Railroad Safety, telephone: 202–493–6322, email: *gary.fairbanks@dot.gov;* or Michael Masci, Senior Attorney, Office of the Chief Counsel, telephone: 202–493–6037, email: *michael.masci@dot.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary

Purpose of the Regulatory Action

FRA periodically reviews, and proposes amendments to, its regulations to identify ways to enhance safety and streamline and update regulatory requirements. Various Executive orders also encourage or require such reviews with an emphasis on cost-savings.[1] This proposed rule would maintain and, in some cases, enhance safety, while allowing FRA to make better use of its inspection resources, and reduce the overall regulatory burden on railroads.

Summary of the Regulatory Action

The Safety Glazing Standards (or part 223) contain minimum safety requirements for glazing materials in the windows of locomotives, passenger cars, and cabooses. FRA proposes to codify long-standing waivers [2] that have provided certain older railroad equipment relief from part 223. Through the waivers, FRA has generally provided relief from part 223's requirements for certain older railroad equipment operated at speeds not exceeding 30 miles per hour (mph) and used only where the risk of propelled or fouling objects (*e.g.,* cinder blocks or other solid objects hanging from bridges, overpasses, or like structures) striking the equipment is low.[3] Codifying these waivers through this rulemaking proceeding [4] would continue a high level of safety and allow FRA better flexibility to use its inspection resources and reduce the regulatory burden on the

[1] *See, e.g.,* Executive Order 13610, Identifying and Reducing Regulatory Burdens, 77 FR 28469, May 10, 2012; Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821, Jan. 21, 2011.

[2] FRA currently oversees 68 glazing-related waivers issued to 58 different railroads and involving equipment built or rebuilt before July 1, 1980. FRA has placed a list of these waivers in the docket. FRA monitors a railroad's compliance with each waiver and upon request, FRA reviews existing waivers for possible renewal every five years. Table D provides the number of waivers that will be reviewed for renewal during the next 10 years.

[3] FRA accident and incident data from 1990 to the present confirms railroad equipment operating under waiver has sustained four acts of vandalism over the period with no injuries or casualties and the glazing performed satisfactorily.

[4] Notably, existing waivers could potentially be codified through the rulemaking process, as proposed here, or they could be codified through legislation.

railroad industry by eliminating the need to continue to use the waiver process for relief, while providing the railroad industry with regulatory certainty as to the applicability of part 223 to certain older equipment. Codifying these waivers is also consistent with the requirements of section 22411 of the Infrastructure Investment and Jobs Act (Pub. L. 117–58). Section 22411 requires the Secretary to review and analyze existing waivers issued under 49 U.S.C. 20103 that have been in continuous effect for a 6-year period to determine whether issuing a rule consistent with the waiver is in the public interest and consistent with railroad safety. After conducting the appropriate analysis, if the Secretary concludes that it would be in the public interest and consistent with railroad safety to initiate a rulemaking to incorporate into the regulations the relevant aspects of the waivers analyzed, section 22411 specifically authorizes the Secretary to initiate such a rulemaking.

Appendix A to part 223 (appendix A) contains the performance criteria and the testing methodology for the required glazing materials. Appendix A requires glazing materials in locomotives and passenger cars to be subject to two specific tests—ballistic impact and large object impact testing. The large object impact test requires the use of a certain-sized cinder block that is no longer manufactured and can be difficult to recreate accurately. Accordingly, FRA is proposing to allow the large object impact test to be performed using an easily obtainable steel ball. Permitting use of a steel ball that can be acquired with consistent properties that will not deform during testing also makes the test more consistent and repeatable, which would increase reliability. Therefore, the alternative steel ball test would allow glazing manufacturers to adopt a test that would produce more consistent and accurate results to help ensure safety. Because, as discussed in Section III.B below, the steel ball test is at least equivalent to the existing cinder block test, safety would be maintained, if not enhanced, by the standardization of testing the steel ball test provides.

Finally, FRA proposes to revise several section headings in part 223 to replace terms that have become outdated. Since 1979, when FRA first published part 223, use of the terms ''new'' and ''existing'' in various section headings has become confusing. Accordingly, for clarity, FRA is proposing to amend the section headings to refer to the relevant compliance dates for each section.

Costs and Benefits of the Proposed Regulatory Action

The proposed rule would eliminate the need for railroads to submit waiver petitions (and repeated extensions of those waivers every 5 years) from part 223 for certain older railroad equipment, eliminate the Federal Government's need to review and approve the waiver petitions and extension requests, and reduce window glazing manufacturers' window glazing certification costs. FRA's estimates of cost savings for the NPRM are shown in the table below. FRA estimates there will be no costs associated with implementing the proposed rule.

SUMMARY OF TOTAL COST SAVINGS OVER THE 10-YEAR PERIOD

[2020 Dollars] [5]

Entity	Undiscounted	Present value		Annualized	
		3%	7%	3%	7%
Railroad (Waiver Submissions)	$44,000	$37,000	$30,000	$4,300	$4,200
Manufacturer (Steel Ball Option)	74,800	63,800	52,500	7,500	7,500
Government (Review Savings)	1,000,200	844,000	685,000	99,000	97,500
Total Cost Savings	1,119,000	944,800	767,500	110,800	109,300

II. Background

A. Existing Glazing Requirements

In the 1970s, railroads recorded many incidents involving propelled or fouling objects (*e.g.,* stones, cinder blocks, and bullets) striking railroad vehicle windows, resulting in injuries to railroad employees and passengers.[6] Some of the incidents were caused by intentional acts of vandalism (*e.g.,* thrown rocks and stones); others resulted from routine rail operations (*e.g.,* ballast or debris kicked-up by oncoming trains); and some were believed to be accidental (*e.g.,* stray bullets from nearby hunting).

In 1979, FRA issued part 223 to protect railroad crew members and passengers when train windows are struck by propelled or fouling objects. Part 223 requires exterior windows in locomotives, cabooses, and passenger cars to be equipped with glazing that meets certain technical specifications designed to protect the vehicles' occupants from injury if a window is impacted by an object.[7] Appendix A outlines the criteria for certifying a window's glazing and ensures that glazing materials in rail equipment are significantly more resistant to impact than ordinary window glass or safety glass.

Part 223 requires all equipment built or rebuilt after June 31, 1980, to be equipped with certified glazing. With certain exceptions, part 223 also phases in requirements for equipment built or rebuilt prior to July 1, 1980. As a result, almost the entire railroad fleet is equipped with certified glazing.

The exceptions from part 223 include those for some older railroad equipment that is still in use today. Specifically, FRA's 2016 amendments to part 223 exclude equipment under § 223.3(b)(3) that is more than 50 years old and, except for incidental freight service, used only for excursion, educational, recreational, or private transportation purposes.[8] The amount of remaining older equipment that was not built or rebuilt with certified glazing prior to July 1, 1980, and is not excepted under § 223.3(b)(3), is very small.[9] As discussed below, however, much of this older equipment continues to operate today subject to individual waivers from part 223's requirements.

[5] In this document, both total and annualized figures have been rounded to improve clarity.

[6] *See* 44 FR 77348, Dec. 31, 1979.

[7] *Id.*

[8] 81 FR 6775, Feb. 9, 2016. 49 CFR 223.3(b)(3).

[9] FRA estimates the remaining equipment that would be affected by this rule is very small as all of the equipment is owned and operated by the 58 railroads currently operating under 68 waivers. Some railroads have been granted more than one part 223 waiver.

B. FRA Waiver Process and Glazing Waivers

FRA has, in various instances, exercised its delegated authority to waive compliance with its regulations.[10] As noted above, FRA currently oversees 68 glazing-related waivers. FRA's waiver process is well established. FRA implemented this authority by issuing the rules under subpart C to 49 CFR part 211, providing a process for regulated entities to submit, and FRA to respond to, waiver petitions. Under part 211, each properly filed petition for a waiver of a safety rule, regulation, or standard is referred to FRA's Railroad Safety Board (Safety Board) for decision.[11] The Safety Board's decision is typically rendered after a notice is published in the **Federal Register** and an opportunity for public comment is provided.[12] The Safety Board may grant a waiver request if it finds that doing so is ''consistent with railroad safety and in the public interest.'' [13] If the Safety Board grants a waiver petition, it may impose conditions on the grant of relief to ensure safety.

Activity under a waiver of regulatory compliance may generate sufficient data and experience to support an expansion of its scope, applicability, and duration. A waiver's success and its continued expansion may further warrant consideration of regulatory codification. Codifying a waiver,[14] and thereby making its exemptions and requirements universally applicable, results in industry cost-savings larger than from the waiver alone.

Since 1998, FRA has granted conditional relief from part 223 to approximately 200 small railroads that operate older equipment under certain circumstances (*i.e.,* low speeds and in geographical locations with no history of broken windows and low risk of future vandalism to railroad equipment). Currently 58 railroads continue to operate under 68 such waivers. Some railroads operate under more than one waiver. In granting these waivers, the Safety Board's review of available records found that the specific railroad operations and operating environment of each railroad demonstrated no history of injuries resulting from windows breaking on their equipment and low risk of any future injuries (*i.e.,* no or few reported incidents of vandalism, no history of windows being broken from propelled or fouling objects). In addition, the Safety Board consistently found that, due to rising prices for materials and labor, and modifications that are necessary to adapt the window frames in the older equipment to support the increased thickness and weight of glazing in modern window designs, requiring railroads with older equipment and limited operations (such as those railroads that are party to the existing glazing waivers referenced in footnote 9) to install certified glazing would be cost-prohibitive and of limited benefit. See the discussion of Executive Order 12866 in Section IV.A below.

While monitoring implementation of these waivers, FRA reviewed all incident reports from railroads operating under the waivers and identified no injuries that would have been prevented or mitigated by part 223 certified glazing. Given the rail industry's long-term success in safely operating under these waivers, FRA is proposing to incorporate the regulatory flexibility provided by the waivers into part 223. This change would eliminate the need for further waivers and the associated employee hours spent on their documentation and renewal every five years, as well as remove any industry uncertainty as to whether FRA would renew the waivers.

III. Overview and Technical Discussion of Proposed Requirements

A. Proposal To Exclude From Part 223 Older Equipment Operated at Only Low Speeds in Locations With Low Risk of Objects Striking Equipment

FRA has historically granted waivers from part 223 on a case-by-case basis, finding that locations and operations where there is a low risk of propelled or fouling objects striking the equipment, and the equipment travels at relatively slow speeds, could be used as a basis for providing the relief.[15] When deciding individual waiver requests, FRA has historically considered the risks along a railroad's particular operating route, along with the speed limitations on the equipment, to evaluate each individual railroad's request.

The risk of injury to a railroad employee or passenger from objects impacting rail vehicle windows is diminished at lower speeds, regardless of whether the windows are protected with certified glazing. As a result, FRA has generally limited the speeds at which equipment, subject to waivers from part 223, may travel to between 10 and 30 mph, depending on the operating conditions of the petitioning railroad and the class of track over which the equipment is operated.[16] FRA recognizes that although non-compliant glazing may fail at operating speeds of 30 mph or lower, the lower speeds will minimize the risk of injuries occurring.

Impact testing at 30 mph, for other than ballistic impacts, has been the benchmark for certified glazing since part 223 was established. The large object impact test in appendix A requires a 24-lb cinder block of specific dimensions to move at an impact speed of 44 feet per second (fps), which is equivalent to 30 mph. To conduct the test, appendix A requires a cinder block to move dynamically towards a static piece of glazing. This scenario approximates actual occurrences where trains have struck a static cinder block hanging from a bridge or overpass.

In addition to striking cinder blocks or other objects fouling the movement of a train at the height of its windows, there is the potential for vandals to throw projectiles (rocks, stones, *etc.*) at oncoming trains or for debris from the ground to impact the windows of rail vehicles. FRA conducted an analysis to determine whether projectiles thrown at or flying into Type I glazing [17] could present a more significant risk and be more damaging than a train window striking a static 24-lb cinder block. The governing equation for this analysis is Equation 1 below:

[10] 49 U.S.C. 20103 (''The Secretary [of Transportation] may waive compliance with any part of a regulation prescribed or order issued under this chapter if the waiver is in the public interest and consistent with railroad safety.''). The Secretary has delegated this authority to FRA, 49 CFR 1.89(a).

[11] 49 CFR 211.41(a).

[12] 49 CFR 211.41(b).

[13] 49 U.S.C. 20103(d).

[14] *See* FN 4.

[15] 44 FR 77348, Dec. 31, 1979.

[16] In a few instances, FRA has also granted relief from part 223 and allowed the subject equipment to operate at speeds above 30 mph, but those approvals are based on analysis of the unique operations involved.

[17] Type I glazing is the type of glazing generally required to be installed on end facing windows. Under part 223, Type II glazing is required to be installed on side facing windows. Part 223's requirements for Type I glazing are more stringent than those for Type II glazing because of the more prominent location of the glazing and to account for the more direct effects of longitudinal speed.

$$\frac{1}{2}m_{cinder\ block}(v_{train}+v_{cinder\ block})^2=\frac{1}{2}m_{projectile}\left(v_{train}+v_{projectile}\right)^2$$

Equation 1

Equation 1 sets the kinetic energy of a cinder block moving at a given velocity to the kinetic energy of a projectile moving at a different (and greater) velocity than the cinder block. In Equation 1, $m_{cinder\ block}$ is the mass of the cinder block; v_{train} is the velocity of the train; $m_{projectile}$ is the mass of the propelled object, and $v_{projectile}$ is the velocity of the propelled object. Note that the velocity of the train is added to the velocity of the projectile because the train and projectile are travelling in opposite directions and, therefore, their velocities are additive.

For this analysis, the velocity of the cinder block is assumed to be zero as it represents a static cinder block hanging from a bridge or similar-type overhang. Therefore, Equation 1 reduces to Equation 2 below:

$$\frac{1}{2}m_{cinder\ block}{v_{train}}^2=\frac{1}{2}m_{projectile}\left(v_{train}+v_{projectile}\right)^2$$

Equation 2

Solving for the projectile velocity ($v_{projectile}$) results in Equation 3 below:

$$v_{projectile}=\sqrt{\frac{m_{cinder\ block}}{m_{projectile}}{v_{train}}^2}-v_{train}$$

Equation 3

The mass of the cinder block ($m_{cinder\ block}$) is 24 lbs.[18] In addition, the velocity of the train (v_{train}) is 30 mph. Plugging these values into Equation 3 results in Equation 4 below:

$$v_{projectile}=\sqrt{\frac{24}{m_{projectile}}30^2}-30$$

Equation 4

Now a projectile mass ($m_{projectile}$) can be entered into Equation 3, and the result is the projectile velocity ($v_{projectile}$) needed to throw the projectile at an oncoming train travelling at 30 mph to impact with the same kinetic energy as a train travelling at 30 mph impacting a static 24-lb cinder block. Table 1 puts forth the mass of different projectiles ($m_{projectile}$) and the resulting projectile velocity ($v_{projectile}$).

TABLE 1

Projectile mass (pounds)	Projectile velocity (mph)	Projectile velocity (fps)
10	16.5	24.2
5	35.7	52.4
0.3125	232.9	341.6

As Table 1 demonstrates, a 10-lb projectile and a 5-lb projectile would have to be thrown at 16.5 mph (24.2 fps) and 35.7 mph (52.4 fps), respectively, to generate the same impact energy as a train travelling at 30 mph striking a static 24-lb cinder block.

To give an idea of the arm strength required to generate these velocities with such objects, the last line in Table 1 represents a weight of 5 ounces (0.3125 pounds), which is equivalent to the weight of a baseball. A baseball would have to be thrown at approximately 232.9 mph (341.6 fps) at an oncoming train travelling at 30 mph to generate the equivalent energy of a train travelling at 30 mph impacting a static 24-lb cinder block. Professional baseball pitchers have never recorded pitches in excess of 110 mph. Therefore, FRA concludes that a velocity of 232.9 mph cannot be attained by a vandal using only arm strength. Similarly, it is likely that not many people have the arm strength necessary to achieve a velocity of 35.7 mph (52.4 fps) throwing a 5-lb projectile or a velocity of 16.5 mph (24.2 fps) throwing a 10-lb projectile. Based on this analysis, FRA has concluded that a projectile thrown at an oncoming train travelling at 30 mph would impact the train with less energy than if the train traveling at the same speed impacts a static cinder block. Therefore, the safety risk for equipment traveling at 30 mph or lower and struck by a thrown object is relatively low. A 30-mph maximum allowable speed also correlates with

[18] Note that a pound (lb) is not technically a unit of mass but is sufficient for this calculation. The conversion could be made to the International System of Units (SI units) to complete the calculation; then, the result could be converted back to US units. However, for the present calculation, the same result is obtained whether or not this conversion to SI units is performed.

FRA's maximum allowable speed for FRA Class 2 track, as outlined in 49 CFR 213.9, which makes it consistent with the operational realities of many small railroad operations.

For the reasons explained above, in this NPRM, FRA proposes to exclude from compliance with part 223 all locomotives, cabooses, and passenger cars built or rebuilt prior to July 1, 1980, that are operated at speeds not exceeding 30 mph, and are used only where the risk of propelled or fouling objects striking the equipment is low. To implement this rule as proposed, FRA believes the railroads are well-suited to determine whether there is low risk in operations, because they should know the history in those areas and can continuously monitor for incidents and potential risks. Currently, during the waiver process, FRA investigates to determine the risk of propelled or fouling objects striking equipment in operation. FRA's investigations typically involve physical inspections of the route over which the equipment operates, talking to railroad officials and employees, and in some cases, requesting information from local law enforcement. FRA expects that if this proposed rule is adopted and a railroad initially determines its equipment and operations meet the proposed exclusion from part 223, but subsequently the railroad (or FRA) becomes aware of incidents of propelled or fouling objects striking the windows of railroad equipment in operation, the railroad will take appropriate action to install certified glazing or otherwise mitigate the risk of damage to the rail equipment windows.

B. Proposal To Provide Alternative to Existing Large Object Impact Test Requiring Use of a Cinder Block

FRA first became aware in the early 2000s that cinder blocks of the weight and dimensions appendix A requires (*i.e.,* cinder blocks weighing a minimum of 24 pounds with dimensions of 8 inches by 8 inches by 16 inches) for the large object impact test were no longer being manufactured and accordingly becoming harder for the glazing manufacturing and railroad industries to find. These industries therefore began relying on cinder blocks originally manufactured to non-conforming dimensions and weight that then have to be customized to the required dimensions and weight, and continue to do so today. Having to customize non-conforming cinder blocks to part 223's requirements is not only inconvenient and costly to glazing manufacturers, it also introduces potential inconsistencies because different manufacturers independently modify each cinder block to conform to the required test specification. In addition, even if conforming cinder blocks were widely produced and available, each cinder block typically can be used only once during testing, because the required impact on the corner of the block damages it, rendering it non-conforming for further testing.

To address the growing issue of the unavailability of the cinder blocks required for testing under appendix A, FRA asked the Railroad Safety Advisory Committee (RSAC) to evaluate the issue.[19] RSAC recommended, and FRA agreed, that further research should be conducted to determine whether a steel ball could be a potentially suitable alternative test object to use instead of the required cinder block. FRA tasked the John A. Volpe National Transportation Systems Center (Volpe Center) to conduct this research. The Volpe Center retained Parsons Brinckerhoff Quade & Douglas, Inc., in association with ETC Laboratories, to conduct a testing program for railroad vehicle glazing to analyze the use of a steel ball for the end facing (Type I) glazing large object impact test standard. The goal was to determine whether an impact test using a steel ball could be at least as stringent as the existing impact test using a cinder block to certify glazing under part 223.

The main features of the test were the use of: (1) A solid 12-lb steel ball as the impact object; (2) a minimum impact speed of 62.5 fps; and (3) pass-fail acceptance criteria defined by no penetration of a witness plate, with a minimum of 3 out of 4 passes required to define a pass. Using the equation for kinetic energy, FRA determined that a 12-lb steel ball traveling at 62.5 fps has the same kinetic energy as a 24-lb cinder block traveling at 44 fps, as appendix A currently requires.

The 62.5 fps value for the velocity of the steel ball was arrived at by using the following equation which sets the kinetic energy of the cinder block equal to the kinetic energy of the steel ball:

$$\frac{1}{2} m_{cinder\ block} v_{cinder\ block}{}^2 = \frac{1}{2} m_{steelball} v_{steelball}{}^2$$

Equation 5

In Equation 5, $m_{cinder\ block}$ represents the mass of the cinder block, $v_{cinder\ block}$ represents the velocity of the cinder block, $m_{steelball}$ represents the mass of the steel ball, and $v_{steelball}$ represents the velocity of the steel ball. Solving for the velocity of the steel ball results in the following equation:

$$v_{steelball} = \sqrt{\frac{m_{cinder\ block}}{m_{steelball}} v_{cinder\ block}{}^2}$$

Equation 6

[19] RSAC was established to provide a forum for exploring railroad safety issues and developing recommendations on rulemakings and other safety program issues. It includes representation from all FRA's major stakeholder groups, including railroads, labor organizations, suppliers, manufacturers, and other interested parties.

In Equation 6, plugging in 24 lbs for the mass of the cinder block, 44 fps for the velocity of the cinder block, and 12 lbs for the mass of the steel ball results in a value of approximately 62.5 fps for the velocity of the steel ball.[20]

North American Specialty Glass (NASG) provided five different types of Type I glazing samples for testing, which included two-ply and three-ply glazing with and without spall shields.[21] For each test, the samples were mounted in a fixture and a witness plate, consisting of an aluminum sheet having a 2-millimeter thickness mounted in another frame behind the samples for gauging the relative potential harm of any spall resulting from each impact. The study confirmed the steel ball impact test, using a 12-lb steel ball as the large object impact test object and at an impact speed of a minimum 62.5 fps, can be practically achieved in the laboratory, and as proposed in this rulemaking, can be used as an equivalent alternative to the existing cinder block impact test. Further, use of a 12-lb steel-coated shot put ball instead of a solid steel ball, was also acceptable based on the testing criteria used for the solid steel ball. The Volpe Center's complete report of these tests and resulting findings is available for review in the docket to this proceeding.[22]

Interestingly, the three models/types of glazing specimens tested without a spall shield were not able to pass the 12-lb steel ball test at a speed of 62.5 fps. These three types of glass specimens were Type I certified, meaning they had previously passed the standard 24-lb cinder block test. Yet, even though the velocity of the 12-lb steel ball is adjusted to obtain the same kinetic energy as the 24-lb cinder block, there are other factors that must be considered regarding equivalency of the tests. For example, unlike a steel ball, a cinder block is not a symmetrical object. During a test, the cinder block can hit the target glazing on one of its twelve edges, or it can hit directly on one of its six faces. If the cinder block impacts the glazing on one of its faces, there is a much larger surface area coming into contact with the glazing material, so the force per unit area is lower than when only the edge of the cinder block impacts the glazing.

A steel ball impact is much more uniform due to the inherent symmetry of the steel ball. Additionally, the contact area created when a steel ball impacts the target glazing is likely even smaller than the contact area created when the edge of a cinder block impacts the target glazing. This creates a scenario where the contact area is quite small and, therefore, the force per unit area is high. This small contact area created by use of a steel ball differs from the variable, but typically larger, contact area created when a cinder block impacts the target glazing. This likely was the cause of the three models/types of glazing specimens to pass the steel ball test only with spall shields even though they passed the cinder block test without spall shields when certified as FRA Type I glazing. In other words, the results indicate the steel ball test is potentially a more stringent test than the cinder block test. Therefore, safety will not be diminished if the steel ball test is used as opposed to the existing cinder block test.

Given the more stringent nature of the steel ball test, FRA finds that the steel ball alternative test option is appropriate for both Type I (end facing) and Type II (side facing) glazing large object impact testing under part 223. Accordingly, FRA is proposing to amend appendix A to provide the option to use a 12-lb steel ball as an alternative to a 24-lb cinder block for large object impact testing when certifying glazing under part 223. As noted above, the requirements for Type I glazing are more stringent than those for Type II glazing, because of the more prominent location of the glazing and to account for the more direct effects of longitudinal speed. Therefore, the Volpe Center research, even though it focused on Type I glazing, served to validate use of the steel ball for Type II glazing large object impact testing. Use of Type II glazing subject to a comparable steel ball testing regimen should be at least as safe as use of Type II glazing subject to the existing cinder block testing process.

While FRA is not proposing any substantive change to the existing cinder block test, it specifically requests comments on whether the test should be retained, or whether it is now obsolete and should be replaced with the steel ball test. To preserve either option, this NPRM proposes to incorporate by reference the ASTM International (ASTM) specifications C33/C33M–18 and C90–16a. The previous versions of these specifications are currently referenced in appendix A as C33L and C90, respectively. The portions of these specifications that are relevant to the large object impact test have not significantly changed and would continue to be used to ensure proper cement construction and integrity for the cinder blocks.

Use of the steel ball would increase consistency, provide flexibility, and save cost during large object impact testing, leading to more repeatable, reliable, and efficient testing. FRA is not aware of any other suitable object that could be used to establish an impact test equivalent to the cinder block test and provide the same benefits as the steel ball for equipment subject to the requirements in appendix A. Nonetheless, FRA invites comment about alternative objects that could be used for such impact testing and whether another performance standard is feasible.

FRA notes that, in 2018, FRA established impact testing requirements for certifying glazing for passenger equipment operating at speeds up to 220 mph in a dedicated right-of-way without grade crossings.[23] The requirements for this Tier III passenger equipment in 49 CFR part 238 were based on recommendations developed for RSAC by a subgroup of glazing experts (the Tier III Cab Glazing Task Group) identified by the Passenger Safety Working Group's Engineering Task Force.[24] These recommendations were developed to address modifications to the glazing regulations for very high-speed, Tier III passenger operations. An informative aspect of this effort was the evolution of surrogates used for large object impact testing throughout the world. Given the substantial research conducted by global standards organizations on the topic, it was recommended that FRA adopt modified criteria based on the relevant elements of Euronorm (EN) 15152 and International Union of Railways (UIC) 651, specifically the nature of the projectile and its mass, shape, and composition, along with other specifications for test conditions (*e.g.,* impact angle, temperatures, etc.) to ensure scientific controls and repeatability.[25]

FRA makes clear that the language proposed in this NPRM is appropriate for broad application to both freight and passenger equipment operated at conventional speeds. Nonetheless, FRA recognizes that the proposed language differs from that adopted in part 238 to address concerns associated with very high-speed, Tier III rail operations. FRA

[20] *See* FN 18. For the present calculation, the same result is obtained whether or not a conversion to SI units is performed.

[21] A spall shield is a film or coating applied over the glazing material to provide additional protection from spalling (*i.e.,* fragmentation or splintering of the glazing material) during impact with an object. Part 223 does not require certified glazing to be equipped with a spall shield.

[22] Parsons Brinckerhoff, ''Railroad Vehicle Window Glazing Large Object Impact Test,'' May 2006.

[23] 49 CFR 238.721, 83 FR 59182 (Nov. 21, 2018).

[24] 81 FR 88017 (Dec. 6, 2016).

[25] *Id.*

therefore seeks comment on the appropriateness and utility of applying part 238's Tier III glazing requirements more broadly to the degree that certain aspects of the Tier III glazing requirements might be considered for application to this rulemaking and, if so, which aspects.

IV. Section-by-Section Analysis

This section-by-section analysis is intended to explain the rationale for each revised or new provision of the proposed rule. The proposed regulatory changes are organized by section number. FRA seeks comments on all proposals made in this NPRM.

Section 223.3 Application

Section 223.3 sets forth the scope and applicability of part 223. Existing paragraph (b) excludes from part 223's applicability certain types of equipment and operations. FRA proposes to add a new paragraph (b)(5) to exclude locomotives, cabooses, and passenger cars built or rebuilt prior to July 1, 1980, that are operated at speeds not exceeding 30 mph, and used only where there is low risk of propelled or fouling objects striking the equipment. The July 1, 1980, date corresponds to the original application date of part 223 to then-existing equipment, as discussed below under §§ 223.11 through 223.15, which with certain exceptions led to phasing in requirements for this equipment. Risk factors include reported incidents of propelled or fouling objects striking rail equipment, or infrastructure conditions or other operating environment conditions that have led or are likely to lead to objects striking rail equipment in operation. Paragraph (b)(5) would provide that risk is presumed low, unless the railroad operating the equipment has knowledge, or FRA makes a showing, that specific risk factors exist. FRA would determine whether there is low risk primarily based on FRA's observations during routine inspections and from any reported incidents of propelled or fouling objects striking rail equipment in operation. FRA expects the operating railroad to inform FRA of any such incidents known to the railroad. If FRA has reason to believe there have been incidents of propelled or fouling objects striking equipment in operation, FRA may investigate further. As part of its investigation, FRA may contact local law enforcement for more information, in determining the risk level.

Section 223.9 Requirements for Equipment Built or Rebuilt After June 30, 1980

The current heading for this section is ''Requirements for new or rebuilt equipment.'' FRA is proposing to revise the section heading to ''Requirements for equipment built or rebuilt after June 30, 1980'' to reflect the requirements of the section more accurately. When the Safety Glazing Standards final rule was published in 1979, the date June 30, 1980, was chosen to identify equipment built or rebuilt after that date as fully subject to this section's requirements. With the passage of time, referring to equipment built after June 30, 1980, as ''new'' equipment is potentially confusing. FRA therefore proposes to amend the section heading for clarity by referring to the actual compliance date for equipment subject to this section, including rebuilt equipment.

Section 223.11 Requirements for Locomotives Built or Rebuilt Prior to July 1, 1980

The current heading for this section is ''Requirements for existing locomotives.'' FRA is proposing to revise the section heading to ''Requirements for locomotives built or rebuilt prior to July 1, 1980'' to reflect the requirements of the section more accurately. When the Safety Glazing Standards final rule was published in 1979, the date July 1, 1980, was chosen to identify equipment built or rebuilt prior to that date as subject to different, phased-in requirements. With the passage of time, referring to equipment built or rebuilt prior to July 1, 1980, as ''existing'' equipment is potentially confusing. FRA therefore proposes to amend the section heading for clarity by referring to the actual compliance date for equipment subject to this section. For the same reason, FRA is also proposing to make corresponding changes to the similarly worded headings for §§ 223.13 and 223.15, below, to specify the compliance date instead.

Section 223.13 Requirements for Cabooses Built or Rebuilt Prior to July 1, 1980

The current heading for this section is ''Requirements for existing cabooses.'' As noted above, FRA is proposing to revise the section heading to ''Requirements for cabooses built or rebuilt prior to July 1, 1980'' to reflect the actual compliance date for equipment subject to this section.

Section 223.15 Requirements for Passenger Cars Built or Rebuilt Prior to July 1, 1980

The current heading for this section is ''Requirements for existing passenger cars.'' As noted above, FRA is proposing to revise the section heading to ''Requirements for passenger cars built or rebuilt prior to July 1, 1980'' to reflect the actual compliance date for equipment subject to this section.

Appendix A to Part 223—Certification of Glazing Materials

As discussed above, FRA proposes to revise this appendix to provide the option to use a 12-lb steel ball as an alternative to a 24-lb cinder block for large object impact testing when certifying glazing under part 223. In doing so, FRA is making miscellaneous, conforming changes to existing requirements.

In paragraph b.(6), consistent with the Volpe report, FRA proposes adjusting the width of the witness plate to account for the difference in object size between the steel ball and the cinder block for conducting large object impact testing.

Further, FRA proposes revising paragraph b.(10), containing the Type I test regimen requirements for end facing glazing locations. FRA would add the steel ball test option to paragraph b.(10)(ii), Large Object Impact, as new paragraph b.(10)(ii)(B); the existing cinder block test would be in redesignated paragraph b.(10)(ii)(A). Under paragraph b.(10)(ii)(B), a steel ball, including a ball bearing or shot put ball, weighing a minimum of 12 lbs would impact the glazing surface at an impact velocity of 62.5 fps. Since the kinetic energy of a 12-lb steel ball travelling at 62.5 fps is equivalent to the kinetic energy of a 24-lb cinder block traveling at 44 fps under the existing Type I testing method, proposed paragraph b.(10)(ii)(B) would represent an alternative but equivalent test option to the standard cinder block method for Type I testing.

In paragraphs b.(10) and (11), FRA plans to incorporate by reference ASTM C90–16a, ''Standard Specification for Loadbearing Concrete Masonry Units,'' 2016, and ASTM C33/33M–18, ''Standard Specification for Concrete Aggregates,'' 2018. Both specifications provide options for the precise cinder block makeup used in the large object impact tests. ASTM C90–16a provides specifications for loadbearing concrete masonry units made from portland cement, water, and mineral aggregates with or without the inclusion of other materials. ASTM C33/33M–18 provides

specifications for grading and quality of fine and coarse aggregate (other than lightweight or heavyweight aggregate) for use in concrete. The existing references in appendix A identify the ASTM specifications that were current when part 223 was issued in 1979, ASTM C33L and ASTM C90. Cinder blocks conforming to either the current specifications, or those from 1979, are suitable for the large object impact test. Because manufacturers are building cinder blocks to the current specifications, FRA proposes to incorporate the current specifications. Both standards proposed for incorporation, ASTM C90–16a and C33/C33M–18, are available to all interested parties online at *https://www.astm.org.* Further, FRA will maintain copies of these standards available for review at Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC 20590.

Similarly, FRA proposes revising paragraph b.(11), containing the Type II test regimen requirements for side facing glazing locations. FRA would add the steel ball test option to paragraph b.(11)(ii), Large Object Impact, as new paragraph b.(11)(ii)(B); the existing cinder block test would be in redesignated paragraph b.(11)(ii)(A). Under paragraph b.(11)(ii)(B), a steel ball, including a ball bearing or shot put ball, weighing a minimum of 12 lbs would impact the glazing surface at an impact velocity of 17 fps. The kinetic energy of a 12-lb steel ball travelling at 17 fps is equivalent to the kinetic energy of a 24-lb cinder block traveling at 12 fps under the existing Type II testing method. Proposed paragraph b.(11)(ii)(B) would therefore represent an alternative but equivalent test option to the standard cinder block method for Type II testing.

Moreover, FRA proposes to revise paragraph b.(13), concerning the number of test specimens required for large object impact testing. Under revised paragraph b.(13), use of the alternative steel ball test option in paragraphs b.(10)(ii)(B) and b.(11)(ii)(B) would require four different test specimens to be subjected to each impact test—rather than only two different test specimens required for the existing cinder block impact test. FRA proposes this change together with that proposed to the pass-fail requirements in paragraph b.(15), below, based on the Volpe Center's test regimen used during its research into the steel ball alternative, discussed above.

Under proposed paragraph b.(15), use of the alternative steel ball test option in paragraphs b.(10)(ii)(B) and b.(11)(ii)(B) would require three out of the four test specimens to pass the test for the glazing material to be found acceptable. Use of the existing cinder block test would continue to require that both glazing specimens pass the test for the glazing material to be found acceptable. The pass-fail requirement for use of the alternative steel ball test is intended to provide testing flexibility and is based on the Volpe Center's test regimen.

V. Regulatory Impact and Notices

A. Executive Orders 12866

The proposed rule is a nonsignificant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' FRA made this determination by finding that the economic effects of the proposed rulemaking would not exceed the $100 million annual threshold defined by Executive Order 12866. FRA estimates this proposed rule would result in cost savings for the industry over a ten-year period, while maintaining and in some cases enhancing safety.

The proposed rulemaking seeks to amend part 223 in two substantive ways. The proposed rule would codify long-standing waivers that exclude old rail equipment from certified safety window glazing requirements provided the railroads that use this equipment comply with FRA-required operating conditions intended to maintain and, in some cases, enhance safety. The proposed rule would also add a steel ball test option to appendix A.

FRA complied with Office of Management and Budget (OMB) Circular A–4 when accounting for benefits, costs, and cost savings relative to a baseline condition. Typically, a baseline represents a best judgement about what the world would look like in the absence of the regulatory intervention.[26] Without this proposed rule, small railroads operating rail cars under waiver equipped with uncertified glazing would continually need to apply for waivers from part 223. To estimate benefits, costs, and cost-savings, this analysis assumes a baseline where FRA's approval of these waivers resembles historical practice.

FRA generally reviews two types of waivers: (1) Test or pilot waivers and (2) ongoing or long-standing waivers. Test or pilot waivers require extensive technical analysis and investigation by stakeholders when applying for and renewing them. Long-standing waivers cover more familiar and proven technology, and have previously undergone the renewal process. Renewal requests for these waivers require less effort for applicants and for FRA. For this proposed rule, FRA considers waivers that were initially granted for equipment for 10 years or longer as long-standing waivers; in other words, the equipment has operated subject to waiver for 10 years or longer. A waiver's benefits, costs, and likely net cost savings are based on industry application of technologies and procedures, which are presumably less restrictive than the underlying regulation. However, continuation of cost savings and associated regulatory relief is subject to the uncertainty regarding whether the waiver will be renewed during its periodic review. Currently, only Class III railroads operate rail equipment under waiver from part 223 that would no longer be necessary under this proposed rule. Based upon historical records, FRA estimates the proposed rule would provide cost savings to 58 (8 percent) of the 753 Class III railroads.

These long-standing waivers reflect familiar uncertified glazing technologies and safe operating conditions for which FRA has granted short line railroads waiver renewals. The uncertified window glazing permitted by waivers and the FRA-required operating conditions for these waivers have been used by members of the industry for a long time and are essentially ''built-in'' to their operations. FRA historic inspection data indicates that the railroads have operated safely with these waivers. The continuation of these long-standing waivers is a reasonable estimation of the world without the final rule. Cost savings for these waivers are estimated as simply the reduction in renewal processing costs for the railroads and FRA.

As discussed above, the Safety Board has consistently found that, due to rising prices for materials and labor, and modifications that are necessary to adapt the window frames in the older equipment to support the increased thickness and weight of glazing in modern window designs, mandating that railroads with older equipment install certified glazing would be cost-prohibitive due to the need to remove the existing window frames and replace them with new frames that are compatible with compliant glazing. This could exceed the value of the locomotive itself. FRA expects that even if this installation took place, there would be limited benefits, which would not exceed the expected costs.

More recent waivers (*i.e.,* those approved by FRA less than 10 years ago) are subject to more extensive review and

[26] ''Circular A–4: Regulatory Analysis'' (Sep. 17, 2003), available at *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4. See Section E(2) Developing a Baseline.*

analysis. FRA may modify conditions of the waivers and impose restrictions to maintain and in some cases enhance safety. Costs for renewing more recent waivers are higher than for long-standing waivers, and the railroads must incur significant uncertainty during the process because renewal is not assured. In this analysis, FRA estimates impacts due to codifying these recent waivers as the costs and cost-savings resulting from the underlying glazing waiver application process and safety procedures and in lieu of what is required under existing regulation.

The proposed rule would, in effect, lift the five-year waiver renewal requirement from subject small railroads, reduce window glazing manufacturers' window glazing certification costs, and eliminate the Federal Government's requirement to review and approve these waivers. FRA estimates all entities would realize total cost savings as estimated in Table A. FRA estimates there would be no costs associated with implementing the proposed rule.

TABLE A—SUMMARY OF TOTAL COST SAVINGS OVER THE 10-YEAR PERIOD

[2020 Dollars]

Entity	Undiscounted	Present value		Annualized	
		3%	7%	3%	7%
Railroad (Waiver Submissions)	$44,000	$37,000	$30,000	$4,300	$4,200
Manufacturer (Steel Ball Option)	74,800	63,800	52,500	7,500	7,500
Government (Review Savings)	1,000,200	844,000	685,000	99,000	97,500
Total Cost Savings	1,119,000	944,800	767,500	110,800	109,300

Railroad Cost Savings

In 1979, FRA issued part 223 and generally established minimum safety requirements for glazing materials in the windows of locomotives, passenger cars, and cabooses. FRA has traditionally granted waiver requests to small railroads that operate such vehicles in existence at the time the regulation was promulgated at speeds up to 30 mph on rail tracks located in areas where railroad reports and FRA observations, as well as police records, show little risk of objects, such as cinder blocks and bullets, striking rail equipment. Once initial waiver requests are approved, recipients must resubmit waiver requests to FRA every five years to continue to operate the vehicles. During the waiver approval process, FRA field inspectors verify safe conditions and contact local police if appropriate.[27] FRA historical records of the approval process confirm that from 1998 to April 2020 no railroad operating under waiver from part 223's requirements has reported any incident resulting from use of windows not conforming to part 223's requirements. Based on this documented safety history and FRA's standard practice for evaluating waiver requests,[28] FRA is confident that codifying window glazing waivers serves the public interest by providing small railroads permanent regulatory relief while preserving safety on the general railroad system of transportation. The proposed rule also adds a steel ball test option to the window glazing certification process. FRA expects this amendment would reduce glazing certification costs and encourage technical innovation among manufacturers.

Currently, Class III railroads operate rolling stock under 68 waivers from part 223. These railroads are required to resubmit waivers every year 5 years. The number of waivers submitted to FRA each year would vary over the next 10 years. For example, FRA expects railroads would submit 8 waivers in 2021 (4 originated in 2001, 1 originated in 2006, and 3 originated in 2011). In 2022, a total of 11 waivers would be submitted, which originated in 2002, 2007, 2012, and 2017. Each railroad operating under waiver would submit requests for all waivers granted to them twice over the next 10 years so that a total of 136 waiver renewals would be submitted over the period.

FRA calculated the railroad cost savings in the table below based upon the following inputs.[29]

- Railroad administrative burdened[30] wage rate is $77.47 per hour.[31]
- Each railroad waiver submission requires 4 hours of railroad administrative labor.
- Copying and mailing costs total $10 per waiver.
- Total cost per waiver equals $319.88.[32]

TABLE B—RAILROAD COST SAVINGS BY YEAR

Year	Number of waivers	Discount rate		
		Undiscounted	3%	7%
2021	8	$2,559	$2,485	$2,392
2022	11	3,519	3,317	3,073
2023	14	4,478	4,098	3,656
2024	18	5,758	5,116	4,393
2025	17	5,438	4,691	3,877
2026	8	2,559	2,143	1,705
2027	11	3,519	2,861	2,191

[27] District inspectors verify safe conditions with the police if they find any evidence window glazing has been damaged or replaced.

[28] Standard operating procedures include periodic updates of the FRA Motive Power and Equipment Compliance Manual, which would be expected with the passage of this rule.

[29] Inputs are based on expertise drawn from FRA's Motive Power and Equipment Division unless otherwise noted.

[30] The ''burdened'' wage rate includes fringe and overhead benefits.

[31] Source: Surface Transportation Board, 2019, professional and administrative employees, group #200; burdened wage rate = $44.27 * 1.75 benefits rate = $77.47.

[32] Total costs per waiver = 4 * $77.47 + $10 = $319.88.

TABLE B—RAILROAD COST SAVINGS BY YEAR—Continued

Year	Number of waivers	Discount rate		
		Undiscounted	3%	7%
2028	14	4,478	3,535	2,607
2029	18	5,758	4,413	3,132
2030	17	5,438	4,046	2,764
Total	136	43,500	37,000	30,000
Annualized			4,300	4,200

Based upon these inputs, under the proposed rule the 58 small railroads operating under 68 glazing-related waivers would realize approximately $320 in savings per avoided waiver in current dollars.

Manufacturer Cost Savings

FRA expects the option to use a steel ball in lieu of a cinder block in the railroad window glazing certification process to reduce manufacturers' technical development costs and encourage technical innovation. Appendix A includes Type I and Type II large object impact tests. These tests require the rectangular edge of an 8″ by 8″ by 16″ cinder block weighing 24 lbs to strike a glazed window under specified conditions without penetrating the back side of the glass. Partial penetration of the front side of the glass does not constitute a failure. Cinder blocks meeting part 223 specified parameters are no longer manufactured. Materials engineers must customize four currently available cinder blocks requiring two hours of labor, increasing current glazing certification costs beyond what was anticipated during the original rulemaking. The Volpe Center conducted research verifying a 12-lb steel ball can achieve the same kinetic energy as the cinder block. In addition, the steel ball can be used repeatedly due to its symmetry and surface tension but the cinder block can only be used once because its rectangular edge is damaged beyond repair during each test use.

The following assumptions were made to estimate the manufacturers' labor and material cost savings due to the proposed changes to the railroad vehicle glazing certification process.[33] FRA requests public comments on the assumptions used in this analysis.

- Five manufacturers across the globe develop railroad vehicle glazing; three are located within the U.S. and two are foreign manufacturers.
- FRA assumes that all glazing manufacturers will make use of the steel ball option.
- FRA expects each firm will conduct five tests per year and save approximately $500 per test in current 2020 dollars.
- The total manufacturing cost savings table below is developed for the three U.S. manufacturing firms and assumes 15 tests are conducted per year.
- As the cinder block is damaged during each pass of the test, two cinder blocks are required at a cost of $1.50 apiece and $6 in total. Each cinder block test requires 10 labor hours, *e.g.,* 2 hours to customize 4 cinder blocks and 8 hours to run the cinder block test. Two additional cinder blocks were included in the analysis to ensure that extra cinder blocks were available if the first test was failed.
- Each steel ball costs $75. This analysis assumes each U.S. manufacturer will purchase one steel ball at the beginning of the first year of analysis period. These one-time costs are subtracted from the 2021 cost savings shown in Table D. Steel ball costs are not included in Table C per test cost savings. FRA assumes the steel ball will be used after 2030.
- Materials engineers conduct the certification tests at a burdened hourly wage of $82.[34]
- FRA recognizes the NPRM would result in unquantified environmental cost savings as glazing manufacturers reduce the purchase and landfill disposal of cinder blocks. FRA lacks sufficient data to quantify these costs and asks for public comment.

TABLE C—MANUFACTURER COST SAVINGS

Expense	Large object costs per test	Labor hours per test	Labor costs per test	Total costs per test	Large object costs 15 tests	Labor costs 15 tests	Total costs per year
Cinder Block	$6	10	$824	$830	$90	$12,353	[35] $12,443
Steel Ball After First Year	0	4	330	330	0	4,941	[36] 4,941
Burdened Hourly Wage Rate	82						
Cost Savings per Year							7,500
Cost Savings per Test							500

In summary, all three U.S. window glazing manufacturers and the two foreign manufacturers are expected to save $500 per test by exercising the steel ball option. The following table shows the 10-year cost savings for all three U.S. manufacturers.

[33] Assumptions are based on expertise from FRA's Motive Power and Equipment Division.

[34] Current materials engineer wage rate = $47.06. Burdened rate = 1.75 * $47.06 = $82.36. Source: *https://www.bls.gov/oes/current/oes172131.htm.*

[35] Total cinder block tests cost per year = 15 * ($6 + $823.55) where $6 is the per test cinder block cost and $823.55 is the per test labor cost. It is assumed the 3 U.S. firms conduct a total of 15 test per year.

[36] The steel ball costs per test include only 4 hours of labor and = 4 * 82.36 or $329.42. Fifteen tests per year = 15 * $329.42 = $4,941.

TABLE D—MANUFACTURER COST SAVINGS BY YEAR

Year	Number of tests	Undiscounted	Present value	
			3%	7%
2021	15	$7,277	$7,065	$6,801
2022	15	7,502	7,071	6,552
2023	15	7,502	6,865	6,124
2024	15	7,502	6,665	5,723
2025	15	7,502	6,471	5,349
2026	15	7,502	6,283	4,999
2027	15	7,502	6,100	4,672
2028	15	7,502	5,922	4,366
2029	15	7,502	5,750	4,081
2030	15	7,502	5,582	3,814
Total	150	74,800	63,800	52,500
Annualized			7,500	7,500

Federal Government Cost Savings

The tables below estimate the Federal Government cost savings expected from this proposed rule. FRA would no longer receive numerous petitions from small railroads requesting waiver from compliance with the window glazing requirements, which would save time and expense FRA previously spent on the waiver review and decision process. Specifically, as noted above, FRA currently oversees 68 glazing-related waivers, subject to renewal every five years, and as a result, FRA receives approximately one glazing waiver renewal request every month. As part of the waiver process, an FRA inspector spends one to two days investigating each glazing waiver renewal request and reporting the findings. In addition, an FRA subject matter expert spends one to two days reviewing the inspector's report and drafting a recommendation memorandum to the Safety Board and a notice to publish in the **Federal Register** for each waiver renewal request.

FRA estimates the cost savings from eliminating one railroad window glazing waiver review and decision is approximately $7,400 at the burdened wage rate. FRA cost savings estimates are based on the reduction of labor hours at the 2020 Office of Personnel Management (OPM) pay grade levels as shown below.[37] Hours were considered at the burdened wage rate by multiplying the actual wage rate by 175 percent.

FRA's waiver review and decision typically require contributions from employees earning salaries at General Schedule (GS) pay grades 12, 14, and 15, and employees earning Senior Executive Service (SES) salaries. Table E shows the hours and wage rates for Government employees reviewing and issuing decisions for part 223 waiver requests.

TABLE E—FRA WAIVER REVIEW WAGE RATES BY GENERAL SCHEDULE PAY GRADES

		Burdened wage rate (wage * 1.75)	Hours	Total unburden	Total burden
GS–12 (RUS)	$41.66	$72.91	12	$500	$875
GS–12 (DCB)	46.88	82.04	4	188	328
GS–14 (DCB)	65.88	115.29	36	2,372	4,150
GS–15 (DCB)	77.49	135.61	8	620	1,085
SES	87.26	152.71	6	524	916
Total Cost per Waiver				4,200	7,400

Table F provides the yearly cost savings of eliminating the Federal Government's burden of reviewing 136 waivers over the next 10 years.

TABLE F—GOVERNMENT ADMINISTRATIVE COST SAVINGS BY YEAR

Year	Number of waivers	Burdened wage rate undiscounted	Discount rate	
			3%	7%
1	8	$58,836	$57,123	$54,987
2	11	80,900	76,256	70,661
3	14	102,964	94,226	84,049
4	18	132,382	117,620	100,994
5	17	125,027	107,850	89,143

[37] OPM general wage rates are listed here: GS 12 District Staff from Rest of the US *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/RUS_h.pdf;* GS 12, 13, 15 DOT Headquarters Staff from DC Metropolitan Area: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/DCB_h.pdf;* SES from Mid-Level III: *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2020/EX.pdf.*

TABLE F—GOVERNMENT ADMINISTRATIVE COST SAVINGS BY YEAR—Continued

Year	Number of waivers	Burdened wage rate undiscounted	Discount rate	
			3%	7%
6	8	58,836	49,275	39,205
7	11	80,900	65,779	50,380
8	14	102,964	81,280	59,926
9	18	132,382	101,460	72,007
10	17	125,027	93,032	63,558
Total	136	1,000,219	844,000	685,000
Annualized			99,000	97,500

In addition, codifying the active glazing waivers would allow FRA inspectors to perform other essential duties, namely their typical inspection duties, rather than dedicating time to investigating glazing waiver renewal requests, and would also allow headquarters staff to spend their time on other issues that may have a larger impact on maintaining and improving safety.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking'' (67 FR 53461 (Aug. 16, 2002)), require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities, and has therefore prepared this IRFA. FRA seeks comment from small entities on the economic impacts of this proposed rule.

1. Reasons for Considering Agency Action

FRA is proposing this rulemaking to relieve the burden on the railroad industry by codifying waivers from part 223 for small railroads operating rail equipment with uncertified window glazing. The proposed rule would also add a steel ball option to comply with the glazing certification requirements for large object impact testing. FRA's proposed changes to part 223 are expected to result in cost savings for railroads, the Government, and window glazing manufacturers.

Without this proposed rule, railroads would continue to submit waiver renewal requests from the part 223 glazing requirements every five years. Manufacturers would continue using a customized cinder block to certify new window glazing materials and not be able to reduce production costs by using the steel ball option. The alternative, not issuing the proposed rule, would continue to burden small railroads with unnecessarily high glazing certification costs and both the small railroads and the Federal Government with unnecessary administrative costs.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of this proposed rule is to reduce the regulatory burden on the railroad industry while maintaining and in some cases enhancing the existing level of safety, by excluding railroads operating vehicles at speeds not exceeding 30 mph built or rebuilt before July 1, 1980, and operated in low risk areas, from part 223 certified window glazing requirements. The proposed rule would also reduce window glazing manufacturers' production costs by adding the steel ball large object impact test option to certify glazing. In addition, FRA expects this rule would reduce the regulatory and administrative burden on regulated entities by eliminating the need to renew waivers every five years.

The Secretary of Transportation has broad statutory authority to ''prescribe regulations and issue orders for every area of railroad safety'' under 49 U.S.C. 20103, including window glazing regulated in part 223.

3. A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry includes a for-profit ''line-haul railroad'' that has fewer than 1,500 employees and a ''short line railroad'' with fewer than 500 employees.[38]

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Under that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR part 1201, General Instructions section 1–1, which is $20 million or less in inflation-adjusted annual revenues; and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less.[39] The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR part 1201, General Instructions section 1–1. The current threshold is $40.4 million.[40] FRA is using this definition for the proposed rule. FRA estimates this proposed rule

[38] ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

[39] 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

[40] The Class III railroad revenue threshold is $40,384,263 or less, for 2019. (The Class II railroad threshold is between $40,384,263 and $504,803,294; and the Class I railroad threshold is $504,803,294 or more.) *See* Surface Transportation Board Decision, Docket No, EP 748, Indexing the Annual Operating Revenues of Railroads, Decided June 4, 2020. *https://prod.stb.gov/reports-data/economic-data/railroad-revenue-deflator-factors/.*

directly affects the 58 Class III railroads currently operating under one or more waivers. The proposed rulemaking would relieve these railroads of the labor costs and the uncertainty associated with the waiver submission process. FRA estimates three U.S. glazing manufacturers would develop and test new certifiable glazing materials each year during the analysis period. FRA expects these manufacturers would benefit from lower production costs due to the flexibility added to the certification test requirements. However, each of these manufacturers employs more than 1,000 persons, the SBA [41] benchmark for large businesses by defined by the SBA.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

The proposed rule would eliminate the need for certain railroads to follow FRA's waiver process to be excluded from part 223 window glazing requirements. FRA is confident that all railroads currently operating under these part 223 waivers are small entities. This proposed rule would reduce the regulatory costs and hourly burdens on these railroads; the proposed changes would result in a positive economic impact on those railroads.

To estimate the cost savings for small entities, FRA used its historic records to identify each of the 58 small entities currently operating under one or more waivers and their 5-year resubmission dates. FRA assumed each waiver cost the railroad industry $320 and included 4 hours of required labor at a burdened rate of $77.47 and mailing costs of $10. Each of the affected railroads would submit 2 waivers over the 10-year analysis period or a total 136 waivers. Total cost to the industry is estimated at approximately $37,000 or $30,000, when discounted at rates of 3 and 7 percent. Each year, the small railroad industry would be relieved of $4,300 or $4,200 at the same rates. These railroads would also be relieved of the uncertainty imposed during the renewal process.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with the proposed rule.

6. A Description of Significant Alternatives to the Rule

FRA is proposing this rulemaking to relieve the burden on industry by codifying long-standing window glazing waivers and reducing manufacturing costs by adding a steel ball large object testing option to the glazing certification testing requirements. The main alternative to this rulemaking would be to maintain and, in some cases, enhance safety.

In the absence of this proposed rule, affected railroads would continue to submit waiver renewals every five years under part 223. Manufacturers would continue using a customized cinder block to certify new window glazing materials as they would not be able to reduce production costs by using the steel ball option. The alternative of not issuing the proposed rule would be to continue to burden small railroads with unnecessarily high glazing certification costs and both the small railroads and the Federal Government with unnecessary administrative costs.

C. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to OMB for approval under the Paperwork Reduction Act of 1995.[42] Please note that any revised requirements, as proposed in this NPRM, are marked by asterisks (*) in the table below. The sections that contain the proposed and current information collection requirements under OMB Control No. 2130–0525 and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent wage rate [43] (D) = C *
223.3—Application—Locomotives, passenger cars, and cabooses built after 1945 used only for excursion, educational, recreational, or private transportation purposes.	704 railroads	400 marked tools (small hammers with instructions).	30 minutes	200.00 hours	$11,978.00
223.11(c)—Requirements for locomotives built or rebuilt prior to July 1, 1980, equipped with certified glazing in all locomotive cab windows (* *Note:* Revised requirement.*).	The proposed rule would eliminate the need for railroads to submit waiver petitions (and repeated extensions of those waivers every 5 years) from part 223 for certain older railroad equipment, eliminate the Federal Government's need to review and approve the waiver petitions and extension requests.				
—(d)(1) Locomotive placed in designated service due to a damaged or broken cab window—Stenciled ''Designated Service—DO NOT OCCUPY''.	704 railroads	15 stencilings	3 minutes	.75 hour	$44.92
—(d)(2) Locomotives removed from service until broken or damaged windows are replaced with certified glazing.	Glazing certification for locomotive replacement windows is done at the time of manufacturing. Consequently, there is no additional burden associated with this requirement.				

[41] North American Industry Classification System (NAICS) Code 327211 signifies the Flat Glass and Glazing Manufacturing Firms that would be affected by this proposal. Per SBA, any firm under NAICS code 327211 that employs more than 1,000 employees cannot qualify as a small business. *See* U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification Codes, effective January 1, 2017. *https://www.sba.gov/sites/default/files/2019/08/SBA%20Table%20of%20Size%20Standards_Effective%20Aug%2019%2C%202019.pdf.*

[42] 44 U.S.C. 3501 *et seq.*

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total cost equivalent wage rate [43]
		(A)	(B)	(C) = A * B	(D) = C *
223.13(c)—Requirements for cabooses built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows (* *Note:* Revised requirement.*).	The proposed rule would eliminate the need for railroads to submit waiver petitions (and repeated extensions of those waivers every 5 years) from part 223 for certain older railroad equipment, eliminate the Federal Government's need to review and approve the waiver petitions and extension requests.				
—(d) Cabooses removed from service until broken or damaged windows are replaced with certified glazing.	Glazing certification for caboose replacement windows is done at the time of manufacturing. Consequently, there is no additional burden associated with this requirement.				
223.15(c)—Requirements for passenger cars built or rebuilt prior to July 1, 1980, equipped with certified glazing in all windows plus four emergency windows (* *Note:* Revised requirement. For those passenger cars operating above Class III speed would need still need to submit a waiver. For those operating below Class III speed the proposed rule would eliminate the need for the passenger railroads to submit waiver petitions.*).	704 railroads	1 renewal waiver ...	4 hours	4.00 hours	$460.96
—(d) Passenger cars removed from service until broken/damaged windows are replaced with certified glazing.	Glazing certification for passenger car replacement windows is done at the time of manufacturing. Consequently, there is no additional burden associated with this requirement.				
Appendix A—(b)(16)—Certification of Glazing Materials—Manufacturers to certify in writing that glazing material meets the requirements of this section.	5 manufacturers	10 certifications	30 minutes	5.00 hours	$387.20
—(c) Identification and marking of each unit of glazing material.	5 manufacturers	25,000 marked pieces.	480 pieces per hour.	52.08 hours	$3,119.07
Total	704 railroads + 5 manufacturers.	25,426 responses	N/A	262 hours	$15,990

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Collection Clearance Officer, at 202–493–0440. Organizations and individuals desiring to submit comments on the collection of information requirements should direct them via email to Ms. Wells at *Hodan.Wells@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

Executive Order 13132, Federalism,[44] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, the agency may not issue a regulation with federalism

[43] The dollar equivalent cost is derived from the Surface Transportation Board's 2020 Full Year Wage A&B data series using the appropriate employee group hourly wage rate that includes a 75-percent overhead charge.

[44] 64 FR 43255 (Aug. 10, 1999).

implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Impact

FRA has evaluated this proposed rule consistent with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Council of Environmental Quality's NEPA implementing regulations at 40 CFR parts 1500–1508, and FRA's NEPA implementing regulations at 23 CFR part 771 and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[45] Specifically, FRA has determined that this proposed rule is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

The main purpose of this rulemaking is to revise FRA's Safety Glazing Standards to maintain and in some cases enhance safety, while reducing unnecessary costs and provide regulatory flexibility while. This rule would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[46] FRA has concluded that no such unusual circumstances exist with respect to this proposed rule and it meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[47] FRA has also determined that this rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[48]

G. Executive Order 12898 (Environmental Justice)

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and DOT Order 5610.2b[49] require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate, and also requires consideration of the benefits of transportation programs, policies, and other activities where minority populations and low-income populations benefit, at a minimum, to the same level as the general population as a whole when determining impacts on minority and low-income populations. FRA has evaluated this proposed rule under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

H. Unfunded Mandates Reform Act of 1995

Under section 201 of the Unfunded Mandates Reform Act of 1995,[50] each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

I. Energy Impact

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.''[51] FRA evaluated this proposed rule under Executive Order 13211 and determined that this

[45] 40 CFR 1508.4.

[46] 23 CFR 771.116(b).

[47] *See* 16 U.S.C. 470.

[48] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[49] Available at *https://www.transportation.gov/regulations/dot-order-56102b-department-transportation-actions-address-environmental-justice*.

[50] Public Law 104–4, 2 U.S.C. 1531.

[51] 66 FR 28355 (May 22, 2001).

regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

J. Privacy Act Statement

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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

K. Analysis Under 1 CFR Part 51

As required by 1 CFR 51.5, FRA has summarized the standards it is incorporating by reference in the section-by-section analysis in this preamble. These standards summarized herein are reasonably available to all interested parties for inspection. Copies can be obtained from the ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA, 19428–2959, *https://www.astm.org.* Copies are also available for inspection at the Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC 20590.

List of Subjects in 49 CFR Part 223

Glazing standards, Penalties, Incorporation by reference, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 223 of title 49, Code of Federal Regulations, as follows:

PART 223—SAFETY GLAZNG STANDARDS—LOCOMOTIVES, PASSENGER CARS AND CABOOSES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461 note; and 49 CFR 1.89.

■ 2. Amend § 223.3 by:
■ a. Removing the semicolon at the end of paragraph (b)(1) and adding a period in its place.
■ b. Adding paragraph (b)(5).

The addition reads as follows:

§ 223.3 Application.

* * * * *

(b) * * *

(5) Locomotives, cabooses, and passenger cars built or rebuilt prior to July 1, 1980, that are operated at speeds not exceeding 30 mph, and used only where the risk of propelled or fouling objects striking the equipment is low. Risk is presumed low, unless the railroad operating the equipment has knowledge, or FRA makes a showing, that specific risk factors exist. Risk factors include reported incidents of propelled or fouling objects striking rail equipment, or infrastructure conditions or other operating environment conditions that have led or are likely to lead to objects striking rail equipment in operation.

* * * * *

■ 3. Amend § 223.9 by revising the section heading to read as follows:

§ 223.9 Requirements for equipment built or rebuilt after June 30, 1980.

* * * * *

■ 4. Amend § 223.11 by revising the section heading to read as follows:

§ 223.11 Requirements for locomotives built or rebuilt prior to July 1, 1980.

* * * * *

■ 5. Amend § 223.13 by revising the section heading to read as follows:

§ 223.13 Requirements for cabooses built or rebuilt prior to July 1, 1980.

* * * * *

■ 6. Amend § 223.15 by revising the section heading to read as follows:

§ 223.15 Requirements for passenger cars built or rebuilt prior to July 1, 1980.

* * * * *

■ 7. Amend appendix A to part 223 by revising paragraphs b.(6), (10), (11), (13), and (15) and adding paragraph d. to read as follows:

Appendix A to Part 223—Certification of Glazing Materials

* * * * *

b. * * *

(6) The Witness Plate shall be an unbacked sheet of maximum 0.006 inch, alloy 1100 temper O, aluminum stretched within the perimeter of a suitable frame to provide a taut surface. If a steel ball is used for Large Object Impact testing, the Witness Plate shall be an unbacked sheet of maximum 0.002 inch, alloy 1145 temper H19 or equivalent, aluminum stretched within the perimeter of a suitable frame to provide a taut surface.

* * * * *

(10) The Test Specimen for glazing material that is intended for use in end facing glazing locations shall be subjected to a Type I test regimen consisting of the following tests:

(i) Ballistic Impact: A standard 22 caliber long rifle lead bullet of 40 grains in weight impacts at a minimum velocity of 960 feet per second.

(ii) Large Object Impact:

(A) A cinder block weighing a minimum of 24 lbs with dimensions of 8 inches by 8 inches by 16 inches nominally impacts the glazing surface at the corner of the block at a minimum velocity of 44 feet per second. The cinder block must be of composition referenced in American Society for Testing and Materials (ASTM) Specification C33/C33M–18 or ASTM C90–16a; or

(B) A steel ball (*e.g.,* ball bearing or shot put) weighing a minimum of 12 lbs impacts the glazing surface at a minimum velocity of 62.5 feet per second.

(11) The Test Specimen for glazing material that is intended for use only in side facing glazing locations shall be subjected to a Type II test regimen consisting of the following tests:

(i) Ballistic Impact: A standard 22 caliber long rifle lead bullet of 40 grains in weight impacts at a minimum velocity of 960 feet per second.

(ii) Large Object Impact:

(A) A cinder block weighting a minimum of 24 lbs with dimensions of 8 inches by 8 inches by 16 inches nominally impacts the glazing surface at the corner of the block at a minimum velocity of 12 feet per second. The cinder block must be of the composition referenced in ASTM C33/C33M–18 or ASTM C90–16a; or

(B) A solid steel ball (*e.g.,* ball bearing or shot put) weighing a minimum of 12 lbs impacts the glazing surface at a minimum velocity of 17 feet per second.

* * * * *

(13) Except as provided in paragraphs b.(10)(ii)(B) and b.(11)(ii)(B) of this appendix, two different test specimens must be subjected to the large object impact portion of the tests. For purposes of paragraphs b.(10)(ii)(B) and b.(11)(ii)(B), four different test specimens shall be subjected to each impact test.

* * * * *

(15) Except as provided in paragraphs b.(10)(ii)(B) and b.(11)(ii)(B) of this appendix, test specimens must consecutively pass the required number of tests at the required minimum velocities. Individual tests resulting in failures at greater than the required minimum velocities may be repeated but a failure of an individual test at less than the minimum velocity shall result in termination of the total test and failure of the material. For purposes of paragraphs b.(10)(ii)(B) and b.(11)(ii)(B), three out of four test specimens must pass the test for the glazing material to be acceptable. Individual tests resulting in a failure at velocities above the prescribed range may be repeated.

* * * * *

d. Incorporation by Reference

Certain material is incorporated by reference into this appendix with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the FRA and the National Archives and Records Administration

(NARA). Contact FRA at: Federal Railroad Administration, Docket Clerk, 1200 New Jersey Avenue SE, Washington, DC 20590; phone: (202) 493–6052; email: *FRALegal@dot.gov*. For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.* The material may be obtained from the following source(s) in this paragraph d.

(1) ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 phone: (610) 832–9585; *www.astm.org.*

(i) ASTM C90–16a, ''Standard Specification for Loadbearing Concrete Masonry Units,'' 2016.

(ii) ASTM C33/C33M–18, ''Standard Specification for Concrete Aggregates,'' 2018.

(2) [Reserved]

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2022–07838 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220411–0091]

RIN 0648–BL20

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2022

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2022 summer flounder, scup, and black sea bass recreational fisheries. The implementing regulations for this fishery require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of this action is to set management measures that allow the recreational fisheries to achieve, but not exceed, the recreational harvest limits and thereby prevent overfishing of the summer flounder, scup, and black sea bass stocks.

DATES: Comments must be received by May 3, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0042, by the following method:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0042 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Emily Keiley, Fishery Policy Analyst, (978) 281–9116.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission cooperatively manage summer flounder, scup, and black sea bass. The Council and the Commission's Management Boards meet jointly each year to recommend recreational management measures. Recreational management measures are required to be set so that recreational harvest achieves, but does not exceed, the recreational harvest limit (RHL). For summer flounder and black sea bass, we must implement coastwide measures or approve conservation-equivalent measures per 50 CFR 648.102(d) and 648.142(d), as soon as possible following the Council and Commission's recommendation. This action proposes establishing conservation equivalency for both species in 2022. For scup, the regulations require us to propose additional management measures if the measures recommended by the Council and Commission alone will not constrain harvest as needed. As such, we are proposing a Federal recreational closure because harvest is expected to exceed the 2022 RHL and the adjustments recommended by the Council and Commission alone will not achieve the necessary reduction.

Recreational Management Measures Process

The Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) establishes a Monitoring Committee consisting of representatives from the Commission, the Council, state marine fishery agencies from Massachusetts to North Carolina, and NMFS. The FMP's implementing regulations require the Monitoring Committee to review scientific and other relevant information annually. The objective of this review is to recommend management measures to the Council that will constrain landings within the RHL for the upcoming fishing year. The FMP restricts the options for managements measures to minimum and maximum fish size limits, per angler possession limits, and timing of the fishing season.

The Council and the Board then consider the Monitoring Committee's recommendations and any public comment in making their recommendations. The Council forwards its recommendations to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for summer flounder, scup, and black sea bass in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters. Commission measures are final at the time they are adopted.

2022 Scup Recreational Management Measures

The current Federal recreational scup management measures are a 9-inch (22.86-cm) minimum fish size, a 50-fish per person possession limit, and a year-round open season. State measures are similar but vary slightly due to differences in scup availability. Recreational landings in 2020 were 12.91 million lb (5,855 mt), which was nearly twice the 2020 RHL of 6.51 million lb (2,952 mt). The 2022 RHL is 6.08 million lb (2,757 mt), and harvest projections indicate that a 56-percent reduction in catch would be needed to constrain harvest to the 2022 RHL.

The Council and Board proposed a 1-inch (2.54-cm) increase to the scup recreational minimum size in state and Federal waters for 2022. In Federal waters, this results in a 10-inch total length minimum size. Collectively, this change in both state and Federal waters is expected to achieve an approximate 33-percent reduction in harvest. This is less than the estimated 56-percent reduction in harvest needed to constrain recreational harvest to the 2022 RHL. Because the action proposed by the Council and Board would not sufficiently reduce scup harvest as

required by the FMP, we are required by the regulations at 50 CFR 648.122(b) to propose additional measures to ensure the scup recreational annual catch limit is not exceeded. We are proposing a closure for Federal waters, which is the only management measure available that would result in any meaningful reduction in harvest, even though less than 6 percent, on average, of recreational scup catch comes from Federal waters, and a reduction in catch of an additional 23 percent is needed to achieve, but not exceed, the RHL. This closure as proposed would apply to all recreational vessels fishing in Federal waters and all federally permitted for-hire vessels fishing in either state or Federal waters. While such a closure is not expected to achieve the full 23-percent reduction, we are required, per the FMP's implementing regulations, to propose additional management measures as the Council's and Commission's recommendations do not ensure that the recreational ACL would not be exceeded. Given the potential impacts of the closure we are seeking comments on additional or alternative measures that may also achieve the overarching objective of constraining harvest to the annual catch limit and preventing overfishing.

Summer Flounder and Black Sea Bass Conservation Equivalency

Under conservation equivalency, Federal recreational measures are waived and federally permitted party/charter vessels and all recreational vessels fishing in Federal waters are subject to the recreational fishing measures implemented by the state in which they land. This approach allows for more customized measures at a state or regional level that are likely to meet the needs of anglers in each area, compared to coastwide measures that may be advantageous to anglers in some areas and unnecessarily restrictive in others. The combination of state or regional measures must be ''equivalent'' in terms of conservation (*i.e.,* not expected to exceed the RHL) to a set of ''non-preferred coastwide measures,'' which are recommended by the Council and the Board each year.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or that coastwide management measures be implemented to ensure that the RHL will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of non-preferred coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation by the Commission that the proposed state or regional measures developed through its technical and policy review processes achieve conservation equivalency, NMFS may waive, for the duration of the fishing year, the permit condition found at 50 CFR 648.4(b) that requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder and black sea bass charter/party permit holders and individuals fishing for summer flounder and black sea bass in the exclusive economic zone (EEZ) are subject to the recreational fishing measures implemented by the state in which they land, rather than the coastwide measures. Conservation equivalency expires at the end of each fishing year (December 31).

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a management proposal to the Commission's Technical Committee or that submits measures that are not conservationally equivalent to the coastwide measures.

The development of conservation-equivalency measures happens at both the Commission and at the individual state level. The selection of appropriate data and analytical techniques for technical review of potential state conservation-equivalent measures and the process by which the Commission evaluates and recommends proposed conservation-equivalent measures are wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state or regional measures or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

Once the states and regions select their final 2022 summer flounder and black sea bass management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the submitted proposals, ultimately notifying NMFS as to which proposals have been approved or disapproved. NMFS has no overarching authority in the development of state or Commission management measures but is an equal participant along with all the member states in the review process. NMFS neither approves nor implements individual states' measures but retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters. The final combination of state and regional measures will be detailed in a letter from the Commission to the Regional Office certifying that the combination of state and regional measures have met the conservation objectives under Addendum XXXII to the Commission's Interstate FMP and are expected to constrain catch to the 2022 recreational harvest limit. NMFS will publish its determination on 2022 conservational equivalency as a final rule in the **Federal Register** following review of the Commission's determination and any other public comment on this proposed rule.

2022 Summer Flounder Recreational Management Measures

This action proposes adopting conservation equivalency for summer flounder in 2022, with regional measures expected to achieve, but not exceed, the 2022 RHL of 10.36 million lb (4,699 mt). Based on the analysis conducted by the Monitoring Committee, the Council and Board recommended that recreational summer flounder measures can be liberalized, allowing for up to a 16.5-percent increase in recreational harvest.

For 2022, non-preferred coastwide measures approved by the Council and Board are a 18.5-inch (47-cm) minimum fish size, a 4-fish per person possession limit, and an open season from May 15–September 15. The only adjustment compared to 2021 is a decrease in the non-preferred minimum size from 19-inches to 18.5-inches (48.26-cm to 21.59-cm) total length. The coastwide measures become the default management measures in the subsequent fishing year, in this case 2023, until the joint process establishes either coastwide or conservation-equivalency measures for the next year.

The 2022 precautionary default measures recommended by the Council and Board are identical to those in place for 2021: A 20.0-inch (50.8-cm) minimum fish size; a 2-fish per person possession limit; and an open season of July 1–August 31, 2022. These measures may be assigned by the Commission if conservation equivalency is approved

but a state or region does not submit a conservationally equivalent proposal.

2022 Black Sea Bass Recreational Management Measures

This action proposes adopting conservation equivalency for black sea bass in 2022, with regional measures expected to achieve, but not exceed, the 2022 RHL of 6.74 million lb (3,057 mt). To achieve but not exceeded the RHL, a harvest reduction of 20.7 percent is needed. Preliminary analysis suggested the need for a 28-percent reduction, but subsequent analyses conducted by the Technical Committee resulted in the Council and Board adopting a reduction target of 20.7 percent. Consistent with this required reduction, the Council and Board recommended the following coastwide measures: A 14-inch (35.56-cm) minimum size; a 5-fish possession limit; and an open season of May 15–October 8. The recommended precautionary default measures are a 16-inch (40.64-cm) minimum size, a 3-fish possession limit, and an open season of June 24–December 31.

Regulatory Requirements

The current regulations developed by the Mid-Atlantic Fishery Management Council for summer flounder, scup, and black sea bass require NMFS to implement recreational management measures that are projected to ensure the sector-specific ACL for an upcoming fishing year or years will not be exceeded. The regulations do not provide flexibility to consider factors such as biomass or fishing mortality in the measure-setting process. Black sea bass and scup are at high levels of biomass, but projected recreational catch and harvest significantly exceeds the previously adopted ACLs and RHLs.

The current recreational management measure setting process was developed as part of the FMP by the Council in conjunction with the Board. We are required to act consistent with the regulations implementing the previously approved FMP. Absent Secretarial action, NMFS cannot change the process for setting recreational management measures, including the factors considered. We are required to propose recreational management measures (possession limit, size limit, and season) that are expected to achieve the recreational ACL. The Council and Board are currently considering changes to the recreational management process. Until the Council and Board take action to modify the FMP's underlying requirements relating to the setting of recreational management measures, we are required to propose recreational management measures consistent with the FMP requirements and corresponding regulations.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment. This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures. According to the commercial ownership database, 361 for-hire affiliate firms generated revenues from recreational fishing for various species during the 2018–2020 period. All of those business affiliates are categorized as small businesses. For purposes of the Regulatory Flexibility Act, a for-hire recreational fishing business with receipts of up to $11 million is considered a small entity. The 3-year average (2018–2020) combined gross receipts (all for-hire fishing activity combined) for these small entities was $49,916,903, ranging from less than $10,000 for 105 entities (lowest value $46) to over $1,000,000 for 8 entities (highest value $3.6 million). Estimating what proportion of the overall revenues of these for-hire firms came from fishing activities for an individual species is not possible. Nevertheless, given the popularity of summer flounder, scup, and black sea bass as a recreational species in the Mid-Atlantic and New England, revenues generated from these species are likely very important for many of these firms at certain times of the year.

For summer flounder and black sea bass, this proposed action would waive Federal measures in lieu of state measures designed to reach the 2022 harvest limits. For scup, this action proposes to close the Federal recreational scup fishery (zero possession), and increase the Federal minimum size from 9 to 10 inches (22.86 to 25.4 cm). The economic impacts of the proposed measures in this action will be affected in part by the specific set of measures implemented at the state level. The impacts are likely to vary by state, but 2022 state measures will likely be liberalized for summer flounder, and will be more restrictive for black sea bass and scup compared to 2018–2021.

The entities affected by this action include recreational for-hire operations holding federal summer flounder, scup, or black sea bass party/charter permits. For-hire revenues are impacted by a variety of factors, including regulations and demand for for-hire trips for summer flounder, scup, black sea bass, and other potential target species; weather; the economy; and other factors. In addition, under similar regulations, recreational harvest of these species is variable. Therefore, it is not possible to accurately quantify the economic impact of the summer flounder liberalization or the black sea bass or scup restrictions on for-hire revenues. However, it would generally be expected that for-hire revenues may slightly increase in 2022 in response to the summer flounder liberalization and slightly decrease in response to the black sea bass and scup restrictions, assuming all other factors that impact revenues are unchanged.

The proposed Federal scup closure would apply to all vessels fishing in Federal waters, and any Federal scup charter/party permit holder. Because for-hire revenues are generated by trip sales and not harvest, and because scup generally not the primary, or only target species, during recreational trips, NMFS does not believe that the proposed closure would have a significant impact on for-hire revenues. Furthermore, impacts to Federal permit holders may be reduced if these vessels ''drop'' their Federal scup permit for the remainder of the fishing year, allowing them to continue to target and retain scup in state waters, in accordance with state regulations.

Therefore, although it is not possible to accurately quantify the economic impact of the summer flounder liberalization or the black sea bass or scup restrictions on for-hire revenues, it would generally be expected that for-hire revenues may slightly increase in 2022 in response to the summer flounder liberalization and slightly decrease in response to the black sea bass and scup restrictions, assuming all other factors that impact revenues are unchanged. As a result, this rule will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements

under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 11, 2022.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.104, revise paragraph (b) to read as follows:

§ 648.104 Summer flounder size requirements.

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* The minimum size for summer flounder is 18.5-inches (47 cm) total length for all vessels that do not qualify for a summer flounder moratorium permit under § 648.4(a)(3), and charter boats holding a summer flounder moratorium permit if fishing with more than three crew members, or party boats holding a summer flounder moratorium permit if fishing with passengers for hire or carrying more than five crew members, unless otherwise specified in the conservation equivalency regulations at § 648.107. If conservation equivalency is not in effect in any given year, possession of smaller (or larger, if applicable) summer flounder harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.111 and abide by state regulations.

* * * * *

■ 3. In § 648.107, revise paragraph (a) introductory text to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2022 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

* * * * *

■ 4. In § 648.126, revise paragraph (b) to read as follows:

§ 648.126 Scup minimum fish sizes.

* * * * *

(b) Party/Charter permitted vessels and recreational fishery participants. The minimum size for scup is 10 inches (25.4 cm) total length for all vessels that do not have a scup moratorium permit, or for party and charter vessels that are issued a scup moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat. However, possession of smaller scup harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

* * * * *

■ 5. Revise § 648.127 to read as follows:

§ 648.127 Scup recreational fishing season.

Fishermen and vessels that are not eligible for a scup moratorium permit under § 648.4(a)(6) may not possess scup. The recreational fishing season may be adjusted pursuant to the procedures in § 648.122. Non-federally scup permitted vessels abiding by state regulations may transit with scup harvested from state waters on board through the Block Island Sound Transit Area following the provisions outlined in § 648.131.

■ 6. In § 648.128, revise paragraph (a) to read as follows:

§ 648.128 Scup possession restrictions.

(a) *Party/Charter and recreational possession limits.* No person shall possess scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122. However, possession of scup harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.131 and abide by state regulations.

* * * * *

■ 7. In § 648.145, revise paragraph (a) to read as follows:

§ 648.145 Black sea bass possession limit.

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 5 black sea bass in, or harvested from, the EEZ per trip unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit, unless otherwise specified in the conservation equivalent measures described in § 648.151. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 5 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters above this possession limit is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.150 and abide by state regulations.

■ 8. Revise § 648.146 as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a black sea bass moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 15 through October 8, unless otherwise specified in the conservation equivalent measures described in § 648.151 or unless this time period is adjusted pursuant to the procedures in § 648.142. However, possession of black sea bass harvested from state waters outside of this season is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

■ 9. In § 648.147, revise paragraph (b) to read as follows:

§ 648.147 Black sea bass size requirements.

* * * * *

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum fish size for black sea bass is 14 inches (35.56 cm) total length for all vessels that do not qualify for a black sea bass moratorium permit, and for party boats holding a black sea bass moratorium permit, if fishing with passengers for hire or carrying more than five crew members, and for charter boats holding a black sea bass moratorium permit, if fishing with more than three crew members, unless otherwise specified in the conservation equivalent measures as described in § 648.151. However, possession of smaller black sea bass harvested from state waters is allowed for state-only permitted vessels when transiting Federal waters within the Block Island Sound Transit Area provided they follow the provisions at § 648.151 and abide by state regulations.

■ 10. Add § 648.151 to subpart I to read as follows:

§ 648.151 Black sea bass conservation equivalency.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by the states of Maine through North Carolina for 2022 are the conservation equivalent of the season, size limits, and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a). This determination is based on a recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission.

(1) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels harvesting black sea bass in or from the EEZ and subject to the recreational fishing measures of this part, landing black sea bass in a state whose fishery management measures are determined by the Regional Administrator to be conservation equivalent shall not be subject to the more restrictive Federal measures, pursuant to the provisions of § 648.4(b). Those vessels shall be subject to the recreational fishing measures implemented by the state in which they land.

(2) [Reserved]

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels registered in states and subject to the recreational fishing measures of this part, whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, size limits and possession limit prescribed in §§ 648.146, 648.147(b), and 648.145(a), respectively, due to the lack of, or the reversal of, a conservation-equivalent recommendation from the Black Sea Bass Board of the Atlantic States Marine Fisheries Commission shall be subject to the following precautionary default measures: Season—June 24 through December 31; minimum size—16 inches (40.64 cm); and possession limit—3 fish.

[FR Doc. 2022–08056 Filed 4–15–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 74
Monday, April 18, 2022

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

[Docket ID: USDA–2022–0011]

Notice of Request for an Extension of a Currently Approved Information Collection

AGENCY: Department of Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Department of Agriculture to request Office of Management and Budget (OMB) approval of an extension of a currently approved information collection entitled ''Request for a Medical Exception to the COVID–19 Vaccination Requirement,'' OMB Control Number 0503–0027. The OMB control number was obtained through emergency clearance on December 21, 2021 and it will expire on June 20, 2022.

DATES: Comments on this notice must be received by June 17, 2022 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments on this notice. Comments may be submitted through the Federal eRulemaking Portal. This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All items submitted must include the Agency name and docket number Department of Agriculture, USDA–2022–0011. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ruth Brown, email: *Ruth.Brown@usda.gov;* telephone: (202) 720–8958. Person with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice) or 844–433–2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Title: Request for a Medical Exception to the COVID–19 Vaccination Requirement.

OMB Number: 0503–0027.

Expiration Date of Approval: 3-Year from approval date.

Type of Request: Extension Request of an Approved Information Collection.

Abstract: Section 2 of E.O. 14043 mandates that each agency ''implement, to the extent consistent with applicable law, a program to require COVID–19 vaccination for all of its Federal employees, with exceptions only as required by law.'' This medical exemption form is necessary for USDA to determine legal exemptions to the vaccine requirement under the Rehabilitation Act. This includes the requisite confidentiality requirements, subject to the applicable Rehabilitation Act standards, and maintenance of supporting documents.

For the following estimated total annual burden on respondents, the formula used to calculate the total burden hour is the estimated average time per response hours multiplied by the estimated total annual responses.

Estimate of Annual Burden: Public reporting burden for this collection of information is estimated to average 10 minutes per response.

Type of Respondents: Federal Employees and Medical Providers.

Estimated Number of Respondents: 2,000.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 2,000.

Estimated Average Time per Responses: 0.1666 hours.

Estimated Total Annual Burden on Respondents: 333.

Comments are invited on:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Ruth Brown, *Ruth.Brown@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

The vaccination requirement issued pursuant to E.O. 14043, is currently the subject of a nationwide injunction. While that injunction remains in place, Department of Agriculture will not process requests for a medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043. Department of Agriculture will also not request the submission of any medical information related to a request for an exception from the vaccination requirement pursuant to E.O. 14043 while the injunction remains in place. But Department of Agriculture may nevertheless receive information regarding a medical exception. That is because, if Department of Agriculture were to receive a request for an exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 during the pendency of the injunction, Department of Agriculture will accept the request, hold it in abeyance, and notify the employee who submitted the request that implementation and enforcement of the COVID–19 vaccination requirement pursuant to E.O. 14043 is currently enjoined and that an exception therefore is not necessary so long as the injunction is in place. In other words, during the pendency of the injunction, any information collection related to requests for medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 is not

undertaken to implement or enforce the COVID–19 vaccination requirement.

Oscar Gonzales,

Assistant Secretary for Administration.

[FR Doc. 2022–08218 Filed 4–15–22; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 18, 2022 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.

Foreign Agricultural Service

Title: Agriculture Wood Apparel Manufacturers Trust Fund.

OMB Control Number: 0551–0045.

Summary of Collection: Section 12603 of the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) reauthorized distributions out of the Agriculture Wool Apparel Manufacturers Trust Fund (''Agriculture Wool Trust Fund'') in each of calendar years 2019 through 2023, payable to qualifying claimants. Eligible claimants are directed to submit a notarized affidavit, following the statutory procedures specified in the 2018 Farm Bill. FAS must collect the information provided in the affidavits to assess the eligibility of the claimants and correctly calculate the mandated payments.

Need and Use of the Information: Eligible claimants for a distribution from the Agriculture Wool Trust Fund are directed to submit a notarized affidavit, following the statutory procedures specified in the 2018 Farm Bill, to claim a distribution from the Agriculture Wool Trust Fund. The Foreign Agricultural Service will use the information provided in the affidavits to certify the claimants' eligibility and to authorize payment from the Agriculture Wood Trust Fund.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 95.

Frequency of Responses: Record keeping, Reporting: Annually.

Total Burden Hours: 260.

Dated: April 13, 2022.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–08265 Filed 4–15–22; 8:45 am]

BILLING CODE 3410–10–P

COMMISSION ON CIVIL RIGHTS

Commission on the Social Status of Black Men and Boys; Sunshine Act Meetings

AGENCY: Commission on the Social Status of Black Men and Boys (CSSBMB), U.S. Commission on Civil Rights.

ACTION: Notice of CSSBMB public business meeting.

DATES: Friday, April 22, 2022, 1 p.m. ET.

ADDRESSES: Virtual briefing via: *https://www.youtube.com/user/USCCR/videos.*

FOR FURTHER INFORMATION CONTACT: Dr. Marvin Williams, 202–339–2371, *pressbmb@usccr.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Public Law 116–156, 1134 Stat. 700 (2020), the Commission on the Social Status of Black Men and Boys (CSSBMB) will hold a public meeting. This meeting is open to the public via livestream on the Commission on Civil Rights' YouTube Page at *https://www.youtube.com/user/USCCR/videos.* (Streaming information subject to change.) Public participation is available for the event with view access, along with an audio option for listening. Computer assisted real-time transcription (CART) will be provided. The web link to access CART (in English) on Friday, Friday, April 22, 2022, is *https://www.steamtext.net/player?event=USCCR* (* subject to change). Please note that CART is text-only translation that occurs in real time during the meeting and is not an exact transcript.

Meeting Agenda

I. Opening Remarks by CSSBMB Chair, Frederica S. Wilson
II. Call to Order
III. Approval of Agenda
IV. Roundtable Discussion w/Expert Panelists
V. Business Meeting
  A. Formation of subcommittee to complete the Annual Report 2022
  B. Approval of November 9, 2021, and January 14, 2022, Meeting Minutes
VI. Management and Operations *
VII. Adjourn Meeting

Dated: April 14, 2022.

Angelia Rorison,

USCCR Media and Communications Director.

[FR Doc. 2022–08316 Filed 4–14–22; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Household Pulse Survey

On February 28, 2022, the Department of Commerce received clearance from the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 to conduct Phase 3.4 of the Household Pulse Survey (OMB No. 0607–1013, Exp. 10/31/23). The Household Pulse Survey was designed to meet a need for timely information associated with household experiences during the Covid-19 pandemic. The Department is committed to ensuring that the data collected by the Household Pulse Survey continue to meet information needs as they may evolve over the course of the pandemic. This notice serves to inform of the Department's intent to request clearance from OMB to

* Date and meeting details are subject to change. For more information or the CSSBMB or the upcoming public meeting, please visit CSSBMB's website at *www.usccr.gov/about/CSSBMB.*

make some revisions to the Household Pulse Survey questionnaire. To ensure that the data collected by the Household Pulse Survey continue to meet information needs as they evolve over the course of the pandemic, the Census Bureau submits this Request for Revision to an Existing Collection for a revised Phase 3.5 questionnaire.

Phase 3.5 includes new questions on timing of positive coronavirus test, use of coronavirus treatments, the experience of long-COVID symptoms, amount of monthly rent and changes in monthly rent, children's mental health, and difficulty with self-care and communicating. Questions related to food expenditures will be reinstated for Phase 3.5. There are also modifications to existing questions, including changing the focus of one vaccination question from reasons for not receiving the vaccine to reasons for not receiving a vaccine booster dose, modifying the questions on children's vaccines to include both age group and number of vaccine doses received, and a revised question on number of days teleworked (if any). Several questions will be removed for Phase 3.5, including questions on the number of vaccine doses and brand of vaccine received, intention to receive vaccine, mental health prescriptions and services use and unmet needs, preventive care for children, confidence in paying rent or mortgage on time, and some questions on household activities.

It is the Department's intention to commence data collection using the revised instrument on or about May 25, 2022. The Department 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. Public comments were previously sought on the Household Pulse Survey via the **Federal Register** on May 19, 2020, June 3, 2020, February 1, 2021, April 13, 2021, June 24, 2021, October 26, 2021, and January 24, 2022. This notice allows for an additional 30 days for public comments on the proposed revisions.

Agency: U.S. Census Bureau.

Title: Household Pulse Survey.

OMB Control Number: 0607–1013.

Form Number(s): None.

Type of Request: Request for a Revision of a Currently Approved Collection.

Number of Respondents: 235,200.

Average Hours per Response: 20 minutes.

Burden Hours: 77,616.

Needs and Uses: Data produced by the Household Pulse Survey are designed to inform on a range of topics related to households' experiences during the COVID–19 pandemic. Topics to date have included employment, facility to telework, travel patterns, income loss, spending patterns, food and housing security, access to benefits, mental health and access to care, intent to receive the COVID–19 vaccine/booster, and post-secondary educational disruption. The requested revision, if approved by OMB, will remove selected items from the questions for which utility has declined and add questions based on information needs expressed via public comment and in consult with other Federal agencies. The overall burden change to the public will be insignificant.

The Household Pulse Survey was initially launched in April, 2020 as an experimental project (see *https://www.census.gov/data/experimental-data-products.html*) under emergency clearance from the Office of Management and Budget (OMB) initially granted April 19, 2020; regular clearance was subsequently sought and approved by OMB on October 30, 2020 (OMB No. 0607–1013; Exp. 10/30/2023).

Affected Public: Households.

Frequency: Households will be selected once to participate in a 20-minute survey.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Sections 8(b), 182 and 196.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–1013.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08262 Filed 4–15–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–825]

Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Final Results of Countervailing Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On February 25, 2022, the Department of Commerce (Commerce) published the notice of initiation and preliminary results of the changed circumstances review (CCR) of the countervailing duty (CVD) order on heavy walled rectangular welded carbon steel pipes and tubes (HWR pipes and tubes) from the Republic of Turkey (Turkey). Commerce preliminarily determined that Özdemir Boru Profil Sanayi ve Ticaret Anonim Sirketi (Ozdemir A.S.) is the successor-in-interest to Özdemir Boru Profil Sanayi ve Ticaret Limited Sirketi (Ozdemir LLC) and, as a result, should be accorded the same CVD cash deposit treatment as Ozdemir LLC with respect to subject merchandise. For these final results, Commerce continues to find that Odzemir A.S. is the successor-in-interest to Ozdemir LLC and is entitled to the same cash deposit treatment as Ozdemir LLC under the CVD order on HWR pipes and tubes from Turkey.

DATES: Applicable April 18, 2022.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Robert Palmer, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–0968, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 25, 2022, Commerce published the *Initiation and Preliminary Results* [1] of this changed circumstances review, finding that Ozdemir A.S. is the successor-in-interest to Ozdemir LLC and, as such, that Ozdemir A.S. is entitled to Ozdemir LLC's CVD cash deposit rate with respect to entries of subject merchandise.[2] In the *Initiation*

[1] *See Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Notice of Initiation and Preliminary Results of Countervailing Duty Changed Circumstances Review,* 87 FR 10772 (February 25, 2022) (*Initiation and Preliminary Results*).

[2] *Id.*

and Preliminary Results, we provided all interested parties with an opportunity to comment and request a public hearing regarding our preliminary results. No party requested a hearing, submitted a case brief, or otherwise commented on the *Initiation and Preliminary Results.*

Scope of the Order [3]

The products covered by the *Order* are certain heavy walled rectangular welded steel pipes and tubes of rectangular (including square) cross section, having a nominal wall thickness of not less than 4 mm. The merchandise includes, but is not limited to, the American Society for Testing and Materials (ASTM) A–500, grade B specifications, or comparable domestic or foreign specifications.

Included products are those in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements below exceed the quantity, by weight, respectively indicated:

- 2.50 percent of manganese, or
- 3.30 percent of silicon, or
- 1.50 percent of copper, or
- 1.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 2.0 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.80 percent of molybdenum, or
- 0.10 percent of niobium (also called columbium), or
- 0.30 percent of vanadium, or
- 0.30 percent of zirconium.

The subject merchandise is currently provided for in item 7306.61.1000 of the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may also enter under HTSUS 7306.61.3000. While the HTSUS subheadings and ASTM specification are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.

Final Results of Changed Circumstances Review

Having received no comments from interested parties and finding no information or evidence on the record that calls into question the preliminary results, we continue to find that Ozdemir A.S. is the successor-in-interest to Ozdemir LLC and, as such, that Ozdemir A.S. is entitled to Ozdemir LLC's CVD cash deposit rate with respect to entries of subject merchandise for the reasons stated in the *Initiation and Preliminary Results.*[4] As a result of this determination and consistent with established practice, we find that Ozdemir A.S. should receive the CVD cash deposit rate previously assigned to Ozdemir LLC. Consequently, Commerce will instruct U.S. Customs and Border Protection to suspend liquidation of all shipments of subject merchandise produced and/or exported by Ozdemir A.S. and entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register** at the CVD cash deposit rate in effect for Ozdemir LLC. This cash deposit requirement shall remain in effect until further notice.

Notification to Interested Parties

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216(e).

Dated: April 6, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–08260 Filed 4–15–22; 8:45 am]

BILLING CODE 3510–DS–P

[3] *Heavy Walled Rectangular Welded Carbon Steel Pipes and Tubes from the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 81 FR 62874 (September 13, 2016) (*Order*).

[4] *Initiation and Preliminary Results,* 87 FR 10772, 10773.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB913]

Western Pacific Fishery Management Council (Council); Public Meeting; Correction

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

ACTION: Notice; correction.

SUMMARY: NMFS published a document in the **Federal Register** of March 29, 2022, concerning the Western Pacific Stock Assessment Review (WPSAR) Steering Committee meeting. The dates and times for this meeting have since changed.

FOR FURTHER INFORMATION CONTACT: Marlowe Sabater; phone: (808) 522–8143, or *marlowe.sabater@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of March 29, 2022, in FR Doc 2022–06555, on page 17993, in the third column, correct the **DATES** caption to read:

DATES: The Steering Committee will meet from 10 a.m. to 12 noon on April 26, 2022. For agendas, see **SUPPLEMENTARY INFORMATION**.

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

Dated: April 12, 2022.

Tracey L. Thompson,

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

[FR Doc. 2022–08192 Filed 4–15–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Bay Watershed Education and Training Program National Evaluation System

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 8, 2022 (87 FR 7157), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Bay Watershed Education and Training Program National Evaluation System.

OMB Control Number: 0648–0658.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 2,583.

Average Hours per Response: Awardee-respondents will complete an online survey in 60 minutes and teacher-respondents will complete two online surveys in 30 minutes each.

Total Annual Burden Hours: 1,027.

Needs and Uses: The National Oceanic and Atmospheric Administration's (NOAA) Office of Education is sponsoring data collection efforts on its Bay Watershed Education and Training (B–WET) program. The NOAA B–WET program is authorized under 33 U.S.C. 893a(a), the America COMPETES Act. The Administrator of the National Oceanic and Atmospheric Administration is authorized to conduct, develop, support, promote, and coordinate formal and informal educational activities at all levels to enhance public awareness and understanding of ocean, coastal, Great Lakes, and atmospheric science and stewardship by the general public and other coastal stakeholders, including underrepresented groups in ocean and atmospheric science and policy careers. B–WET advances NOAA's mission by awarding education grants that foster an environmentally literate citizenry who have the knowledge, attitudes, and skills needed to protect watersheds and related ocean, coastal, and Great Lakes ecosystems. B–WET currently funds projects in seven regions (California, Chesapeake Bay, Great Lakes, Gulf of Mexico, Hawaii, New England, and the Pacific Northwest).

To ensure that educational activities funded by B–WET are of the highest quality, and maximize federal resources, B–WET has created an across-region, internal evaluation system to provide ongoing monitoring of program implementation and to identify opportunities for improved program outcomes. The evaluation system is maintained by B–WET staff with occasional assistance from an outside contractor. The evaluation system collects information from B–WET program-funded project participants.

B–WET awardees of grants or cooperative agreements, and the awardees' teachers who attend professional development programs provided by the awardees, are asked to voluntarily complete online survey forms to provide data for the evaluation system. Information collected from awardees includes program elements such as program duration, format, audience, location, support and/or materials offered, and topics covered. Information collected from teacher professional development participants includes teaching methodologies, program satisfaction, program coverage, suggestions for improvement, and teaching confidence. Information collected from teachers at the end of the school year following their participation in a professional development program includes time spent teaching topics covered in the professional development program, types of activities used with their students, teachers' perceptions of student learning, and teaching practices utilized. One individual from each awardee organization is asked to complete a survey once per year of the award, and the teacher participants are asked to complete one survey at the end of their professional development program and another survey at the end of the following school year. Responses to the survey questions are aggregated and analyzed as part of ongoing evaluation efforts.

Based on a review of annual evaluation system results, B–WET has made program improvements by adjusting its Federal Notice of Funding Opportunities and program guidelines. On-going data collection enables NOAA to monitor program implementation and outcomes on a regular basis and supports adaptive management of the program.

Affected Public: Business and other for-profit organizations; not-for-profit institutions; state, local or tribal government; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

Legal Authority: 33 U.S.C. 893a(a), the America COMPETES Act.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0658.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08160 Filed 4–15–22; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Application for Appointment in the NOAA Commissioned Officer Corps

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 9, 2022 (87 FR 7429), during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Application for Appointment in the NOAA Commissioned Officer Corps.

OMB Control Number: 0648–0047.

Form Number(s): NOAA 56–42 and NOAA 56–42A.

Type of Request: Regular submission [extension of a current information collection].

Number of Respondents: 300.

Average Hours per Response: Written applications, 2 hours; interviews, 5 hours; references, 15 minutes.

Total Annual Burden Hours: 2,475.

Needs and Uses: This is a request for extension of an existing information collection.

The NOAA Commissioned Officer Corps is the uniformed service of the National Oceanic and Atmospheric Administration (NOAA), a bureau of the United States Department of Commerce. Officers serve under Senate-confirmed appointments and Presidential commissions (33 U.S.C. chapter 17, subchapter 1, sections 853 and 854). The NOAA Corps provides a cadre of professionals trained in engineering, earth sciences, oceanography, meteorology, fisheries science, and other related disciplines who serve their country by supporting NOAA's mission of surveying the Earth's oceans, coasts, and atmosphere to ensure the economic and physical well-being of the Nation.

NOAA Corps officers operate vessels and aircraft engaged in scientific missions and serve in leadership positions throughout NOAA. Persons wishing to apply for an appointment in the NOAA Commissioned Officer Corps must complete an application package, including NOAA Form 56–42, at least three letters of recommendation, and official transcripts. A personal interview must also be conducted. Eligibility requirements include a bachelor's degree with at least 48 credit hours of science, engineering, or other disciplines related to NOAA's mission, excellent health, and normal color vision with uncorrected visual acuity no worse than 20/400 in each eye (correctable to 20/20).

Affected Public: Individuals or households.

Frequency: Once.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 33 U.S.C. chapter 17, subchapter 1, sections 853 and 854.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0047.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–08159 Filed 4–15–22; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0023]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to revise the Office of Management and Budget's (OMB's) approval for an existing information collection, titled ''Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V).''

DATES: Written comments are encouraged and must be received on or before June 17, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0023 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552.

Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Prohibition on Inclusion of Adverse Information in Consumer Reporting in Cases of Human Trafficking (Regulation V).

OMB Control Number: 3170–0002.

Type of Review: Revision of a currently approved information collection.

Affected Public: Private sector: businesses and other for-profit entities.

Estimated Number of Respondents: 779,073.

Estimated Total Annual Burden Hours: 6,246,866.

Abstract: The Bureau seeks comment on regulations implementing amendments to the Fair Credit Reporting Act (FCRA) that assist consumers who are victims of trafficking. The information collection would include a recent amendment to the FCRA, would establish a method for a victim of trafficking to submit documentation to consumer reporting agencies, including information identifying any adverse item of information about the consumer that resulted from certain types of human trafficking, and prohibit the consumer reporting agencies from furnishing a consumer report containing the adverse item(s) of information. The Bureau is taking this action as mandated by the National Defense Authorization Act for Fiscal Year 2022 and to assist consumers who are victims of trafficking in building or rebuilding financial stability and personal independence.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the 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. 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.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–08252 Filed 4–15–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF ENERGY

Appliance Standards and Rulemaking Federal Advisory Committee

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

ACTION: Notice of charter renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act, and in accordance with Title 41 of the Code of Federal Regulations, and following consultation with the Committee

Management Secretariat, General Services Administration, notice is hereby given that the Appliance Standards and Rulemaking Federal Advisory Committee's (ASRAC) charter is being renewed. The Committee will provide advice and recommendations to the Secretary of Energy on matters concerning the DOE's Appliances and Commercial Equipment Standards Program's (Program) test procedures and rulemaking process. Additionally, the renewal of the ASRAC has been determined to be essential to conduct business of the Department of Energy's and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer at (202) 287–1692, or by email at *asrac@ee.doe.gov.*

Signing Authority: This document of the Department of Energy was signed on April 13, 2022, by Miles Fernandez, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 13, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08263 Filed 4–15–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Request for Information (RFI) on Resilient and Efficient Codes Implementation

AGENCY: Office Energy Efficiency and Renewable Energy, Building Technologies Office, Department of Energy (DOE).

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) invites public comment on its request for information (RFI) number DE–FOA–0002755 regarding the Building Technologies Office's Draft Resilient and Efficient Codes Implementation (RECI) Funding Opportunity Announcement (FOA), as required by the Infrastructure Investment and Jobs Act also known as the Bipartisan Infrastructure Law (BIL). Information collected from this RFI will be used by DOE for planning purposes when developing a potential FOA and will not be published.

DATES: A public workshop to gather additional input on a potential FOA will be held on April 27, 2022. Responses to the RFI must be received by 5:00 p.m. (ET) on May 20, 2022.

ADDRESSES: Additional information on the public workshop is available at: *https://www.energycodes.gov/RECI-codes-workshop.*

Comments to the RFI must be provided in writing. Interested parties are to submit their written comments electronically to *RECI_RFI@hq.doe.gov* and include ''RECI FOA'' in the subject line of the email. Email attachments can be provided as a Microsoft Word (.docx) file or an Adobe PDF (.pdf) file, prepared in accordance with the detailed instructions in the RFI. Documents submitted electronically should clearly indicate which topic areas and specific questions are being addressed and should be limited to no more than 25 MB in size. Further instructions can be found in the complete RFI DE–FOA–0002755 document located at *https://eere-exchange.energy.gov/.*

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Perry, (240) 780–6149, *Christopher.perry@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: This RFI pertains to a draft FOA to be issued by the Office of Energy Efficiency and Renewable Energy, Building Technologies Office (BTO) on the effective implementation of resilient and efficient building energy codes. The intent of this RFI is to obtain public input from state and local government agencies, building officials, contractors, designers, builders, other industry representatives, community organizations, academia, research laboratories, and other stakeholders regarding the solicitation process and structure of a potential FOA to fund sustained cost-effective implementation of building energy codes, in accordance with the BIL.

The goal of this potential FOA is to effectively address building energy code implementation priorities as outlined in Section 40511. Cost-Effective Codes Implementation for Efficiency and Resilience of the BIL. DOE anticipates the possible resulting outcomes of a potential FOA will increase the successful implementation of updated energy codes in states and territories throughout the United States. In addition to this foundational goal, DOE anticipates that this funding will make significant progress in developing a next generation workforce, facilitating updates, advancing new policies and tools, increasing equity, and improving overall compliance necessary to advance energy codes across the U.S.

DOE is seeking input from the public regarding the designs and goals of the potential FOA, with specific input requested on:

- Energy Code Implementation Criteria and Requirements for Key Topic Areas
- Advanced Energy Codes and Building Resilience
- Methods to Support Sustained State Energy Code Implementation
- Funding, Partnerships, Eligible Entities, and Evaluation Criteria
- Equity, Environmental and Energy Justice (EEEJ) Priorities

In addition to these specific items, DOE is requesting input on other aspects, such as: Technical requirements; funding and cost share requirements; period of performance requirements; data sharing, measurement and validation requirements; and other relevant issues.

Specific questions can be found in the RFI. The RFI DE–FOA–0002755 is available at: *https://eere-exchange.energy.gov/.*

Confidential Business Information: Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Signing Authority: This document of the Department of Energy was signed on April 12, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the

original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on April 13, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–08247 Filed 4–15–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–47–000.
Applicants: Berkshire Hathaway Inc.
Description: Supplement to March 21, 2022 Application for Authorization Under Section 203 of the Federal Power Act of Berkshire Hathaway Inc.
Filed Date: 4/11/22.
Accession Number: 20220411–5197.
Comment Date: 5 p.m. ET 4/21/22.

Docket Numbers: EC22–52–000.
Applicants: Hallador Power Company, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act of Hallador Power Company, LLC.
Filed Date: 4/11/22.
Accession Number: 20220411–5199.
Comment Date: 5 p.m. ET 5/2/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–51–000.
Applicants: King Mountain Upton Wind, LLC.
Description: Petition for Declaratory Order of [King Mountain Upton Wind, LLC].
Filed Date: 4/5/22.
Accession Number: 20220405–5210.
Comment Date: 5 p.m. ET 5/5/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–1821–004.
Applicants: Panda Stonewall LLC.
Description: Refund Report: Potomac Energy Center, LLC submits tariff filing per 35.19a(b): Refund Report to be effective N/A.
Filed Date: 4/12/22.
Accession Number: 20220412–5042.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER21–1005–003.
Applicants: Montana-Dakota Utilities Co.
Description: Compliance filing: Reactive Service Rate Schedule Compliance Filing to be effective 4/1/2021.
Filed Date: 4/12/22.
Accession Number: 20220412–5109.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1008–002.
Applicants: AEP Texas Inc.
Description: Tariff Amendment: AEPTX–ETT (Salvare) First Amended and Restated Facilities Development Agreement to be effective 1/27/2022.
Filed Date: 4/12/22.
Accession Number: 20220412–5056.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1610–000.
Applicants: Big River Solar, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 6/11/2022.
Filed Date: 4/12/22.
Accession Number: 20220412–5023.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1611–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2022–04–12 Mosca to San Luis 115kV—678—Concurrence to be effective 2/25/2022.
Filed Date: 4/12/22.
Accession Number: 20220412–5025.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1612–000.
Applicants: Central Maine Power Company.
Description: § 205(d) Rate Filing: Second Amendment to Sappi North America, Inc. Interconnection Agreement to be effective 12/31/9998.
Filed Date: 4/12/22.
Accession Number: 20220412–5037.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1613–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 72 to be effective 6/13/2022.
Filed Date: 4/12/22.
Accession Number: 20220412–5104.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1614–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 5875; Queue No. AE2–129 (amend) to be effective 12/3/2020.
Filed Date: 4/12/22.
Accession Number: 20220412–5125.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1615–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of ICSA, SA No. 5551; Queue No. AB2–047 re: complete to be effective 10/30/2020.
Filed Date: 4/12/22.
Accession Number: 20220412–5153.
Comment Date: 5 p.m. ET 5/3/22.

Docket Numbers: ER22–1616–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6423; Queue No. AG1–197 to be effective 3/14/2022.
Filed Date: 4/12/22.
Accession Number: 20220412–5165.
Comment Date: 5 p.m. ET 5/3/22

Docket Numbers: ER22–1617–000.
Applicants: American Electric Power Service Corporation, Ohio Power Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: American Electric Power Service Corporation submits tariff filing per 35.13(a)(2)(iii: AEP submits four Facilities Agreements re: ILDSA, SA No. 1336 to be effective 6/12/2022.
Filed Date: 4/12/22.
Accession Number: 20220412–5168.
Comment Date: 5 p.m. ET 5/3/22.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH22–9–000.
Applicants: New Jersey Resources Corporation.
Description: New Jersey Resources Corporation submits FERC 65–A Exemption Notification.
Filed Date: 4/8/22.
Accession Number: 20220408–5272.
Comment Date: 5 p.m. ET 4/29/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08239 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP16–454–000; CP16–454–001]

Rio Grande LNG, LLC; Notice of Request for Extension of Time

Take notice that on April 6, 2022, Rio Grande LNG, LLC (RGLNG), requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until November 22, 2028, to complete construction of the Rio Grande LNG Terminal (RGLNG Terminal) and make it available for service as authorized in the November 22, 2019 Order Granting Authorizations Under Sections 3 and 7 of the Natural Gas Act (Order).[1]

The RGLNG Terminal, located on the northern embankment of the Brownsville Ship Channel in Cameron County, Texas, would consist of five natural gas liquefaction trains, and be capable of exporting up to approximately 27 million metric tons per annum year of liquefied natural gas (LNG).[2] On November 17, 2021, RGLNG filed an application with Commission under Section 3 of the NGA to amend its November 22, 2019 authorization to incorporate carbon capture and sequestration (CCS) systems into the design of the RGLNG Terminal.[3] This amendment application is still pending with the Commission. The Order required RGLNG to complete construction of the RGLNG Terminal and make it available for service within seven years of the date of the Order, or by November 22, 2026.

RGLNG states that despite its diligent efforts to place the RGLNG Terminal into service by the Order deadline, RGLNG was impacted by unforeseeable developments in the global LNG market as a result of the COVID–19 pandemic, including major disruptions in world energy markets. As a result, RGLNG has been unable to enter into long-term contracts with customers sufficient to enable it to reach a final investment decision (FID), as well as other logistical challenges. Therefore, RGLNG requests that the Commission extend the Order's deadline for construction and operation by two years until November 22, 2028 so that it can continue to pursue long term contracts with certainty and without fear of interruption.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on the Applicant's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[7] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[8] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on April 27, 2022.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08237 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *Rio Grande LNG, LLC,* 169 FERC ¶ 61,131 (2019), order on reh'g, 170 FERC ¶ 61,046 (2020).

[2] The November 22 Order also approved a request by Rio Bravo Pipeline Company, LLC (Rio Bravo), under section 7 of the NGA (CP16–455–000), to construct and operate a new pipeline system (Rio Bravo Pipeline Project) comprised of two parallel 42-inch-diameter natural gas pipelines approximately 135.5 miles long, three 180,000 horsepower (hp) compressor stations, an approximately 2.4-mile-long pipeline header system, and appurtenant facilities to transport natural gas to the RGLNG Terminal for processing, liquefaction, and export. *Id.*

[3] *Rio Grande LNG, LLC,* Application of Rio Grande LNG, LLC for Limited Amendment to NGA Section 3 Authorization, Docket No. CP22–17–000.

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[6] *Id.* at P 40.

[7] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–63–000]

ANR Pipeline Company; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Winfield Storage Field Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Winfield Storage Field Abandonment Project involving abandonment of natural gas storage facilities by ANR Pipeline Company (ANR) in Montcalm County, Michigan. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of an authorization. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and Environmental Document* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on May 12, 2022. Comments may be submitted in written form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on March 2, 2022, you will need to file those comments in Docket No. CP22–63–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law.

ANR provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–63–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project

ANR requests authority to abandon its operations and facilities at the Winfield Natural Gas Storage Field. ANR states the storage field provides little value due to the non-contributing wells and associated pipelines. Therefore, ANR states the cost of maintaining the Winfield Storage Field exceeds any value it provided. Abandonment of the field would eliminate the expenditures required to maintain the field, and ANR would continue to meet all existing contractual commitments.

Specifically, ANR proposes to:

- Abandon 72 natural gas injection/withdrawal wells by permanently plugging the wells;
- abandon 15 miles of associated storage lines in the field, consisting of two 10-inch-diameter laterals, seven 6-inch-diameter laterals, and eighty-two 4-inch-diameter laterals. Approximately

0.8 mile would be removed and 14.2 miles would be abandoned in place;

- abandon 4.43 miles of a 16-inch-diameter storage lateral (Lateral 249) in its entirety from the Winfield Interconnect at Milepost 0.0 to Milepost 4.41, of which approximately 0.49 mile would be removed, and 3.59 miles would be abandoned in place (0.35 mile of which would also be cut, capped, and grouted);
- abandon by removal the Winfield Compressor Station, including all below- and aboveground structures;
- abandon by removal all aboveground appurtenances, including pipeline markers, cathodic protection test stations, rectifiers, casing vents, and aboveground pipeline blowdown vents; and
- abandon in place remaining below-ground miscellaneous appurtenances.

The general locations of the project facilities and the Winfield Compressor Station are shown in appendix 1.[1]

Land Requirements for Construction

The proposed abandonment would disturb about 133 acres of land, including 115.2 acres of existing easement and 17.8 acres of temporary workspace on adjacent lands owned or leased by ANR. Following completion of abandonment activities, ANR would retain rights to the permanent easement.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/ Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary[2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate in the preparation of the environmental document.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–63–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at title 40, Code of Federal Regulations, section 1501.8.

[4] The Advisory Council on Historic Preservation's regulations are at title 36, Code of Federal Regulations, part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

Additional Information

Additional information about the project is 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. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08236 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2392–041]

Ampersand Gilman Hydro, LP; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2392–041.

c. *Date filed:* March 29, 2022.

d. *Applicant:* Ampersand Gilman Hydro, LP.

e. *Name of Project:* Gilman Hydroelectric Project.

f. *Location:* The project is located on the Connecticut River and straddles the Village of Gilman, within the Town of Lunenburg, Essex County, Vermont, and the Town of Dalton, Coos County, New Hampshire. The project does not occupy any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Sayad Moudachirou, Licensing Manager, 717 Atlantic Avenue, Suite 1A, Boston, MA 02111; phone: (617) 933–7206 or email: *sayad@ampersandenergy.com*.

i. *FERC Contact:* Ousmane Sidibe, phone: (202) 502–6245 or email: *ousmane.sidibe@ferc.gov*.

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* May 31, 2022.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. 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. All filings must clearly identify the project name and docket number on the first page: Gilman Hydroelectric Project (P–2392–041).

m. The application is not ready for environmental analysis at this time.

n. The Gilman Hydroelectric Project consists of: (1) A 324.5-foot-wide concrete dam with a crest elevation of 826.8 feet spanning the river's width with a 5-foot-high, 108-foot-long rubber bladder and a 6.5-foot-high, 109-foot-long rubber bladder surmounted on two overflow spillways measuring 112.9 feet and 113 feet in width and an 18-foot-high, 27-foot-wide hydraulically operated crestgate; (2) a downstream fish passage system; (3) a 130-acre impoundment at a normal maximum surface elevation of 833.3 feet (USGS); (4) a steel- and timber-framed powerhouse with an integral water intake draft tube containing four generating turbine units with a total installed capacity of 4.95 megawatts located at the Vermont side of the dam; (5) a 242-foot-long, 23.75-foot-wide trash rack with approximately 2-inch spacing; (6) a 200-foot-long transmission line connecting the 34.5 kilovolt-ampere transformer to National Grid's switchyard; and (7) appurtenant facilities.

Ampersand Gilman Hydro, LP proposes to continue to operate the project in a run-of-river mode with no storage or flood control capacity. In accordance with Condition A of the Vermont Department of Environmental Conservation's water quality certification issued for the project, the project adheres to the following downstream minimum flow release requirements: (1) From June 1 through October 15, when river flows are less than 1,000 cubic feet per second (cfs), pass a minimum flow of 210 cfs over the crestgate; (2) provide a minimum flow of 757 cfs during operational issues or refilling of the impoundment; and (3) for faster impoundment refill based on consultation with the U.S. Fish and Wildlife Service and other agencies, a minimum flow of no less than 300 cfs to protect the dwarf wedge mussel until normal operations are restored. The project can operate in most of the extreme conditions of the Connecticut River and generate electricity from flows of 130 cfs up to high flood conditions of 35,000 cfs. The estimated average annual generation of the project from 2008 to 2018 is 25,000 megawatt-hours.

o. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–2392). For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

You may also register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter (if necessary)—June 2022
Request Additional Information (if necessary)—June 2022
Issue Acceptance Letter and Notice—August 2022
Issue Scoping Document 1 for comments—September 2022
Issue Scoping Document 2 (if necessary)—November 2022
Issue Notice of Ready for Environmental Analysis—December 2022

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08242 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1608–000]

Hallador Power Company, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Hallador Power Company, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 2, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08235 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP22–786–001.

Applicants: Dominion Energy Questar Pipeline, LLC.

Description: Tariff Amendment: Change of Company Name—Amended Filing to be effective 4/1/2022.

Filed Date: 4/12/22.

Accession Number: 20220412–5045.

Comment Date: 5 p.m. ET 4/25/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Number: PR22–34–000.

Applicants: Northwest Natural Gas Company.

Description: Submits tariff filing per 284.123(b),(e)/: Filing of Revised Statement of Operating Conditions to be effective 4/1/2022.

Filed Date: 4/11/2022.

Accession Number: 20220411–5150.

Comments/Protests Due: 5 p.m. ET 5/2/22.

Docket Numbers: RP22–817–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Amendment to a Negotiated Rate Agreement Filing-Eco-Energy Natural Gas to be effective 4/12/2022.

Filed Date: 4/12/22.

Accession Number: 20220412–5000.

Comment Date: 5 p.m. ET 4/25/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08238 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC22–51–000]

Wisconsin Electric Power Company; Notice of Filing

Take notice that on February 25, 2022, as supplemented on April 8, 2022, Wisconsin Electric Power Company submitted a proposal, and a response to a deficiency letter for additional information, to the Chief Accountant of the Federal Energy Regulatory Commission (Commission or FERC) related to proposed reclassification of certain depreciation reserve balances (Account 108, Accumulated Provision for Depreciation of Electric Utility Plant) related to its non-legal cost of removal that had been previously recorded as a regulatory liability (Account 254, Other Regulatory Liabilities), consistent with its most recent depreciation study on file with the Commission, in Docket No. ER16–592–000 (2016).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on April 22, 2022.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08240 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM21–9–000]

Technical Conference on Financial Assurance Measures for Hydroelectric Projects; Supplemental Notice of Technical Conference

As announced in the Notice of Technical Conference issued in this proceeding on January 25, 2022, the Federal Energy Regulatory Commission (Commission) will convene a Commission staff-led technical conference to discuss how the Commission may require additional financial assurance mechanisms in the licenses and other authorizations it issues for hydroelectric projects, to ensure that licensees have the capability to carry out license requirements and, particularly, to maintain their projects in safe condition. The technical conference will be held on Tuesday, April 26, 2022, from approximately 11:30 a.m. to 4:15 p.m. Eastern time. The conference will be held virtually.

Attached to this Supplemental Notice is a revised agenda for the technical conference, which includes the final conference program and expected speakers. The conference will be open for the public to attend virtually. Registration is not required, and there is no fee for attendance. Information on this technical conference, including a link to the public webcast, will be available at *https://www.ferc.gov/news-events/events/technical-conference-financial-assurance-measures-hydroelectric-projects* prior to the event. The conference is also posted on the Calendar of Events on the Commission's website, *www.ferc.gov.* Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact *HydroFinancialAssurance@ferc.gov.* For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: April 12, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–08241 Filed 4–15–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[9748–01–OA]

Notice of Meeting of the EPA Children's Health Protection Advisory Committee (CHPAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held virtually and in-person on May 17 and 18, 2022 at the U.S. Environmental Protection Agency (EPA) Headquarters located at 1200 Pennsylvania Avenue NW, Washington, DC 20460. The CHPAC advises EPA on science, regulations and other issues relating to children's environmental health.

DATES: May 17, 2022, from 10:00 a.m. to 5:30 p.m. and May 18, 2022, from 10:00 a.m. to 3:30 p.m.

ADDRESSES: The meeting will take place virtually and in-person. If you want to listen to the meeting or provide comments, please email *nguyen.amelia@epa.gov* for further details.

FOR FURTHER INFORMATION CONTACT: Amelia Nguyen, Office of Children's Health Protection, U.S. EPA, MC 1107T,

1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 564–4268, or *nguyen.amelia@epa.gov.*

SUPPLEMENTARY INFORMATION: The meetings of the CHPAC are open to the public. An agenda will be posted to *https://www.epa.gov/children/childrens-health-protection-advisory-committee-chpac.*

Access and Accommodations: For information on access or services for individuals with disabilities, please contact Amelia Nguyen at 202–564–4268 or *nguyen.amelia@epa.gov.*

Amelia Nguyen,

Biologist, Office of Children's Health Protection.

[FR Doc. 2022–08225 Filed 4–15–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9542–02–OAR]

Final Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for 2021 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR) trading programs. EPA has completed final calculations for the allocations of allowances from the CSAPR new unit set-asides (NUSAs) for the 2021 control periods and has posted spreadsheets containing the calculations on EPA's website. EPA has also completed calculations for allocations of the remaining 2021 NUSA allowances to existing units and has posted spreadsheets containing those calculations on EPA's website as well.

DATES: April 18, 2022.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Jason Kuhns at (202) 564–3236 or *kuhns.jason@epa.gov* or Andrew Reighart at (202) 564–0418 or *reighart.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: Under each CSAPR trading program where EPA is responsible for determining emission allowance allocations, a portion of each state's emissions budget for the program for each control period is reserved in a NUSA (and in an additional Indian country NUSA in the case of states with Indian country within their borders) for allocation to certain units that would not otherwise receive allowance allocations. The procedures for identifying the eligible units for each control period and for allocating allowances from the NUSAs and Indian country NUSAs to these units are set forth in the CSAPR trading program regulations at 40 CFR 97.411(b) and 97.412 (NO_X Annual), 97.511(b) and 97.512 (NO_X Ozone Season Group 1), 97.611(b) and 97.612 (SO_2 Group 1), 97.711(b) and 97.712 (SO_2 Group 2), 97.811(b) and 97.812 (NO_X Ozone Season Group 2), and 97.1011(b) and 97.1012 (NO_X Ozone Season Group 3). Each NUSA allowance allocation process involves allocations to eligible units, termed ''new'' units, followed by the allocation to ''existing'' units of any allowances not allocated to new units.[1]

In a notice of data availability (NODA) published in the **Federal Register** on February 25, 2021 (87 FR 10786), EPA provided notice of the preliminary calculations of NUSA allowance allocations for the 2021 control periods and described the process for submitting any objections. This NODA concerns the final NUSA allowance allocations.

In response to the February 25, 2021 NODA, EPA received written objections from Wisconsin Electric Power Company and the Wisconsin Department of Natural Resources. Both objections state that when calculating the allocation of CSAPR SO_2 Group 1 allowances for unit 2 at the Elm Road Generating Station (Plant ID 56068), EPA should have used a value of 315 tons instead of 262 tons for the unit's reported 2021 SO_2 emissions. Based on a review of the reported 2021 emissions data, EPA agrees with these objections and accordingly has corrected the final NUSA allowance allocations for the CSAPR SO_2 Group 1 Trading Program for Wisconsin to reflect a 53-ton increase in the amount of NUSA allowances allocated to Elm Road unit 2 and a corresponding 53-ton decrease in the collective amounts of NUSA allowances allocated to the state's ''existing'' units. EPA received no other written objections, and all other final allocations are unchanged from the preliminary allocations.

The detailed unit-by-unit data and final allowance allocation calculations are set forth in Excel spreadsheets titled ''CSAPR_NUSA_2021_NO_X_Annual_Final_Data_New_Units,'' ''CSAPR_NUSA_2021_NO_X_OS_Final_Data_New_Units,'' ''CSAPR_NUSA_2021_SO_2_Final_Data_New_Units,'' ''CSAPR_NUSA_2021_NO_X_Annual_Final_Data_Existing_Units,'' ''CSAPR_NUSA_2021_NO_X_OS_Final_Data_Existing_Units,'' and ''CSAPR_NUSA_2021_SO_2_Final_Data_Existing_Units'', available on EPA's website at *https://www.epa.gov/csapr/csapr-compliance-year-2021-nusa-nodas.*

EPA notes that an allocation or lack of allocation of allowances to a given unit does not constitute a determination that CSAPR does or does not apply to the unit. EPA also notes that, under 40 CFR 97.411(c), 97.511(c), 97.611(c), 97.711(c), 97.811(c), and 97.1011(c), allocations are subject to potential correction if a unit to which allowances have been allocated for a given control period is not actually an affected unit as of the start of that control period.

(Authority: 40 CFR 97.411(b), 97.511(b), 97.611(b), 97.711(b), 97.811(b), and 97.1011(b).)

Rona Birnbaum,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2022–08157 Filed 4–15–22; 8:45 am]

BILLING CODE 6560–50–P

[1] For control periods before 2021, the NUSA allocation process involved two rounds of allocations. The current one-round process for all CSAPR trading programs was adopted in the Revised CSAPR Update. Refer to 86 FR 23054, 23145–46 (April 30, 2021).

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0214, OMB 3060–0718, OMB 3060–1185 and OMB 3060–1207; FR ID 82672]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before May 18, 2022.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *https://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0214.

Title: Sections 73.3526 and 73.3527, Local Public Inspection Files; Sections 73.1212, 76.1701 and 73.1943, Political Files.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, Local or Tribal government; Individuals or households.

Number of Respondents: 23,805 respondents; 66,364 responses.

Estimated Time per Response: 1–52 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in Sections 151, 152, 154(i), 303, 307, 308, and 315 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,064,483 hours.

Total Annual Cost: No cost.

Needs and Uses: On January 25, 2022, the Commission adopted a Report and Order in MB Docket No. 21–293, FCC 22–5, 87 FR 7748 (February 10, 2022), Revisions to Political Programming and Record-Keeping Rule, which updates the political file rules for broadcast licensees and cable television system operators to bring them into conformity with the Bipartisan Campaign Reform Act of 2002. The Report and Order revises the following information collection requirements:

Pursuant to 47 CFR 73.1943 and 76.1701, each broadcast station licensee and each cable television system is required to maintain in its online political file a complete record of any request to purchase broadcast and cablecast time that is made by or on behalf of a candidate for public office, or that communicates a message relating to any political matter of national importance, including a legally qualified candidate, any election to Federal office, or a national legislative issue of public importance. Such records must include information regarding:

(1) Whether the request to purchase broadcast or cablecast time is accepted or rejected by the broadcast licensee or cable television system operator;

(2) the rate charged for the broadcast or cablecast time;

(3) the date and time on which the communication is aired;

(4) the class of time that is purchased;

(5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

In addition, when free time is provided for use by or on behalf of candidates, a record of the free time provided must be placed in the political file. These records must be placed in the political file as soon as possible and retained for a period of two years.

All other information collection requirements contained under 47 CFR 73.1212, 73.3526, 73.3527, 73.1943, and 76.1701 are still a part of the information collection and remain unchanged since last approved by OMB.

OMB Control Number: 3060–0718.

Title: Part 101 Rule Sections Governing the Terrestrial Microwave Fixed Radio Service.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 9,500 respondents; 33,914 responses.

Estimated Time per Response: 0.25–2.85 hours.

Frequency of Response: On occasion and every 10 year reporting requirements, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 301, 303(f), 303(g), 303(r), 307, 308, 309, 310, and 316.

Total Annual Burden: 39,096 hours.

Total Annual Cost: $3,884,100.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget for a three-year extension of OMB Control Number 3060–0718. Part 101 rule sections require respondents to report or disclose information to the Commission or third parties, respectively, and to maintain records. These requirements are necessary for the Commission staff to carry out its duties to determine technical, legal and other qualifications of applicants to operate and remain licensed to operate a station(s) in the common carrier and/or private fixed microwave services. In addition, the information is used to determine whether the public interest, convenience, and necessity are being served as required by 47 U.S.C. 309 and to ensure that applicants and licenses comply with ownership and transfer restrictions imposed by 47 US.C. 310. Without this information, the Commission would not be able to carry out its statutory responsibilities.

OMB Control Number: 3060–1185.

Title: Annual Report for Mobility Fund Phase I Support, FCC Form 690 and Record Retention Requirements.

Form Number: FCC Form 690.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or tribal governments.

Number of Respondents and Responses: 34 respondents and 880 responses.

Time per Response: 1–18 hours.

Frequency of Response: Annual and on occasion reporting requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection 47 U.S.C. 154, 254 and 303(r) of the Communications Act of 1934, as amended.

Estimated Total Annual Burden: 15,874 hours.

Total Annual Costs: No Cost.

Needs and Uses: A request for extension of this information collection (no change in requirements) will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from OMB. The Commission uses the information contained in this collection to ensure that each winning bidder is meeting its obligations for receiving Mobility Fund Phase I (MF–I) and Tribal Mobility Fund Phase I (TMF–I) support. In its November 2011 USF/ICC Transformation Order (FCC 11–161) (76 FR 73830, November 29, 2011), the Commission comprehensively reformed and modernized the high-cost program within the universal service fund and, among other things, established the Mobility Fund. The Commission adopted rules in the USF/ICC Transformation Order for MF–I, which provided up to $300 million in one-time universal service support payments to immediately accelerate deployment of mobile broadband services in unserved areas, including annual reporting and record retention requirements for MF–I support recipients. The Commission also established a separate and complementary one-time TMF–I to award up to $50 million in additional universal service funding to Tribal Areas, including Alaska, to accelerate mobile broadband availability in these remote and underserved areas. In its May 2012 Third Order on Reconsideration (FCC 12–52) (77 FR 30904, May 24, 2012), the Commission revised certain rules adopted in the USF/ICC Transformation Order, including the deadline by which MF–I and TMF–I support recipients must file their annual reports pursuant to 47 CFR 54.1009(a). The information being collected under this information collection will be used by the Commission to ensure that MF–I and TMF–I support recipients are meeting the public interest obligations associated with receiving such support.

OMB Control Number: 3060–1207.

Title: Section 25.701, Other DBS Public Interest Obligations, and Section 25.702, Other SDARS Public Interest Obligations.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3 respondents; 11 responses.

Estimated Time per Response: 1–11 hours.

Frequency of Response: On occasion reporting requirement, Recordkeeping requirement, Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 154, 301, 302, 303, 307, 309, 310, 332, and 335 of the Communications Act of 1934, as amended.

Total Annual Burden: 75 hours.

Total Annual Cost: No cost.

Needs and Uses: On January 25, 2022, the Commission adopted a Report and Order in MB Docket No. 21–293, FCC 22–5, Revisions to Political Programming and Record-Keeping Rule, which updates the political file rules for Direct Broadcast Satellite (DBS) providers and Satellite Digital Audio Radio Service (SDARS) licensees to bring them into conformity with the Bipartisan Campaign Reform Act of 2002. The Report and Order revises the following information collection requirements:

Pursuant to 47 CFR 25.701(d) and 25.702(b), each DBS provider and each SDARS licensee is required to maintain in its online political file a complete record of any request to purchase airtime that is made by or on behalf of a candidate for public office, or that communicates a message relating to any political matter of national importance, including a legally qualified candidate, any election to Federal office, or a national legislative issue of public importance. Such records must include information regarding:

(1) Whether the request to purchase airtime is accepted or rejected by the DBS provider or SDARS licensee;

(2) the rate charged for the airtime;

(3) the date and time on which the communication is aired;

(4) the class of time that is purchased;

(5) the name of the candidate to which the communication refers and the office to which the candidate is seeking election, the election to which the communication refers, or the issue to which the communication refers (as applicable);

(6) in the case of a request made by, or on behalf of, a candidate, the name of the candidate, the authorized committee of the candidate, and the treasurer of such committee; and

(7) in the case of any other request, the name of the person purchasing the time, the name, address, and phone number of a contact person for such person, and a list of the chief executive officers or members of the executive committee or of the board of directors of such person.

In addition, when free time is provided for use by or on behalf of candidates, a record of the free time provided must be placed in the political file. These records must be placed in the political file as soon as possible and retained for a period of two years.

All other information collection requirements contained under 47 CFR 25.701 and 25.702 are still a part of the information collection and remain unchanged since last approved by OMB.

This information collection (OMB 3060–1207) also consolidates the information collections in OMB 3060–1065, OMB 3060–1212, and the portion of OMB 3060–0214 which related to SDARS licensees to eliminate duplication and inconsistencies

between these information collections. OMB 3060–1065 and OMB 3060–1212 will be discontinued.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–08182 Filed 4–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0710; FR ID 82565]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before June 17, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0710.

Title: Policy and Rules Under Parts 1 and 51 Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 15,282 respondents; 1,067,987 responses.

Estimated Time per Response: 0.50–4,000 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1–4, 201–205, 214, 224, 251, 252, and 303(r) of the Communications Act of 1934, as amended, and section 601 of the Telecommunications Act of 1996. 47 U.S.C. 151–154, 201–205, 224, 251, 252, 303(r), and 601.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

Total Annual Burden: 645,798 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR Section 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance.

The Commission adopted rules to implement the First Report and Order on Reconsideration issued in CC Docket No. 96–98. That Order implemented parts of sections 251 and 252 of the Telecommunications Act of 1996 that affect local competition. Incumbent local exchange carriers (ILECs) are required to offer interconnection, unbundled network elements (UNEs), transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services and rates that are cost-based and just and reasonable and provide access to right-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–08156 Filed 4–15–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[NOTICE 2022–12]

Filing Dates for the Texas Special Election in the 34th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Texas has scheduled a Special General Election on June 14, 2022, to fill its U.S. House of Representatives seat in the 34th Congressional District vacated by Representative Filemon B. Vela. There are two possible elections, but only one may be necessary. Under Texas law, all qualified candidates, regardless of party affiliation, will appear on the ballot. The majority winner of the special election is declared elected. Should no candidate achieve a majority vote, the Governor will then set the date for a Special Runoff Election that will include only the top two vote-getters. Committees participating in the Texas special election are required to file pre- and post-election reports.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Texas Special General Election shall file a 12-day Pre-General Report on June 2, 2022. If there is a majority winner, committees must also file a Post-General Report on July 14, 2022. (See charts below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See charts below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Texas Special General Election by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Texas Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Texas special election may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Possible Special Runoff Election

In the event that no candidate receives a majority of the votes in the Special General Election, a Special Runoff Election will be held. The Commission will publish a future notice giving the filing dates for that election if it becomes necessary.

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $20,200 during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

CALENDAR OF REPORTING DATES FOR TEXAS SPECIAL ELECTION

Report	Close of books [1]	Overnight mailing deadline	Filing deadline
If Only the Special General (06/14/2022) is Held, Political Committees Involved Must File			
Pre-General	05/25/2022	[2] 05/30/2022	06/02/2022
Post-General	07/04/2022	07/14/2022	07/14/2022
July Quarterly	—Waived—		
October Quarterly	09/30/2022	10/15/2022	[3] 10/15/2022
If Two Elections are Held, Political Committees Involved in Only the Special General (06/14/2022) Must File			
Pre-General	05/25/2022	[2] 05/30/2022	06/02/2022
July Quarterly	06/30/2022	07/15/2022	07/15/2022

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

[3] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

Dated: April 8, 2022.

On behalf of the Commission.

Allen Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–08190 Filed 4–15–22; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

[Notice 2022—11]

Filing Dates for the Nebraska Special Election in the 1st Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Nebraska has scheduled a special election on June 28, 2022, to fill the U.S. House of Representatives seat in the 1st Congressional District vacated by Representative Jeff Fortenberry. Committees required to file reports in connection with the Special General Election on June 28, 2022, shall file a 12-day Pre-General and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Nebraska Special General Election shall file a 12-day Pre-General Report on June 16, 2022, and a 30-day Post-General Report on July 28, 2022. (See chart below for the closing date for each report.)

Note that these reports are in addition to the campaign committee's regular quarterly filings. (See chart below for the closing date for each report).

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Nebraska Special General Election by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the Nebraska Special General Election will continue to file according to the monthly reporting schedule.

Additional disclosure information for the Nebraska special election may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that

are otherwise required to file reports in connection with the special election must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of $20,200 during the special election reporting periods. (See chart below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

CALENDAR OF REPORTING DATES FOR NEBRASKA SPECIAL ELECTION

Report	Close of books [1]	Reg./Cert. & overnight mailing deadline	Filing deadline
Political Committees Involved in the Special General (06/28/2022) Must File			
Pre-General	06/08/2022	06/13/2022	06/16/2022
July Quarterly	06/30/2022	07/15/2022	07/15/2022
Post-General	07/18/2022	07/28/2022	07/28/2022
October Quarterly	09/30/2022	10/15/2022	[2] 10/15/2022

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that this filing deadline falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than registered, certified or overnight mail, or electronically, must be received before the Commission's close of business on the last business day before the deadline.

On behalf of the Commission.

Dated: April 8, 2022.

Allen Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–08186 Filed 4–15–22; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–12]

Notice of Filing of Complaint and Assignment; International Longshoremen's Association, Complainant v. Gateway Terminals, LLC; Charleston Stevedoring Company, LLC; Ports America Florida, Inc.; Ceres Marine Terminals, Inc.; and SSA Atlantic, LLC, Respondents

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by International Longshoremen's Association, hereinafter ''Complainant'', against Gateway Terminals, LLC (Gateway), Charleston Stevedoring Company, LLC (CSC), Ports America Florida, Inc. (Ports America), Ceres Marine Terminals, Inc. (Ceres), and SSA Atlantic, LLC (SSA), hereinafter ''Respondents.'' Complainant alleges that Gateway is a marine terminal operator in the Port of Savannah, Georgia, and is a Georgia limited liability company, and is a joint venture composed of Ports America, SSA, and Ceres; CSC is a marine terminal operator in the Port of Charleston, South Carolina, and is a Delaware limited liability company, and is a joint venture of Ports America, SSA, and Ceres; Ports America is a Florida corporation; Ceres is a Maryland corporation; and SSA is a Delaware limited liability company.

Complainant alleges that Respondents violated 46 U.S.C. 41102(b), 41105(6), 41106 and 15 U.S.C. 13 with regard to anticompetitive and trade restrictive practices. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-12/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by April 12, 2023, and the final decision of the Commission shall be issued by October 26, 2023.

Served: April 12, 2022.

William Cody,

Secretary.

[FR Doc. 2022–08188 Filed 4–15–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 3, 2022.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *Elizabeth Guest Stevens, Woodbridge, New Jersey, as trustee of Trust u/a 2nd(3) u/w of Hubert B. Phipps for Hubert G. Phipps, Trust u/a 2nd(4)(a) u/w Hubert B. Phipps for Hubert G. Phipps, Trust u/a 2nd(3) u/w Hubert B. Phipps for Melissa Phipps, and Trust u/a 2nd(4)(a) u/w Hubert B. Phipps for Melissa Phipps, all of Woodbridge, New Jersey; Frederick E. Guest II Trust dated 12/10/2014, Willington, Delaware, Trust f/b/o Alexander M. D. Guest u/Art. 7(B)(5) u/w Winston F. C. Guest, Deceased, Trust f/b/o Cornelia C. Guest u/Art. 7(B)(5) u/w Winston F. C. Guest, Deceased, and Trust f/b/o Winston Guest, Jr. u/Art. 7(B)(5) u/w Winston F. C. Guest, Deceased, all of New York, New York; and Elizabeth Guest Stevens Revocable Trust dated June 21, 2011, Woodbridge, New Jersey;* to acquire

voting shares of The Bessemer Group, Incorporated, Woodbridge, New Jersey, and thereby indirectly acquire voting shares of Bessemer Trust Company, N.A., New York, New York, and Bessemer Trust Company, Woodbridge, New Jersey.

B. Federal Reserve Bank of Minneapolis (Chris P. Wangen, Assistant Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org:*

1. *James Kou Vang, West Lakeland, Minnesota;* to acquire voting shares of Morristown Holding Company, Excelsior, Minnesota, and thereby indirectly acquire voting shares of Lake Country Community Bank, Morristown, Minnesota.

C. Federal Reserve Bank of Cleveland (Bryan S. Huddleston, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566. Comments can also be sent electronically to *Comments.applications@clev.frb.org:*

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of S&T Bancorp, Inc., and thereby indirectly acquire voting shares of S&T Bank, both of Indiana, Pennsylvania.

2. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of First Financial Bancorp, and thereby indirectly acquire voting shares of First Financial Bank, both of Cincinnati, Ohio.

D. Federal Reserve Bank of St. Louis (Holly A. Rieser, Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Simmons First National Corporation, and thereby indirectly acquire voting shares of Simmons Bank, both of Pine Bluff, Arkansas.

2. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Old National Bancorp, and thereby indirectly acquire voting shares of Old National Bank, both of Evansville, Indiana.

E. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street, NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire voting shares of Synovus Financial Corp., and thereby indirectly acquire voting shares of Synovus Bank, both of Columbus, Georgia.

F. Federal Reserve Bank of San Francisco (Sebastian Astrada, Director, Applications) 101 Market Street, San Francisco, California 94105–1579:

1. *The Vanguard Group, Inc., Malvern, Pennsylvania; on behalf of itself, its subsidiaries and affiliates, including investment companies registered under the Investment Company Act of 1940, other pooled investment vehicles, and institutional accounts that are sponsored, managed, or advised by Vanguard;* to acquire additional voting shares of Hope Bancorp, Inc., and thereby indirectly acquire voting shares of Bank of Hope, both of Los Angeles, California.

Board of Governors of the Federal Reserve System, April 13, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–08257 Filed 4–15–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than May 18, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Security Federal Mutual Bancorp, Logansport, Indiana;* to become a mutual savings and loan holding company, in connection with the reorganization of Security Federal Savings Bank, Logansport, Indiana, from a federal mutual savings association to a stock savings association.

Board of Governors of the Federal Reserve System, April 13, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–08258 Filed 4–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–0338]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Annual Submission of the Ingredients Added to, and the Quantity of Nicotine Contained in, Smokeless Tobacco Manufactured, Imported, or Packaged in the U.S.'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 27, 2021, to obtain comments from the public and affected entities. CDC did not receive comments related to the FRN. This notice serves to allow an additional 30 days for public and affected entities' comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Annual Submission of the Ingredients Added to, and the Quantity of Nicotine Contained in, Smokeless Tobacco Manufactured, Imported, or Packaged in the U.S. (OMB Control No. 0920–0338, Exp. 04/30/2022)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Smokeless tobacco products (SLT) are associated with many health problems. Using smokeless tobacco can lead to nicotine addiction; causes cancer of the mouth, esophagus, and pancreas; is associated with diseases of the mouth; can increase risks for early delivery and stillbirth when used during pregnancy; can cause nicotine poisoning in children; and may increase the risk for death from heart disease and stroke.

The CDC's Office on Smoking and Health (OSH) has the primary responsibility for the HHS smoking and health program. As required by the Comprehensive Smokeless Tobacco Health Education Act of 1986 (CSTHEA, 15 U.S.C. 4401 *et seq.,* Pub. L. 99–252), CDC collects a list of ingredients added to tobacco in the manufacture of smokeless tobacco products and a specification of the quantity of nicotine contained in each product. HHS has delegated responsibility for implementing the required information collection to CDC's Office of Smoking and Health (OSH). Respondents are the manufacturers, packagers, or importers (or their representatives) of smokeless tobacco products. Respondents are not required to submit specific forms; however, they are required to meet reporting guidelines and to submit the ingredient and nicotine reports. Ingredient reports must be submitted by chemical name and Chemical Abstract Service (CAS) Registration Number, consistent with accepted reporting practices for other companies that are required to report ingredients added to other consumer products. Typically, respondents submit a summary report to CDC with the ingredient information for multiple products, or a statement that there are no changes to their previously submitted ingredient report. Respondents may submit the required information to CDC through a designated representative. The information collection is subject to strict confidentiality provisions.

Ingredient and nicotine reports for new SLT products are due at the time of first importation. Thereafter, ingredient and nicotine reports are due annually on March 31. Information is submitted to CDC by mailing a written report on the respondent's letterhead. Electronic mail submissions are not accepted. Annual submission reports are mailed to Attention: FCLAA Program Manager, Office on Smoking and Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, MS S107–7, Atlanta, GA 30341–3717.

Upon receipt and verification of the annual nicotine and ingredient report, CDC issues a Certificate of Compliance to the respondent. As deemed appropriate by the Secretary of HHS, HHS is authorized to use the information to report to Congress the health effects of ingredients, research activities related to the health effects of ingredients, and other information that the Secretary determines to be of public interest.

OMB approval is requested for three years. CDC requests OMB approval for an estimated 18,843 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokeless Tobacco Manufacturers, Packagers, and Importers.	SLT Ingredient Report	11	1	6.5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Smokeless Tobacco Manufacturers, Packagers, and Importers.	SLT Nicotine Report	11	1	1,706.5

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–08214 Filed 4–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–1128; Docket No. CDC–2022–0050]

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 State Unintentional Drug Overdose Reporting System (SUDORS). This information collection supports drug overdose prevention efforts, detects new trends in fatal unintentional drug overdoses, and assesses the progress of HHS's initiative to reduce opioid abuse.

DATES: CDC must receive written comments on or before June 17, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0050 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: 404–639–7570; 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

State Unintentional Drug Overdose Reporting System (SUDORS) (OMB Control No. 0920–1128, Exp. 10/31/2023)—Revision—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a Revision request for the currently approved State Unintentional Drug Overdose Reporting System (SUDORS) (OMB Control No. 0920–1128, Exp. Date 10/31/2023). SUDORS assists with ongoing surveillance of fatal unintentional and undetermined intent drug-related overdoses to support prevention and response efforts.

In 2013, there were nearly 44,000 drug overdose deaths, including nearly 36,000 unintentional drug overdose deaths, in the United States, with more people now dying of drug overdoses than automobile crashes. A major driver of the problem are overdoses related to opioids, both opioid pain relievers (OPRs) and illicit forms such as heroin. In order to address this public health problem, the U.S. Department of Health and Human Services (HHS) has made addressing the opioid abuse problem a high priority.

To support targeting of drug overdose prevention efforts, detect new trends in fatal unintentional drug overdoses, and assess the progress of HHS's initiative to reduce opioid abuse and overdoses, the State Unintentional Drug Overdose Reporting System (SUDORS) generates public health surveillance information at the national, state, and local levels. This information is more detailed, useful, and timely than other information that is currently available.

This collection will detect state and local community changes in unintentional and undetermined intent drug-related overdose mortality faster and provide in-depth state and local (*e.g.,* county) information on risk factors for fatal drug overdose deaths that can

inform the selection and targeting of interventions in all 50 states, the District of Columbia and Puerto Rico. This information will help develop, inform, and assess the progress of drug overdose prevention strategies at both the state and national levels. Information will also improve the identification and response to changes in fatal unintentional and undetermined intent drug-related overdose trends at the local, state, and national level. CDC obtained OMB approval in 2020 for a Revision to make the following changes: (1) Expand data collection from the 50 jurisdictions previously approved to include 52 jurisdictions (*i.e.,* all 50 states, Puerto Rico and the District of Columbia), (2) expand data collection from its current focus on opioid overdose deaths to a broader focus on drug overdose deaths, (3) account for increasing data collection burden related to large increases in drug overdose deaths, and (4) update the web-based system to improve performance, functionality, and accessibility, as well as add data elements to the State Unintentional Drug Overdose Reporting System (SUDORS) module to capture more detailed information.

CDC requests a three-year approval for an additional Revision request to continue collecting SUDORS data. The current Revision request has the following change: The burden estimate has been updated to reflect the increase in the number of drug overdose deaths. This new burden estimate is higher than the previously approved estimate of 32,838 hours because the previous burden estimates were based on the number of unintentional and undetermined intent drug overdose deaths that occurred among all 50 states in 2017 (64,998 deaths). This Revision request will use the total number of unintentional or undetermined intent drug overdose deaths in the US from 2020 (87,302 deaths). The total number of unintentional or undetermined intent drug overdose deaths per jurisdiction was estimated by dividing the total number of drug overdose deaths, 87,302 by the number of participating health departments, 51, or approximately 1,711 deaths per participating health department. This created an increase from the previously approved burden.

CDC requests OMB approval for an estimated 43,631 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Total number of responses per respondent	Average burden per response (in hours)	Total burden hours (in hours)
Public Agencies	Retrieving and refiling records	51	1,711	30/60	43,631
Total					43,631

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–08217 Filed 4–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0881; Docket No. CDC–2022–0049]

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 proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Laboratory Response Network (LRN) Data Calls. This project will help CDC conduct special data calls to obtain additional information from LRN laboratories regarding biological or chemical terrorism, or emerging infectious disease preparedness.

DATES: CDC must receive written comments on or before June 17, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0049 by either of the following methods:

- *Federal eRulemaking Portal: 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 *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (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: 404–639–7570; 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

Data Calls for the Laboratory Response Network (LRN) (OMB Control No. 0920–0881, Exp. 06/30/2022)—Extension—National Center for Emerging Zoonotic and Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Laboratory Response Network (LRN) was established by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39 which outlined national anti-terrorism policies and assigned specific missions to Federal Departments and Agencies. The Administration has stated that it is the policy of the United States to use all appropriate means, to deter, defeat, and respond to all terrorist attacks on our territory and resources, both with people and facilities. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond quickly to suspected acts of biological, chemical, or radiological terrorism, emerging infectious diseases, and other public health threats and emergencies. Federal, state and local public health laboratories join the LRN voluntarily.

When laboratories join, they assume specific responsibilities and are required to provide facility information to the LRN Program Office at CDC, as well as test results for real samples or proficiency tests. LRN laboratories participate in Proficiency Testing Challenges, Exercises and Validation Studies each year. LRN information collection is covered by OMB Control No. 0920–0850. Periodically, CDC may conduct a Special Data Call to obtain additional information from LRN laboratories regarding biological or chemical terrorism, or emerging infectious disease preparedness. Although the LRN Program Office at CDC has an extensive database of information regarding all network members, LRN Special Data Calls are sometimes needed to address issues concerning the response capabilities of member facilities for priority threat agents or to assess the network's ability to respond to new emerging threats. Special Data Calls may be conducted via broadcast email that asks respondents to send information via email to the LRN Help Desk or through online survey tools (*i.e.,* Survey Monkey) which require respondents to go to a web link and answer a series of questions.

This request for Extension is for a Generic Clearance that is necessary for any impromptu data calls that are needed. CDC requests OMB approval for an estimated 94 annual burden hours. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Public Health Laboratories	Special Data Call	187	1	30/60	94
Total					94

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–08215 Filed 4–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–22–1011; Docket No. CDC–2022–0047]

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 request for extension of an approved information collection titled Emergency Epidemic Investigation Data Collections. CDC uses the information collected to identify prevention and control measures in response to outbreaks and other public health events.

DATES: CDC must receive written comments on or before June 17, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0047 by either of the following methods:

- *Federal eRulemaking Portal: 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 *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*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; phone: 404–639–7570; 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

Emergency Epidemic Investigation Data Collections (OMB Control No. 0920–1011, Exp. 1/31/2023)—Extension —Division of Scientific Education and Professional Development (DSEPD), Center for Surveillance, Education, and Laboratory Services (CSELS), Centers for Disease Control and Prevention(CDC).

Background and Brief Description

CDC previously conducted Emergency Epidemic Investigations (EEIs) under Office of Management and Budget (OMB) Control No. 0920–0008. In 2013, CDC received OMB approval (OMB Control No. 0920–1011) for a new OMB generic clearance for a three-year period to collect vital information during EEIs in response to outbreaks or other urgent public health events (*i.e.,* natural, biological, chemical, nuclear, radiological), characterized by undetermined agents, undetermined sources, undetermined transmission, or undetermined risk factors. This generic clearance was approved in 2020 for a three-year extension, which expires on 1/31/2023. CDC seeks OMB approval for an extension of this Generic clearance for an additional three-year period.

Supporting effective emergency epidemic investigations is one of the most important ways that CDC protects the health of the public. CDC is frequently called upon to conduct EEIs at the request of local, state, or international health authorities seeking support to respond to outbreaks or urgent public health events. In response to external partner requests, CDC provides necessary epidemiologic support to identify the agents, sources, modes of transmission, or risk factors to effectively implement rapid prevention and control measures to protect the public's health. Data collection is a critical component of the epidemiologic support provided by CDC; data are analyzed to determine the agents, sources, modes of transmission, or risk factors so that effective prevention and control measures can be implemented. During an unanticipated outbreak or urgent public health event, immediate action by CDC is necessary to minimize or prevent public harm. The legal justification for EEIs are found in the Public Health Service Act (42 U.S.C. Sec. 301 [241] (a)).

Successful investigations are dependent on rapid and flexible data collection that evolves during the investigation and is customized to the unique circumstances of each outbreak or urgent public health event. Data collection elements will be those necessary to identify the agents, sources, mode of transmission, or risk factors. Examples of potential data collection methods include telephone or face-to-face interview; email, web, or other type of electronic questionnaire; paper-and-pencil questionnaire; focus groups; medical record review and abstraction; laboratory record review and abstraction; collection of clinical samples; and environmental assessment. Respondents will vary depending on the nature of the outbreak or urgent public health event. Examples of potential respondents include health care professionals, patients, laboratorians, and the general public.

CDC projects 60 EEIs in response to outbreaks or urgent public health events characterized by undetermined agents, undetermined sources, undetermined transmission, or undetermined risk factors annually. The projected average number of respondents is 200 per EEI, for a total of 12,000 respondents. CDC estimates the average burden per response is 30 minutes and each respondent will be asked to respond once. Based on the reported burden for EEIs that have been performed during previous years, the total estimated annual burden hours are 6,000. Participation in EEIs is voluntary and there are no anticipated costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours (in hours)
Emergency Epidemic Investigation Participants.	Emergency Epidemic Investigation Data Collection Instruments.	12,000	1	30/60	6,000
Total					6,000

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–08216 Filed 4–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3424–PN]

Medicare and Medicaid Programs: Application From Det Norske Veritas for Continued Approval of Its Hospital Accreditation Program

AGENCY: Centers for Medicare and Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: This notice acknowledges the receipt of an application from Det Norske Veritas for continued recognition as a national accrediting organization for hospitals that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on May 18, 2022.

ADDRESSES: In commenting, please refer to file code CMS–3424–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3424–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3424–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joy Webb, (410) 786–1667. Lillian William, (410) 786–8636.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments. CMS will not post on *Regulations.gov* public comments that make threats to individuals or institutions or suggest that the individual will take actions to harm the individual. CMS continues to encourage individuals not to submit duplicative comments. We will post acceptable comments from multiple unique commenters even if the content is identical or nearly identical to other comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a hospital provided certain requirements are met. Section 1861(e) of the Social Security Act (the Act), establishes distinct criteria for facilities seeking designation as a hospital. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 482 specify the minimum conditions that a hospital must meet to participate in the Medicare program.

Generally, to enter into an agreement, a hospital must first be certified by a state survey agency (SA) as complying with the conditions or requirements set forth in part 482 of our regulations. Thereafter, the hospital is subject to regular surveys by a SA to determine whether it continues to meet these requirements.

Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at §§ 488.4 and 488.5. The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

Det Norske Veritas' current term of approval for their hospital accreditation program expires September 26, 2022.

II. Approval of Deeming Organization

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of Det Norske Veritas' request for continued approval of its hospital accreditation program. This notice also solicits public comment on whether Det Norske Veritas' requirements meet or exceed the Medicare conditions of participation (CoPs) for hospitals.

III. Evaluation of Deeming Authority Request

Det Norske Veritas submitted all the necessary materials to enable us to make a determination concerning its request

for continued approval of its hospital accreditation program. This application was determined to be complete on February 28, 2022. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national accrediting organizations), our review and evaluation of Det Norske Veritas will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of Det Norske Veritas' standards for hospitals as compared with CMS' hospital CoPs.
- Det Norske Veritas' survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of Det Norske Veritas' processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ Det Norske Veritas' processes and procedures for monitoring a hospital found out of compliance with Det Norske Veritas' program requirements. These monitoring procedures are used only when Det Norske Veritas identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the SA monitors corrections as specified at § 488.9.

++ Det Norske Veritas' capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ Det Norske Veritas' capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of Det Norske Veritas' staff and other resources, and its financial viability.

++ Det Norske Veritas' capacity to adequately fund required surveys.

++ Det Norske Veritas' policies with respect to whether surveys are announced or unannounced, to assure that surveys are unannounced.

++ Det Norske Veritas' policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ Det Norske Veritas' agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

V. Response to Public Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 13, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–08251 Filed 4–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1777–N]

Medicare Program; Meeting Announcement for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the public meeting dates for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel) on Monday, July 18, 2022 and Tuesday, July 19, 2022. The purpose of the Panel is to advise the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on issues related to clinical diagnostic laboratory tests.

DATES:

Meeting Dates: The virtual meeting of the Panel is scheduled for Monday, July 18, 2022 from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time (E.D.T.) and Tuesday, July 19, 2022, from 9:00 a.m. to 5:00 p.m., E.D.T. The Panel is also expected to virtually participate in the Clinical Laboratory Fee Schedule (CLFS) Annual Public Meeting for Calendar Year (CY) 2023 on June 23, 2022 in order to gather information and ask questions to presenters. Notice of the CLFS Annual Public Meeting for CY 2023 is published elsewhere in this issue of the **Federal Register**.

Deadline Date for Registration: All stand-by speakers for the Panel meeting must register electronically to our CDLT Panel dedicated email box, *CDLTPanel@cms.hhs.gov* by June 27, 2022. Registration is not required for non-speakers. The public may view this meeting via webinar, or listen-only via teleconference.

Webinar and Teleconference Meeting Information: Teleconference dial-in instructions, and related webinar details will be posted on the meeting agenda, which will be available on the CMS website approximately 2 weeks prior to the meeting at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.* A preliminary agenda is described in section II of this notice.

ADDRESSES: Due to the current COVID–19 public health emergency, the Panel meeting will be held virtually and will not occur at the campus of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Rasheeda Arthur, Ph.D., (410) 786–3434, email, *CDLTPanel@cms.hhs.gov.* Press inquiries are handled through the CMS Press Office at (202) 690–6145. For additional information on the Panel, we refer readers to the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

SUPPLEMENTARY INFORMATION:

I. Background

The Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (the Panel) is authorized by section 1834A(f)(1) of the Social Security Act (the Act) (42 U.S.C. 1395m–1), as established by section 216(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93), enacted on April 1, 2014. The Panel is subject

to the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. appendix 2), which sets forth standards for the formation and use of advisory panels.

Section 1834A(f)(1) of the Act directs the Secretary of the Department of Health and Human Services (the Secretary) to consult with an expert outside advisory panel established by the Secretary, composed of an appropriate selection of individuals with expertise in issues related to clinical diagnostic laboratory tests, which may include the development, validation, performance, and application of such tests. Such individuals may include molecular pathologists, researchers, and individuals with expertise in laboratory science or health economics.

The Panel will provide input and recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS), on the following:

- The establishment of payment rates under section 1834A of the Act for new clinical diagnostic laboratory tests, including whether to use ''crosswalking'' or ''gapfilling'' processes to determine payment for a specific new test.
- The factors used in determining coverage and payment processes for new clinical diagnostic laboratory tests.
- Other aspects of the new payment system under section 1834A of the Act.

A notice announcing the establishment of the Panel and soliciting nominations for members was published in the October 27, 2014 **Federal Register** (79 FR 63919 through 63920). In the August 7, 2015 **Federal Register** (80 FR 47491), we announced membership appointments to the Panel along with the first public meeting date for the Panel, which was held on August 26, 2015. Subsequent meetings of the Panel and membership appointments were also announced in the **Federal Register**.

II. Agenda

The Agenda for the July 18 and July 19, 2022 Panel meeting will provide for discussion and comment on the following topics as designated in the Panel's charter:

- Calendar Year (CY) 2023 Clinical Laboratory Fee Schedule (CLFS) new and reconsidered test codes, which will be posted on the CMS website at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html.*
- Other CY 2023 CLFS issues designated in the Panel's charter and further described on our Agenda.

A detailed Agenda will be posted approximately 2 weeks before the meeting, on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.* The Panel will make recommendations to the Secretary and the Administrator of CMS regarding crosswalking and gapfilling for new and reconsidered laboratory tests discussed during the CLFS Annual Public Meeting for CY 2023. The Panel will also provide input on other CY 2023 CLFS issues that are designated in the Panel's charter and specified on the meeting agenda.

III. Meeting Participation

This meeting is open to the public. Stand-by speakers may participate in the meeting via teleconference and webinar. A stand-by speaker is an individual who will speak on behalf of a company or organization if the Panel has any questions during the meeting about technical information described in the public comments or presentation previously submitted or presented by the organization or company at the recent Clinical Laboratory Fee Schedule (CLFS) Annual Public Meeting for Calendar Year (CY) 2023 on June 23, 2022. The public may also view or listen-only to the meeting via teleconference and webinar.

IV. Registration Instructions for Stand-By Speakers

Beginning Monday, May 2, 2022 and ending Monday, June 27, 2022 at 5:00 p.m. E.D.T., registration to serve as a stand-by speaker may be completed by sending an email to the following resource box *CDLTPanel@cms.hhs.gov*. The subject of the email should state ''Stand-by Speaker Registration for CDLT Panel Meeting.'' In the email, all of the following information must be submitted when registering:

- Stand-by Speaker name.
- Organization or company name.
- Email addresses that will be used by the speaker to connect to the virtual meeting.
- New or Reconsidered Code(s) for which the company or organization you are representing submitted a comment or presentation.

Registration details may not be revised once they are submitted. If registration details require changes, a new registration entry must be submitted by the date specified in the **DATES** section of this notice. Also, registration information must reflect individual-level content and not reflect an organization entry. In addition, each individual may only register one person at a time. That is, one individual may not register multiple individuals at the same time.

After registering, a confirmation email will be sent upon receipt of the registration. The email will provide information to the speaker in preparation for the meeting. Registration is only required for stand-by speakers and must be submitted by the deadline specified in the **DATES** section of this notice. We note that registration is not required for participants who plan to view the Panel meeting via webinar or listen via teleconference.

V. Panel Recommendations and Discussions

The Panel's recommendations will be posted approximately 2 weeks after the meeting on the CMS website at *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html.*

VI. Special Accommodations

Individuals viewing or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the resource box (*CDLTPanel@cms.hhs.gov*). The deadline for submitting this request is listed in the **DATES** section of this notice.

VII. Copies of the Charter

The Secretary's Charter for the Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests is available on the CMS website at *http://cms.gov/Regulations-and-Guidance/Guidance/FACA/AdvisoryPanelonClinicalDiagnosticLaboratoryTests.html* or a copy of the charter may be obtained by submitting a request to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

VIII. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the **Federal Register** Liaison, to electronically sign this document for

purposes of publication in the **Federal Register**.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–08253 Filed 4–15–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10440]

Agency Information Collection Activities: Proposed Collection; Comment Request; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; correction.

SUMMARY: On April 6, 2022, CMS published a notice in the **Federal Register** that sought comment on a collection of information concerning CMS–10440 (OMB control number 0938–1191) entitled ''Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies.'' In one other instance the title was correct and in another the title was incorrect. This document corrects the incorrect occurrence.

FOR FURTHER INFORMATION CONTACT: William N. Parham, III, (410) 786–4669.

SUPPLEMENTARY INFORMATION:

I. Background

In the April 6, 2022, issue of the **Federal Register** (87 FR 19957), we published a Paperwork Reduction Act notice requesting a 60-day public comment period for the information collection request identified under CMS–10440, OMB control number 0938–1191, and titled ''Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies.''

II. Explanation of Error

In the April 6, 2022, notice, the title associated with the information collection request identified under CMS–10440 is correctly listed on page 19957, in the second column, in the third paragraph under ''Contents.'' However, the title on page 19958 in the first column, in the second paragraph, beginning on line 11, the ''Title of Information Collection:'' incorrectly reads, ''Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies—Revision of Medicare Coverage.'' This notice corrects the ''Title of Information Collection.'' All of the other information contained in the April 6, 2022, notice is correct. The related public comment period remains in effect and ends June 6, 2022.

III. Correction of Error

In the **Federal Register** of April 6, 2022, in FR Doc. 2022–07314, on page 19958, in the first column, in the second paragraph, under ''Title of Information Collection;'' in lines 11–15, correct ''Medicare Coverage of Items and Services in FDA Investigational Device Exemption Clinical Studies—Revision of Medicare Coverage'' to read, ''Data Collection to Support Eligibility Determinations for Insurance Affordability Programs and Enrollment through Health Insurance Marketplaces, Medicaid and Children's Health Insurance Program Agencies;''.

Dated: April 12, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–08221 Filed 4–15–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1775–N]

Medicare Program; Public Meeting on June 23, 2022 Regarding New and Reconsidered Clinical Diagnostic Laboratory Test Codes for the Clinical Laboratory Fee Schedule for Calendar Year 2023

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces a public meeting to receive comments and recommendations (including data on which recommendations are based) on the appropriate basis for establishing payment amounts for new or substantially revised Healthcare Common Procedure Coding System codes being considered for Medicare payment under the Clinical Laboratory Fee Schedule (CLFS) for calendar year (CY) 2023. This meeting also provides a forum for those who submitted certain reconsideration requests regarding final determinations made last year on new test codes and for the public to provide comment on the requests.

DATES:

CLFS Annual Public Meeting Date: The virtual meeting is scheduled for Thursday, June 23, 2022 from 9:00 a.m. to 5:00 p.m., E.D.T.

Deadline for Submission of Presentations and Written Comments: All presenters for the CLFS Annual Public Meeting must register and submit their presentations electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov,* by June 2, 2022 at 5:00 p.m., E.D.T. All written comments (non-presenter comments) must also be submitted electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov,* by June 2, 2022, at 5:00 p.m., E.D.T. Any presentations or written comments received after that date and time will not be included in the meeting and will not be reviewed.

Deadline for Submitting Requests for Special Accommodations: Requests for special accommodations must be received no later than June 2, 2022 at 5:00 p.m. E.D.T.

Publication of Proposed Determinations: We intend to publish our proposed determinations for new test codes and our proposed determinations for reconsidered codes (as described later in section II ''Format'' of this notice) for CY 2023 by early September 2022.

Deadline for Submission of Written Comments Related to Proposed Determinations: Comments in response to the proposed determinations for new and reconsidered codes will be due by early October 2022.

ADDRESSES: Due to the current COVID–19 public health emergency, the CLFS Annual Public Meeting will be held virtually and will not occur at the campus of the Centers for Medicare & Medicaid Services (CMS), Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Where to Submit Written Comments: Interested parties should submit all written comments on presentations and proposed determinations electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* (the specific date for the publication of these determinations and the deadline for submitting comments regarding these determinations will be published on the CMS website).

FOR FURTHER INFORMATION CONTACT: Rasheeda Arthur, Ph.D., (410) 786–3434. Submit all inquiries to the CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* with the

subject entitled ''CLFS Annual Public Meeting Inquiry.''

SUPPLEMENTARY INFORMATION:

I. Background

Section 531(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554) required the Secretary of the Department of Health and Human Services (the Secretary) to establish procedures for coding and payment determinations for new clinical diagnostic laboratory tests under Part B of title XVIII of the Social Security Act (the Act) that permit public consultation in a manner consistent with the procedures established for implementing coding modifications for International Classification of Diseases, Tenth Revision, Clinical Modification (ICD–10–CM). The procedures and Clinical Laboratory Fee Schedule (CLFS) public meeting announced in this notice for new tests are in accordance with the procedures published on November 23, 2001 in the **Federal Register** (66 FR 58743) to implement section 531(b) of BIPA.

Section 942(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) added section 1833(h)(8) of the Act. Section 1833(h)(8)(A) of the Act requires the Secretary to establish by regulation procedures for determining the basis for, and amount of, payment for any clinical diagnostic laboratory test (CDLT) for which a new or substantially revised Healthcare Common Procedure Coding System (HCPCS) code is assigned on or after January 1, 2005. A code is considered to be substantially revised if there is a substantive change to the definition of the test or procedure to which the code applies (for example, a new analyte or a new methodology for measuring an existing analyte-specific test). (See section 1833(h)(8)(E)(ii) of the Act and 42 CFR 414.502).

Section 1833(h)(8)(B) of the Act sets forth the process for determining the basis for, and the amount of, payment for new tests. Pertinent to this notice, sections 1833(h)(8)(B)(i) and (ii) of the Act require the Secretary to make available to the public a list that includes any such test for which establishment of a payment amount is being considered for a year and, on the same day that the list is made available, cause to have published in the **Federal Register** notice of a meeting to receive comments and recommendations (including data on which recommendations are based) from the public on the appropriate basis for establishing payment amounts for the tests on such list. This list of codes for which the establishment of a payment amount under the CLFS is being considered for Calendar Year (CY) 2023 will be posted on the Centers for Medicare & Medicaid Services (CMS) website concurrent with the publication of this notice and may be updated prior to the CLFS Annual Public Meeting. The CLFS Annual Public Meeting list of codes can be found on the CMS website at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/.* Section 1833(h)(8)(B)(iii) of the Act requires that we convene the public meeting not less than 30 days after publication of the notice in the **Federal Register**. The CLFS requirements regarding public consultation are codified at 42 CFR 414.506.

Two bases of payment are used to establish payment amounts for new CDLTs. The first basis, called ''crosswalking,'' is used when a new CDLT is determined to be comparable to an existing test, multiple existing test codes, or a portion of an existing test code. New CDLTs that were assigned new or substantially revised codes prior to January 1, 2018, are subject to provisions set forth under § 414.508(a). For a new CDLT that is assigned a new or significantly revised code on or after January 1, 2018, CMS assigns to the new CDLT code the payment amount established under § 414.507 of the comparable existing CDLT. Payment for the new CDLT code is made at the payment amount established under § 414.507. (See § 414.508(b)(1)).

The second basis, called ''gapfilling,'' is used when no comparable existing CDLT is available. When using this method, instructions are provided to each Medicare Administrative Contractor (MAC) to determine a payment amount for its Part B geographic area for use in the first year. In the first year, for a new CDLT that is assigned a new or substantially revised code on or after January 1, 2018, the MAC-specific amounts are established using the following sources of information, if available: (1) Charges for the test and routine discounts to charges; (2) resources required to perform the test; (3) payment amounts determined by other payers; (4) charges, payment amounts, and resources required for other tests that may be comparable or otherwise relevant; and (5) other criteria CMS determines appropriate. In the second year, the test code is paid at the median of the MAC-specific amounts. (See § 414.508(b)(2)).

Under section 1833(h)(8)(B)(iv) of the Act and § 414.506(d)(1) CMS, taking into account the comments and recommendations (and accompanying data) received at the CLFS Annual Public Meeting, develops and makes available to the public a list of proposed determinations with respect to the appropriate basis for establishing a payment amount for each code, an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on the proposed determinations. Under section 1833(h)(8)(B)(v) of the Act and § 414.506(d)(2), taking into account the comments received on the proposed determinations during the public comment period, CMS then develops and makes available to the public a list of final determinations of payment amounts for tests along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public.

Section 216(a) of the Protecting Access to Medicare Act of 2014 (PAMA) (Pub. L. 113–93) added section 1834A to the Act. The statute requires extensive revisions to the Medicare payment, coding, and coverage requirements for CDLTs. Pertinent to this notice, Section 1834A(c)(3) of the Act requires the Secretary to consider recommendations from the expert outside advisory panel established under section 1834A(f)(1) of the Act when determining payment using crosswalking or gapfilling processes. In addition, section 1834A(c)(4) of the Act requires the Secretary to make available to the public an explanation of the payment rates for the new test codes, including an explanation of how the gapfilling criteria and panel recommendations are applied. These requirements are codified in § 414.506(d) and (e).

After the final determinations have been posted on the CMS website, the public may request reconsideration of the basis and amount of payment for a new CDLT as set forth in § 414.509. Pertinent to this notice, those requesting that we reconsider the basis for payment or the payment amount as set forth in § 414.509(a) and (b), may present their reconsideration requests at the following year's CLFS Annual Public Meeting provided the requestor made the request to present at the CLFS Annual Public Meeting in the written reconsideration request. For purposes of this notice, we refer to these codes as the ''reconsidered codes.'' The public may comment on the reconsideration requests. (See the CY 2008 Physician Fee Schedule final rule with comment period published in the **Federal Register** on November 27, 2007 (72 FR

66275 through 66280) for more information on these procedures).

II. Format

We are following our usual process, including an annual public meeting to determine the appropriate basis and payment amount for new and reconsidered codes under the CLFS for CY 2023. However, due to the COVID–19 public health emergency, the public meeting will be conducted virtually and will not occur on-site at the CMS Central Building.

This meeting is still open to the public. Registration is only required for those interested in presenting public comments during the meeting. During the virtual meeting, registered persons from the public may discuss and make recommendations for specific new and reconsidered codes for the CY 2023 CLFS.

The Medicare Advisory Panel on Clinical Diagnostic Laboratory Tests (Advisory Panel on CDLTs) will participate in this CLFS Annual Public Meeting by gathering information and asking questions to presenters, and will hold its next public meeting, virtually on July 18, 2022 and July 19, 2022. The public meeting for the Advisory Panel on CDLTs will focus on the discussion of and recommendations for test codes presented during the June 23, 2022 CLFS Annual Public Meeting. The Panel meeting also will address any other CY 2023 CLFS issues that are designated in the Panel's charter and specified on the meeting agenda. The announcement for the next meeting of the Advisory Panel on CDLTs is included in a separate notice published elsewhere in this issue of the **Federal Register**.

Due to time constraints, presentations must be brief, lasting no longer than 10 minutes. Written presentations must be electronically submitted to CMS on or before June 2, 2022. Presentation slots are typically assigned based upon chronological order of receipt of presentation materials. In the event there is not enough time for presentations by everyone who is interested in presenting, we will only accept written presentations from those who submitted written presentations within the submission window and were unable to present due to time constraints. Presentations should be sent via email to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov.* In addition, individuals may also submit requests after the CLFS Annual Public Meeting to obtain electronic versions of the presentations. Requests for electronic copies of the presentations after the public meeting should be sent via email to our CLFS dedicated email box, noted above.

Presenters should submit all presentations using a standard PowerPoint template that is available on the CMS website, at *https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/Laboratory_Public_Meetings.html,* under the ''Meeting Notice and Agenda'' heading.

For reconsidered and new codes, presenters should address all of the following five items:

(1) Reconsidered or new code(s) with the most current code descriptor.

(2) Test purpose and method with a brief comment on how the new test is different from other similar analyte or methodologies found in tests already on the CLFS.

(3) Test costs.

(4) Charges.

(5) Recommendation with rationale for one of the two bases (crosswalking or gapfilling) for determining payment for reconsidered and new tests.

In addition, presenters should provide the data on which their recommendations are based. Presentations regarding reconsidered and new test codes that do not address the above five items for presenters may be considered incomplete and may not be considered by CMS when making a determination. However, we may request missing information following the meeting to prevent a recommendation from being considered incomplete.

Taking into account the comments and recommendations (and accompanying data) received at the CLFS Annual Public Meeting, we intend to post our proposed determinations with respect to the appropriate basis for establishing a payment amount for each new test code and our proposed determinations with respect to the reconsidered codes along with an explanation of the reasons for each determination, the data on which the determinations are based, and a request for public written comments on these determinations on our website by early September 2022. This website can be accessed at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/.* Interested parties may submit written comments on the proposed determinations for new and reconsidered codes by early October 2022, electronically to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov* (the specific date for the publication of the determinations on the CMS website, as well as the deadline for submitting comments regarding the determinations, will be published on the CMS website). Final determinations for new test codes to be included for payment on the CLFS for CY 2023 and reconsidered codes will be posted our website in November 2022, along with the rationale for each determination, the data on which the determinations are based, and responses to comments and suggestions received from the public. The final determinations with respect to reconsidered codes are not subject to further reconsideration. With respect to the final determinations for new test codes, the public may request reconsideration of the basis and amount of payment as set forth in § 414.509.

III. Registration Instructions

The Division of Ambulatory Services in the CMS Center for Medicare is coordinating the CLFS Annual Public Meeting registration. Beginning May 2, 2022 and ending June 2, 2022, registration may be completed by presenters only. Individuals who intend to view and/or listen to the meeting do not need to register. Presenter registration may be completed by sending an email to our CLFS dedicated email box, *CLFS_Annual_Public_Meeting@cms.hhs.gov.* The subject of the email should state ''Presenter Registration for CY 2023 CLFS Annual Laboratory Meeting.'' All of the following information must be submitted when registering:

- Speaker name.
- Organization or company name.
- Telephone numbers.
- Email address that will be used by the presenter in order to connect to the virtual meeting.
- New or Reconsidered Code (s) for which presentation is being submitted.
- Presentation.

Registration details may not be revised once they are submitted. If registration details require changes, a new registration entry must be submitted by the date specified in the **DATES** section of this notice. Also, registration information must reflect individual-level content and not reflect an organization entry. In addition, each individual may only register one person at a time. That is, one individual may not register multiple individuals at the same time.

After registering, a confirmation email will be sent upon receipt of the registration. The email will provide information to the presenter in preparation for the meeting. Registration is only required for individuals giving a presentation during the meeting. Presenters must register by the deadline

specified in the **DATES** section of this notice.

If you are not presenting during the CLFS Annual Public Meeting, you may view the meeting via webinar or listen-only by teleconference. If you would like to listen to or view the meeting, teleconference dial-in and webinar information will appear on the final CLFS Annual Public Meeting agenda, which will be posted on the CMS website when available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ClinicalLabFeeSched/index.html?redirect=/ClinicalLabFeeSched/.*

IV. Special Accommodations

Individuals viewing or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the resource box (*CDLT_Annual_Public_Meeting@cms.hhs.gov*). The deadline for submitting this request is listed in the **DATES** section of this notice.

V. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: April 13, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–08259 Filed 4–15–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0049]

Revocation of Five Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to BillionToOne, Inc. for the qSanger-COVID–19 Assay, RTA Laboratories Biological Products Pharmaceutical and Machinery Industry (RTA) for the Diagnovital SARS–CoV–2 Real-Time PCR Kit, DiaSorin Inc. for the DiaSorin LIAISON SARS–CoV–2 IgM Assay, and CENTOGENE US, LLC for both the CentoFast-SARS–CoV–2 RT–PCR Assay and CentoSure SARS–CoV–2 RT–PCR Assay. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorization for the qSanger-COVID–19 Assay is revoked as of March 10, 2022. The Authorization for the Diagnovital SARS–CoV–2 Real-Time PCR Kit is revoked as of March 14, 2022. The Authorization for the DiaSorin LIAISON SARS–CoV–2 IgM Assay is revoked as of March 15, 2022. The Authorizations for the CentoFast-SARS–CoV–2 RT–PCR Assay and CentoSure SARS–CoV–2 RT–PCR Assay are revoked as of March 17, 2022.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On September 4, 2020, FDA issued an EUA to BillionToOne, Inc. for the qSanger-COVID–19 Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On June 12, 2020, FDA issued an EUA to RTA for the Diagnovital SARS–CoV–2 Real-Time PCR Kit, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On September 29, 2020, FDA issued an EUA to DiaSorin Inc. for the DiaSorin LIAISON SARS–CoV–2 IgM Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21749), as required by section 564(h)(1) of the FD&C Act. On July 1, 2020, FDA issued an EUA to CENTOGENE US, LLC for the CentoFast-SARS–CoV–2 RT–PCR Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On September 29, 2020, FDA issued an EUA to CENTOGENE US, LLC for the CentoSure SARS–CoV–2 RT–PCR Assay, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on April 23, 2021 (86 FR 21749), as required by section 564(h)(1) of the FD&C Act. Subsequent changes to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the

FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Requests

On February 25, 2022, BillionToOne, Inc. requested revocation of, and on March 10, 2022, FDA revoked, the Authorization for the qSanger-COVID–19 Assay. Because BillionToOne, Inc. notified FDA that it has decided to discontinue distribution of the qSanger-COVID–19 Assay and requested FDA revoke the EUA for the qSanger-COVID–19 Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization. FDA received a request dated February 15, 2022, from RTA for the revocation of, and on March 14, 2022, FDA revoked, the Authorization for the Diagnovital SARS–CoV–2 Real-Time PCR Kit. Because RTA notified FDA that the EUA for the Diagnovital SARS–CoV–2 Real-Time PCR Kit is no longer required and requested that FDA revoke the EUA for the Diagnovital SARS–CoV–2 Real-Time PCR Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization. On March 10, 2022, FDA received a request from DiaSorin Inc. for the revocation of, and on March 15, 2022, FDA revoked, the Authorization for the DiaSorin LIAISON SARS–CoV–2 IgM Assay. Because DiaSorin Inc. notified FDA that DiaSorin Inc. has decided to discontinue commercial distribution and support of the DiaSorin LIAISON SARS–CoV–2 IgM Assay and requested FDA revoke the EUA for the DiaSorin LIAISON SARS–CoV–2 IgM Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization. On March 14, 2022, FDA received a request from CENTOGENE US, LLC. for the revocation of, and on March 17, 2022, FDA revoked, the Authorization for the CentoFast-SARS–CoV–2 RT–PCR Assay. Because CENTOGENE US, LLC. notified FDA that it does not offer the CentoFast-SARS–CoV–2 RT–PCR Assay anymore and requested FDA revoke the EUA for the CentoFast-SARS–CoV–2 RT–PCR Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization. On March 14, 2022, FDA received a request from CENTOGENE US, LLC. for the revocation of, and on March 17, 2022, FDA revoked, the Authorization for the CentoSure SARS–CoV–2 RT–PCR Assay. Because CENTOGENE US, LLC. notified FDA that it does not offer the CentoSure SARS–CoV–2 RT–PCR Assay anymore and requested FDA revoke the EUA for the CentoSure SARS–CoV–2 RT–PCR Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/.*

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUAs for BillionToOne, Inc.'s qSanger–COVID–19 Assay, RTA's Diagnovital SARS–CoV–2 Real-Time PCR Kit, DiaSorin Inc.'s DiaSorin LIAISON SARS–CoV–2 IgM Assay, and CENTOGENE US, LLC's CentoFast–SARS–CoV–2 RT–PCR Assay and CentoSure SARS–CoV–2 RT–PCR Assay. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

March 10, 2022

Anna Rolda, MS
Sr. Manager, Quality & Regulatory Affairs
BillionToOne, Inc.
1035 O'Brien Drive
Menlo Park, CA 94025
Re: Revocation of EUA201022

Dear Ms. Rolda:

This letter is in response to the request from BillionToOne, Inc., received via email on February 25, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the qSanger-COVID-19 Assay issued on September 4, 2020, and amended on June 23, 2021, and September 23, 2021. BillionToOne, Inc. indicated that it has decided to discontinue distribution of the qSanger-COVID-19 Assay and there is not any viable/non-expired product remaining in distribution.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because BillionToOne, Inc. has notified FDA that it has decided to discontinue distribution of the qSanger-COVID-19 Assay and requested FDA revoke the EUA for the qSanger-COVID-19 Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA201022 for the qSanger-COVID-19 Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the qSanger-COVID-19 Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

March 14, 2022

Ilknur Cetin
Quality Assurance Manager
RTA Laboratories Biological Products Pharmaceutical and Machinery Industry (RTA Laboratuvarlari Biyolojik Urunler Ilac ve Makine San)
76 TW Alexander Drive
Research Triangle Park, NC 27709

Re: Revocation of EUA200486

Dear Ilknur Cetin,

This letter is in response to RTA Laboratories Biological Products Pharmaceutical and Machinery Industry's (RTA's) request dated February 15, 2022, that the U.S. Food and Drug Administration (FDA) revoke the Emergency Use Authorization (EUA200486) for the Diagnovital SARS-CoV-2 Real-Time PCR Kit issued on June 12, 2020 and revised on September 23, 2021. In its February 15, 2022, letter, RTA requested revocation of the EUA effective February 15, 2022, as the product will no longer be distributed or used by that date. FDA understands that RTA has decided not to continue to commercially support the Diagnovital SARS-CoV-2 Real-Time PCR Kit.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because RTA has notified FDA that the EUA for the Diagnovital SARS-CoV-2 Real-Time PCR Kit is no longer required and requested that FDA revoke the EUA for the Diagnovital SARS-CoV-2 Real-Time PCR Kit, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200486 for the Diagnovital SARS-CoV-2 Real-Time PCR Kit, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Diagnovital SARS-CoV-2 Real-Time PCR Kit is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

March 15, 2022

Mari Meyer
DiaSorin Inc.
1951 Northwestern Avenue
Stillwater, MN 55082-0285

Re: Revocation of EUA202004

Dear Mari Meyer:

This letter is in response to a request from DiaSorin Inc., received March 10, 2022, that the U.S. Food and Drug Administration (FDA) revoke the DiaSorin LIAISON SARS-CoV-2 IgM Assay–EUA202004 issued on September 29, 2020, and revised September 23, 2021. DiaSorin Inc. has decided to discontinue commercial distribution and support of the DiaSorin LIAISON SARS-CoV-2 IgM Assay and there is not any viable/non-expired product remaining in distribution.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because DiaSorin Inc. has notified FDA that DiaSorin Inc. has decided to discontinue commercial distribution and support of the DiaSorin LIAISON SARS-CoV-2 IgM Assay and requested FDA revoke the EUA for the DiaSorin LIAISON SARS-CoV-2 IgM Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202004 for the DiaSorin LIAISON SARS-CoV-2 IgM Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the DiaSorin LIAISON SARS-CoV-2 IgM Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

March 17, 2022

Dr. Florian Vogel
Chief Process Officer
CENTOGENE GmbH
Am Strande 7
18055 Rostock
Germany

Re: Revocation of EUA201018

Dear Dr. Vogel:

This letter is in response to the request from CENTOGENE US, LLC. ("Centogene"), received on March 14, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the CentoFast-SARS-CoV-2 RT-PCR Assay issued on July 1, 2020, and amended on August 13, 2021, and September 23, 2021. Centogene indicated that it does not offer this test anymore. FDA understands Centogene has notified all associated laboratories to also stop using this test.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Centogene has notified FDA that it does not offer the CentoFast-SARS-CoV-2 RT-PCR Assay anymore and requested FDA revoke the EUA for the CentoFast-SARS-CoV-2 RT-PCR Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA201018 for the CentoFast-SARS-CoV-2 RT-PCR Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the CentoFast-SARS-CoV-2 RT-PCR Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Cc: Justin Bingham, CENTOGENE US, LLC.

U.S. FOOD & DRUG ADMINISTRATION

March 17, 2022

Dr. Florian Vogel
Chief Process Officer
CENTOGENE GmbH
Am Strande 7
18055 Rostock
Germany

Re: Revocation of EUA202546

Dear Dr. Vogel:

This letter is in response to the request from CENTOGENE US, LLC. ("Centogene"), received on March 14, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the CentoSure SARS-CoV-2 RT-PCR Assay issued on September 29, 2020, and amended on August 13, 2021, and September 23, 2021. Centogene indicated that it does not offer this test anymore. FDA understands Centogene and has notified associated laboratories to also stop using this test.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Centogene has notified FDA that it does not offer the CentoSure SARS-CoV-2 RT-PCR Assay anymore and requested FDA revoke the EUA for the CentoSure SARS-CoV-2 RT-PCR Assay, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA202546 for the CentoSure SARS-CoV-2 RT-PCR Assay, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the CentoSure SARS-CoV-2 RT-PCR Assay is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Cc: Justin Bingham, CENTOGENE US, LLC.

Dated: April 12, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08230 Filed 4–15–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–0430]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Quick Turnaround Testing of Communication Effectiveness

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. 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 of an existing collection of information, and

to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection entitled ''Generic Clearance for Quick Turnaround Testing of Communication Effectiveness.''

DATES: Submit either electronic or written comments on the collection of information by June 17, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before June 17, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 17, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–N–0430 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Quick Turnaround Testing of Communication Effectiveness.'' 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 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''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 provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for Quick Turnaround Testing of Communication Effectiveness

OMB Control Number 0910–0876—Extension

The FDA Food Safety Modernization Act (FSMA) (Pub. L. 111–353) enables FDA to better protect public health by helping to ensure the safety and security of the food supply. It enables FDA to focus more on preventing food safety problems rather than relying primarily on reacting to problems after they occur. FSMA recognizes the important role consumers and stakeholders play in ensuring the safety of the food supply,

which helps ensure that suppliers produce food that meets U.S. safety standards.

Occasionally, FDA will need to communicate with consumers and other stakeholders about immediate health issues which could affect public health and safety. This collection of information allows the use of fast-track methods of communication such as quick turnaround surveys, focus groups, and in-depth interviews collected from consumers and other stakeholders to communicate FDA issues of immediate and important public health significance. We plan on using these methods of communication to collect vital public health and safety information.

For example, these methods of communication might be used when there is a foodborne illness outbreak, food recall, or other situation requiring expedited FDA food, dietary supplement, cosmetics, or animal food or feed communications. So that FDA may better protect the public health, the Agency needs quick turnaround information provided by this collection of information to help ensure its messaging has reached the target audience, has been effective, and, if needed, to update its communications during these events.

Respondents to this collection of information include a wide range of consumers and other FDA stakeholders such as producers and manufacturers of FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed. Participation will be voluntary.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Survey type	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
In-depth Interviews, Cognitive Interviews Screener	45	1	45	0.083 (5 minutes)	4
In-depth Interviews, Cognitive Interviews	9	1	9	1	9
In-depth Interviews Screener	900	1	900	0.083 (5 minutes)	75
In-depth Interviews	180	1	180	1	180
Survey Cognitive Interviews Screener	45	1	45	0.083 (5 minutes)	4
Survey Cognitive Interviews	9	1	9	1	9
Pretest survey screener	750	1	750	0.083 (5 minutes)	62
Pretest survey	150	1	150	0.25 (15 minutes)	38
Self-Administered Surveys—Study Screener	75,000	1	75,000	0.083 (5 minutes)	6,225
Self-Administered Surveys	15,000	1	15,000	0.25 (15 minutes)	3,750
Focus Group/Small Group, Cognitive Groups Screener.	180	1	180	0.083 (5 minutes)	15
Focus Group/Small Group, Cognitive Groups	60	1	60	1.5 (90 minutes)	90
Focus Group/Small Group Participant Screening	720	1	720	0.083 (5 minutes)	60
Focus Group/Small Group Discussion	240	1	240	1.5 (90 minutes)	360
Total					10,881

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: April 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–08189 Filed 4–15–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Ending the HIV/HCV Epidemics in Indian Country: A Program for American Indian/Alaska Native Tribes and Urban Indian Communities

Announcement Type: New.

Funding Announcement Number: HHS–2022–IHS–ETHIC–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.933.

Key Dates

Application Deadline Date: June 17, 2022.

Earliest Anticipated Start Date: August 1, 2022.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for a cooperative agreement for the Ending the Human Immunodeficiency Virus (HIV) and Hepatitis C Virus (HCV) Epidemics in Indian Country (ETHIC) program. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 1621q, 1660e. This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.933.

Background

In February 2019, the White House announced a new initiative, Ending the HIV Epidemic in the U.S. (EHE). This 10-year initiative beginning with fiscal year (FY) 2020, seeks to achieve the critical goal of reducing new HIV infections in the United States (U.S.) to less than 3,000 per year by 2030. The first phase of the initiative focuses on 48 counties, Washington, DC, San Juan, Puerto Rico, and seven states with a substantial rural HIV burden. By focusing on these geographic focus areas (see *https://files.hiv.gov/s3fs-public/Ending-the-HIV-Epidemic-Counties-and-Territories.pdf*) in the first phase of the initiative, the U.S. Department of Health and Human Services (HHS) plans to reduce new HIV infections by 75 percent within five years. To reduce new HIV infections in the U.S. by 75 percent by 2025 and 90 percent by 2030, EHE focuses on four key strategies that together can end the HIV epidemic in the U.S.: Diagnose, Treat, Prevent, and Respond. In this cooperative agreement, the IHS directs applicants to implement activities specific to strategies one, two, and three: Diagnose, Treat, and Prevent.

EHE is a collaboration of HHS agencies, primarily the Health Resources and Services Administration, the Centers for Disease Control and

Prevention (CDC), the National Institutes of Health, the IHS, and the Substance Abuse and Mental Health Services Administration. HHS recently released two national strategic plans, and the IHS expects applicants to adopt these plans as they design and carry out activities toward HIV and HCV elimination: (1) The HIV National Strategic Plan: A Roadmap to End the Epidemic in the United States (2022–2025);[1] and (2) The Viral Hepatitis National Strategic Plan for the U.S.: A Roadmap to Elimination 2021–2025.[2]

The HIV National Strategic Plan (2021–2025) is a 5-year plan that details principles, priorities, and actions to guide the national response to the HIV epidemic. The IHS promotes robust advances and innovations in HIV health care using the HIV National Strategic Plan to end the epidemic as its framework. Therefore, to the extent possible, activities funded by the IHS focus on addressing these four goals:

(1) Reduce new HIV infections;

(2) Increase access to care and improve health outcomes for people with HIV;

(3) Reduce HIV-related health disparities and health inequities;

(4) Achieve a more coordinated national response.

To achieve these shared goals, recipients should align their organization's efforts to ensure that people with HIV are linked to and retained in high-quality HIV care and have timely access to HIV treatment and the supports needed (*e.g.,* mental health and substance use disorders services) to achieve HIV viral suppression.

The Viral Hepatitis National Strategic Plan for the U.S.: A Roadmap to Elimination 2021–2025, released on January 7, 2021, is a new phase in the fight against viral hepatitis in the U.S. Building on three prior National Viral Hepatitis Action Plans over the last 10 years, the Viral Hepatitis National Strategic Plan is the first to aim to eliminate viral hepatitis as a public health threat in the U.S.

The Viral Hepatitis Plan sets forth a clear vision for how the U.S. will be a place where new viral hepatitis infections are prevented, every person knows their status, and every person with viral hepatitis has high-quality health care and treatment and lives free from stigma and discrimination. Both the HIV and viral hepatitis national strategic plans include AI/AN people in their priority populations.

In addition, for resources specific to AI/AN communities, the Northwest Portland Area Indian Health Board, with funding from the IHS and the Minority HIV/AIDS Fund, designed a document to help AI/AN health advocates, decision makers, and medical providers address the HCV epidemic in their communities through programmatic and policy changes. IHS encourages applicants to review the Hepatitis C Elimination Strategy for AI/AN Communities[3] document's objectives which describes the rationale and program design, and provides a tool kit for implementing an HCV micro-elimination program in an AI/AN community—Tribal or IHS clinic, hospital, or health system.

A 2019 CDC analysis[4] shows that the vast majority (about 80 percent) of new HIV infections in the U.S. in 2016 came from the nearly 40 percent of people who either did not know they had HIV or who received a diagnosis but were not receiving HIV care and treatment. This highlights the need to increase the proportion of people with HIV or HCV who are aware of their status and help them get into care and treatment.

Diagnosing AI/AN people with HIV or HCV, linking those with HIV or HCV to primary care, and achieving viral suppression are necessary public health steps toward ending the HIV and HCV epidemics in Indian Country. The HIV/HCV care continuum has five main ''steps'' or stages that include (1) diagnosis, (2) linkage to care, (3) retention in care, (4) adherence to therapy (ART), and (5) viral suppression (HIV)/viral clearance (HCV). The care continuum depicts a series of stages in which people with HIV or HCV engage in care from initial diagnosis through their successful treatment with medication. It also demonstrates the proportion of individuals living with HIV or HCV who are engaged at each stage. The care continuum allows recipients and planning groups to measure progress and direct resources most effectively. For this funding opportunity, the IHS requires applicants to address, implement, and measure the HIV and HCV continuum of care. For example, applicants should be prepared to collect data on the number of new diagnosis of HIV, numbers of positive cases linked to care, how many of those linked to care are retained in care and adhering to therapy, and the number of those achieving an undetectable viral load.

Federal health care facilities in an administrative area of the IHS conducted a review to identify and address gaps in HCV treatment. Facilities generally treated HCV with a strong pharmacy component using a collaborative practice agreement and HCV telehealth services to external specialists. These data indicate that: (1) Rural clinics can be successful providing HCV diagnosis and treatment; (2) pharmacists can play a key role in HCV clinical services; (3) the outcomes of each step in the treatment process at the facility level can vary widely due to local factors; and (4) the barriers to HCV care that persist are nonclinical.[5] In a study published in The Journal of the American Medical Association,[6] the Cherokee Nation Health Services HCV elimination program demonstrated that implementation of a community-based HCV elimination program was associated with an improved cascade of care. In this cohort study, first-time HCV screening coverage increased from 20.9 percent to 38.2 percent from 3 years before to 22 months into implementation.[7] This information may serve other organizations planning to implement similar programs in large rural areas.

[1] *https://hivgov-prod-v3.s3.amazonaws.com/s3fs-public/NHAS-2022-2025.pdf* Accessed 3/11/2022

[2] *https://www.hhs.gov/sites/default/files/Viral-Hepatitis-National-Strategic-Plan-2021-2025.pdf* Accessed 3/11/2022.

[3] *https://www.npaihb.org/wp-content/uploads/2020/08/HCV-Elimination-Strategy-for-AIAN-Communities.pdf* Accessed 3/11/2022.

[4] *http://www.cdc.gov/nchhstp/newsroom/2019/hiv-vital-signs.html.*

[5] A Regional Analysis of Hepatitis C Virus Collaborative Care With Pharmacists in Indian Health Service Facilities *https://journals.sagepub.com/doi/full/10.1177/2150132718807520.*

[6] Evaluation of the Cherokee Nation Hepatitis C Virus Elimination Program in the First 22 Months of Implementation, Mera, Williams, Essex; et al *https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2774323.*

[7] Evaluation of the Cherokee Nation Hepatitis C Virus Elimination Program in the First 22 Months of Implementation, Mera, Williams, Essex; et al *https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2774323.*

For nearly four decades, the national investments in HIV have shown remarkable results in preventing new infections, improving health outcomes, and reducing deaths in hundreds of thousands of Americans. Despite this, progress has plateaued, and additional effort is needed to ensure that all affected groups benefit equally. Some groups, like AI/AN people, African American and Latino gay and bisexual men, transgender individuals, or people living in the South, have a higher burden of HIV and experience health disparities at each stage of the HIV care continuum. Southern states today account for an estimated 44 percent of all people living with an HIV diagnosis in the U.S.,[8] despite having only about one-third (37 percent) of the overall U.S. population.[9] Diagnosis rates for people in the South are higher than for Americans overall. Eight of the ten states and all ten metropolitan statistical areas with the highest rates of new HIV diagnoses are in the South. In addition to the severe burden in the South, nationally there is a high incidence of HIV among transgender individuals, high-risk heterosexuals, and persons who inject drugs.[10]

The U.S. has an unprecedented opportunity to end the HIV and HCV epidemics in America. We have access to the most powerful HIV and HCV prevention and treatment tools in history and new technology that allows us to pinpoint where infections are spreading most rapidly. By effectively equipping all vulnerable AI/AN communities with these tools, we can end the HIV and HCV epidemics in Indian Country. This ETHIC funding opportunity acts boldly on this unprecedented opportunity by providing the hardest-hit AI/AN communities with resources to implement the additional expertise, technology, and resources required to address the HIV and HCV epidemics in their communities.

HHS recently developed a set of critical health priorities for the nation known as ''Leading Health Indicators'' [11] (or LHIs) that are a call to action in critical public health areas. The IHS will use the LHIs to assess the health of the AI/AN population over the next decade, to facilitate collaboration among diverse groups, and to motivate individuals and communities to take action to improve their health. The following LHIs also will be used by the IHS and public health professionals to track progress in local AI/AN communities as they work toward meeting these key national health goals:

(1) Diagnose 95 percent of persons living with HIV or HCV who are aware of their status by 2025, working from a baseline of 85.8 percent in 2016.

(2) Treat 95 percent of persons via linkage to appropriate care within one month of diagnosis by 2025, working from a baseline of 78.3 percent in 2017.

(3) Treat 95 percent of persons diagnosed with HIV or HCV via sufficient viral suppression/viral clearance by 2025, working from a baseline of 61.5 percent in 2016.

(4) Prevent new HIV infections by achieving 25 percent pre-exposure prophylaxis (PrEP) coverage among those for whom PrEP was indicated by 2025.

There are notable concerns in new HIV diagnoses in AI/AN populations: (1) New HIV diagnoses among AI/AN populations increased by 18 percent from 2015 to 2019; (2) rates of new HIV diagnoses among AI/AN adolescents increased by 53 percent; and (3) both male and female AI/AN individuals had the highest percent of estimated diagnoses of HIV infection attributed to injection drug use.[12] Mortality data also found that AI/AN individuals have significantly higher death rates from HIV/AIDS than whites, which could be attributable to later diagnosis, lack of linkage to care, difficulty accessing care, challenges to treatment adherence, or other factors or combination of factors.

HCV is a common co-morbidity for bloodborne HIV infections. In 2009, approximately 21 percent of HIV-infected adults who were tested for past or present HCV infection tested positive, although co-infection prevalence varies substantially according to HIV-infected risk group (*e.g.,* men who have sex with men (MSM), high-risk heterosexuals, and persons who inject drugs).[13] [14] [15] As HCV is a bloodborne virus, primarily transmitted through direct contact with the blood of an infected person, coinfection with HIV and HCV is common among HIV-infected injection-drug users.[16] [17] [18] Although transmission via injection drug use remains the most common mode of HCV acquisition in the U.S., sexual transmission is an important mode of acquisition among certain groups, including HIV-infected MSM with certain risk factors.[19] Data have shown that HCV disproportionately affects AI/AN people, with HCV-related mortality more than double the national rate.[20] In a recent IHS survey, almost 50 percent of the AI/AN individuals diagnosed with HCV were born after 1965 and were younger than the targeted birth cohort for HCV screening campaigns (1945–1965, 'Baby Boomers'). Untreated HCV can lead to a myriad of extrahepatic manifestations and cirrhosis with complications such as portal hypertension, end stage liver disease, and hepatocellular carcinoma (HCC). Early diagnosis and treatment of HCV infection prevents the development of extrahepatic manifestations and progressive liver disease including cirrhosis. Recently developed treatments for HCV are more accessible and highly effective at greatly reducing HCV- and HCC-related

[8] Centers for Disease Control and Prevention. *HIV Surveillance Report, 2019;* vol.32. *http://www.cdc.gov/hiv/library/reports/hiv-surveillance.html.* Published May 2021.

[9] U.S. Census Bureau. Annual Estimates of the Resident Population: 2010–2020. Available at *https://www.census.gov/programs-surveys/popest/technical-documentation/research/evaluation-estimates/2020-evaluation-estimates/2010s-totals-national.html.*

[10] Department of Health and Human Services, Centers for Disease Control and Prevention. HIV in the U.S. and dependent areas *https://www.cdc.gov/hiv/statistics/overview/ataglance.html.* Updated January 29, 2019. Accessed February 5, 2019.

[11] *https://health.gov/healthypeople/objectives-and-data/leading-health-indicators* Accessed 3/11/2020.

[12] Centers for Disease Control and Prevention. *HIV Surveillance Report, 2019;* vol.32. *http://www.cdc.gov/hiv/library/reports/hiv-surveillance.html.* Published May 2021.

[13] Garg S, Brooks J, Luo Q, Skarbinski J. Prevalence of and Factors Associated with Hepatitis C Virus (HCV) Testing and Infection Among HIV-infected Adults Receiving Medical Care in the U.S. Infectious Disease Society of America (IDSA). Philadelphia, PA, 2014.

[14] Yehia BR, Herati RS, Fleishman JA, Gallant JE, Agwu AL, Berry SA, et al. Hepatitis C virus testing in adults living with HIV: A need for improved screening efforts. PLoS ONE 2014;9(7):e102766. *https://pubmed.ncbi.nlm.nih.gov/25032989/.*

[15] Spradling PR, Richardson JT, Buchacz K. Trends in hepatitis C virus infection among patients in the HIV Outpatient Study, 1996–2007. J Acquir Immune Defic Syndr 2010;53:388–396.

[16] Yehia BR, Herati RS, Fleishman JA, Gallant JE, Agwu AL, Berry SA, et al. Hepatitis C virus testing in adults living with HIV: A need for improved screening efforts. PLoS ONE 2014;9(7):e102766. *https://pubmed.ncbi.nlm.nih.gov/25032989.*

[17] Spradling PR, Richardson JT, Buchacz K. Trends in hepatitis C virus infection among patients in the HIV Outpatient Study, 1996–2007. J Acquir Immune Defic Syndr 2010;53:388–396.

[18] Centers for Disease Control and Prevention. Centers for Disease Control and Prevention. HIV Surveillance Report, 2019; vol.32. *http://www.cdc.gov/hiv/library/reports/hiv-surveillance.html.* Published May 2021. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention; 2017.

[19] Panel on Opportunistic Infections in HIV-Infected Adults and Adolescents. Guidelines for the prevention and treatment of opportunistic infections in HIV-infected adults and adolescents: Recommendations from the Centers for Disease Control and Prevention, the National Institutes of Health, and the HIV Medicine Association of the Infectious Diseases Society of America. Available at *https://www.ncbi.nlm.nih.gov/pubmed/19357635.* July 6, 2018.

[20] *https://aspe.hhs.gov/system/files/pdf/260026/HepC.pdf.*

mortality. Treatment for HCV can be highly successful at the primary care level with appropriate planning and support.

Data also show that sexually transmitted infection (STI) rates remain elevated in Indian Country. Recurrent STIs can increase the likelihood of HIV transmission. Gonorrhea and syphilis often present as co-morbid conditions with HIV diagnosis, particularly among MSM. The latest Indian Health Surveillance Report: Sexually Transmitted Diseases 2015 [21] showed that AI/AN people have 3.8 times the incidence rate of whites for chlamydia and 4.4 times the rate of whites for gonorrhea. AI/AN people have the second highest rates for both chlamydia and gonorrhea compared to other races/ethnicities. Gonorrhea rates have continued to increase drastically since 2011. Regional differences in STI incidence in Indian Country are also observed. AI/AN youth and AI/AN women, particularly women of reproductive age, have a disparate and increased STI burden. In addition, recent outbreaks of syphilis have been observed among AI/AN communities. Some of these outbreaks are connected to the use of injection drugs and methamphetamines, all known risk factors for HIV transmission.

Finally, treatment for substance use disorders can be difficult to access in IHS catchment areas, as the appropriated budget includes fewer dollars per patient compared to other Federal direct-care networks. Untreated substance use disorders can exacerbate risk-taking behavior and reduce adherence to treatment. IHS recommends collaboration whenever possible between behavioral health services and HIV/HCV/STI prevention and care.

Confronting these intersecting epidemics requires collaboration across sectors and disciplines and the use of existing public health and clinical infrastructures. Lasting changes to these trends for HIV and related co-morbidities among AI/AN communities will also require innovative new approaches, incorporating existing and new data sources, all driven by community input. IHS recommends applicants research evidence-based approaches or identify culturally appropriate interventions as best-practices for collaborative efforts.

[21] 2015 Indian Health Surveillance Report Sexually Transmitted Infections *https://www.cdc.gov/std/stats/ihs/18IHS-DEDP102_REPORT_STD_M_508.pdf.*

Purpose

The purpose of this program is to support communities in reducing new human HIV infections and relevant co-morbidities, specifically STI and HCV infections, improve HIV-, STI-, and HCV-related health outcomes, and reduce HIV-, STI-, and HCV-related health disparities among AI/AN people. In two separate but related parts, this initiative aims to implement effective and innovative strategies, interventions, approaches, and services to reduce new HIV and HCV infections among AI/AN communities in the U.S. This initiative's overarching goals are to: (1) Reduce new HIV infections in the U.S. to less than 3,000 per year by 2030; and (2) achieve a 90 percent reduction in new HCV infections and a 65 percent reduction in mortality, compared to a 2015 baseline.[22]

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for FY 2022 is approximately $2,480,000. Individual award amounts are anticipated to be between $160,000 and $200,000. The funding available for competing and subsequent awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately 14 awards will be issued under this program announcement.

Period of Performance

The period of performance is for 3 years.

Cooperative Agreement

Cooperative agreements awarded by the HHS are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

[22] *https://www.hhs.gov/hepatitis/viral-hepatitis-national-strategic-plan/national-viral-hepatitis-action-plan-overview/index.html.*

Substantial Agency Involvement Description for Cooperative Agreement

A. The IHS Office of Clinical and Preventive Services (OCPS), Division of Clinical and Community Services (DCCS) will provide ongoing consultation and technical assistance to plan, implement, and evaluate each component as described under Recipient Activities (see Section V.1.B, Application Review Information, Evaluation Criteria, Project Objective(s), Work Plan, and Approach).

B. The IHS will conduct site visits to recipient sites and/or coordinate recipient visits to IHS facilities to assess work plans and ensure data security, confirm compliance with applicable laws and regulations, assess program activities, and to resolve problems, as needed mutually.

C. DCCS will provide a forum for outreach and education to advance this program's goals through existing and new partnerships. The IHS will facilitate the formation of an IHS National HIV/HCV/STI Prevention workgroup, from clinical, public health, advocacy, and education sectors working in HIV/HCV/STI control. The pupose of the workgroup is to align IHS efforts with the HIV, Viral Hepatitis, and STI National Strategies.

D. DCCS will coordinate the various internal IHS and external HHS required reporting activities and provide recipients with program-related technical assistance as appropriate to provide leadership, advocacy, and support.

III. Eligibility Information

1. Eligibility

To be eligible for this funding opportunity, an applicant must be one of the following as defined under 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(1)): ''Tribal organization'' means the

recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

• An Urban Indian organization as defined by 25 U.S.C. 1603(29). The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an Urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of nonprofit status with the application, *e.g.,* 501(c)(3).

The program office will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Additional Required Documentation

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribal or Tribal organization applicant selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official, signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official, signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Tribes organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

Mandatory documents for all applicants include:

• Abstract (one page) summarizing the project.

• Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

• Project Narrative (not to exceed 10 pages). See Section IV.2.A, Project Narrative for instructions.

1. Background information on the organization.

2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.

• Budget Justification and Narrative (not to exceed five pages). See Section IV.2.B, Budget Narrative for instructions.

• Tribal Resolution(s), if applicable.

• Letters of Support from organization's Board of Directors, if applicable.

• Biographical sketches for all Key Personnel.

• Contractor/Consultant resumes or qualifications and scope of work.

• Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.

• Certification Regarding Lobbying (GG-Lobbying Form).

• Work plan with timeline for proposed activities.

• Logic model.

• Map of area identifying project location(s).

• Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).

• Organizational Chart.

• Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/.*

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 10 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger (tables may be done in 10 point font); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches). Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted

below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and will not be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget justifications, narratives, and/or other items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Previous HIV/HCV Prevention, Care, or Treatment Work. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—3 Pages)

Section 1: Community Infrastructure

Describe the applicant's current health program activities, how long it has been operating, and what programs or services the organization is currently providing. Describe how the applicant has determined it has the administrative infrastructure to support the activities proposed.

Part 2: Program Planning and Evaluation (Limit—3 Pages)

Section 1: Program Plans

Describe fully and clearly the applicant's plans to conduct activities that lead to increased HIV and Hepatits C diagnoses, enhanced prevention, and to recruit and retain people in HIV and Hepatits C treatment.

Section 2: Program Evaluation

Describe fully and clearly the improvements that will be made by the applicant to meet the public health needs of the community in the context of the funding requirements.

Part 3: Previous HIV/HCV Prevention, Care, or Treatment Work (Limit—4 Pages)

Section 1

Describe your organization's significant program activities and accomplishments over the past five years associated with HIV/HCV prevention, care, and/or treatment to enhance quality health care services.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs). The budget narrative can include a more detailed spreadsheet than is provided by the SF–424A. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1, Application Review Information, Evaluation Criteria), the narrative should highlight the changes from the first year or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Deputy Director, DGM, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Deputy Director, DGM. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Paul.Gettys@ihs.gov*. The waiver request must: (1) Be documented in writing (emails are acceptable) before submitting an application by some other method; and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Deputy Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.

• Applicants must comply with any page limits described in this funding announcement.

• After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) Applicants and recipient organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through *https://fedgov.dnb.com/webform,* or call (866) 705–5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime recipient organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at *https://sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page: *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (10 Points)

Must include the applicant's background information, a description of HIV and/or HCV service, capacity, and history of support for such activities. Applicants need to include current public health activities, what program services are currently being provided, and interactions with other public health authorities in the region (state, local, or Tribal).

Please describe how the applicant will make improvements in capacity to address the IHS, Tribal, and urban (I/T/U), local-level, and/or Area-level HIV/HCV/STI burden. In order to significantly reduce transmission of HIV/HCV/STI, I/T/U need baseline and annual measurements of HIV/HCV/STI diagnoses, linkage to care, and viral load measurements, as applicable. Applicants will also help evaluate geographies with higher burden of HIV/HCV/STI and assist communities in targeting interventions.

B. Project Objective(s), Work Plan, and Approach (25 Points)

a. Clearly identify the operational strategies to be addressed by the applicant. Include objectives that are Specific, Measurable, Attainable, Relevant, and Time-bound (also known as SMART). In addition, the IHS encourages applicants to assume relevant objectives from (1) The National Strategic Plan: A Roadmap to End the Epidemic for the United States | 2021–2025; [23] and (2) The Viral Hepatitis National Strategic Plan for the U.S.: A Roadmap to Elimination 2021–2025.[24]

b. Activities in at least two of three ETHIC's key operational strategies (Diagnose, Treat, Prevent) must be planned for completion within the program period (indicate these two activities in bold).

c. Applicants will outline their approach for addressing the operational strategies in the work plan or logic model. Outline overarching activities, short-term, and long-term outcomes. Make note of proposed timelines and partners who will be involved in each activity.

Recipient Activities

Proposals must include the following activities:

1. Coordination Operational Strategy

i. Recipients will send at least one representative to the annual IHS HIV meeting. The budget should include travel and associated costs for participation.

ii. Recipients will participate in the IHS National AI/AN STI Prevention workgroup.

iii. Recipients will provide technical assistance and/or support to AI/AN communities by developing or sharing analytical reports that examine the burden of HIV/HCV and other relevant co-morbidities such as STIs in Native communities.

2. Diagnosis Operational Strategy

The recipients will collaborate with communities to increase local capacity to expand the availability of HIV/HCV/STI testing in health centers, emergency departments, substance abuse prevention and treatment programs, mobile units, as well as community-based organizations and non-traditional settings such as bars, parks, and during community festivals to diagnose all people with HIV/HCV/STIs as early as possible.

3. Treatment Operational Strategy

The recipients will provide support to communities in the development of enhanced activities and expanded capacity to identify and better serve people who are not in HIV/HCV/STI care by working with health care providers, Ryan White clinics and I/T/U health centers, state and local health departments, and other partners to expand capacity, strengthen systems, establish new programs and services, and forge new partnerships to tailor and implement these approaches as appropriate in their communities.

4. Prevention Operational Strategy

The recipients will develop local plans with community member input to guide the scale-up of proven prevention interventions and strategies that increase the access to and availability of PrEP and safe syringe programs (SSPs)—

[23] *https://hivgov-prod-v3.s3.amazonaws.com/s3fs-public/HIV-National-Strategic-Plan-2021-2025.pdf.*

[24] *https://www.hhs.gov/hepatitis/viral-hepatitis-national-strategic-plan/national-viral-hepatitis-action-plan-overview/index.html.*

where permitted by local laws—in the communities where these services are needed most.

PrEP is a pill that reduces the risk of getting HIV when taken as prescribed. However, of the estimated 1 million Americans at substantial risk for HIV who could benefit from PrEP, fewer than 1 in 4 actually use it. HHS agencies will support states and local communities to implement strategies to increase access to and use of PrEP—especially among populations disproportionately affected by HIV.

C. Program Evaluation (30 Points)

a. Clearly identify plans for program evaluation to ensure that objectives of the program are met at the conclusion of the funding period.

b. Include evaluation criteria based on SMART objectives.

c. Evaluation should minimally include summaries of activities in each of the proposed key operational strategies.

D. Organizational Capabilities, Key Personnel, and Qualifications (30 Points)

a. Include an organizational capacity statement that demonstrates the ability to execute program strategies within the program period.

b. Provide a project management and staffing plan. Detail that the organization has the current staffing and expertise to address each of the program activities. If current capacity does not exist, please describe the actions that the applicant will take to fulfill this gap within a specified timeline.

c. Applicant must demonstrate a plan to work with Tribal Epidemiology Centers and local partners on the proposed efforts.

d. Demonstrate that the applicant has previous successful experience providing technical or programmatic support to Tribal communities.

E. Categorical Budget and Budget Justification (5 Points)

a. Provide a detailed budget and accompanying narrative to explain the activities being considered and how they are related to proposed program objectives.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Work plan, logic model, and timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement (if applicable).
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS DCCS within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence, other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization, is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The criteria as outlined in this program announcement

B. Administrative Regulations for Grants

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372.*

C. Grants Policy

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' at 45 CFR part 75 subpart E.

E. Audit Requirements

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' at 45 CFR part 75 subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM

issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, ''any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.''

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The recipient must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required quarterly. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at *https://pms.psc.gov.* Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the period of performance. Recipients are responsible and accountable for reporting accurate information on all required reports: the Progress Reports, the Federal Cash Transaction Report, and the Federal Financial Report.

C. Data Collection and Reporting

The recipient must report their progress quarterly towards data points in their ETHIC objectives and activities via a standardized form co-developed with the IHS program officer.

The recipient and the IHS will jointly develop the report for the data and objectives proposed in the application. The recipient will then report on these data points annually. Due dates for these reports will be included in the Terms & Conditions in the NoA. The recipient will participate in quarterly calls with the program office.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards. The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Non-Discrimination Legal Requirements for Recipients of Federal Financial Assistance

Should you successfully compete for an award, recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes ensuring programs are accessible to persons with limited English proficiency and persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English

proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*

• For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html.*

• HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*

• For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS at *https://www.fapiis.gov/fapiis/#/home* before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants, as described in 45 CFR 75.205.

As required by 45 CFR part 75 appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General of all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Deputy Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov.*

And

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/,* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line), or Email: *MandatoryGranteeDisclosures@oig.hhs.gov.*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Mr. Rick Haverkate, Public Health Advisor, Office of Clinical and Preventive Services, Division of Clinical and Community Services, Indian Health Service, 5600 Fishers Lane, Mailstop: 08N34A, Rockville, MD 20857, Phone: (954) 909–4834, Email: *Richard.Haverkate@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: Willis Grant, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2214, Email: *Willis.Grant@ihs.gov.*

3. Questions on systems matters may be directed to: Paul Gettys, Deputy Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Email: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Notice of Purchased/Referred Care Delivery Area Redesignation for the Minnesota Chippewa Tribe, Minnesota, Mille Lacs Band of Ojibwe

AGENCY: Indian Health Service, Health and Human Services.

ACTION: Final notice.

SUMMARY: Notice is hereby given that the Indian Health Service (IHS) has decided to expand the geographic boundaries of the Purchased/Referred Care Delivery Area (PRCDA) for the Mille Lacs Band of Ojibwe in the State of Minnesota to include the Minnesota counties of Crow Wing and Morrison in the State of Minnesota. The final PRCDA for the Mille Lacs Band of Ojibwe is now the Minnesota counties of Aitkin, Crow Wing, Kanebec, Mille Lacs, Morrison, and Pine. Mille Lacs Band of Ojibwe members residing outside of the PRCDA are eligible for direct care services, however, they are not eligible for Purchased/Referred Care (PRC) services. The sole purpose of this expansion is to authorize additional Mille Lacs Band of Ojibwe members and beneficiaries to receive PRC services.

DATES: This expansion is effective as of the publication date of this notice.

ADDRESSES: This notice can be found at *https://www.federalregister.gov.* Written requests for information should be delivered to: CAPT John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop 10E85C, Rockville, MD 20857, (301) 443–0609 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

Background: The IHS provides services under regulations in effect as of September 15, 1987, and republished at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a PRCDA, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the PRCDA. Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC but only potential eligibility for services. Services needed, but not available at an IHS/Tribal facility, are provided under the PRC program depending on the availability of funds, the relative medical priority of the services to be provided, and the actual availability and accessibility of alternate resources in accordance with the regulations.

As applicable to the Tribes, these regulations provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation (42 CFR 136.22(a)(6)). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may, from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRCDA. The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

The number of Indians residing in the area proposed to be so included or excluded;

Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;

The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

The level of funding that would be available for the provision of PRC.

Additionally, the regulations require that any redesignation of a PRCDA must be made in accordance with the Administrative Procedure Act (5 U.S.C. 553). In compliance with this requirement, IHS published a proposed notice of redesignation of the Mille Lacs Band of Ojibwe PRCDA to include the Minnesota counties of Crow Wing and Morrison and requested public comments on October 14, 2020 (85 FR 65055). IHS did not receive any public comments in response to the proposed notice of redesignation.

In support of this expansion, IHS adopts the following findings of the Mille Lacs Band of Ojibwe, which had requested that IHS expand the Mille Lacs Band of Ojibwe PRCDA to include the Minnesota counties of Crow Wing and Morrison:

By expanding, the Mille Lacs Band of Ojibwe estimates the current eligible population will be increased by 324.

The Mille Lacs Band of Ojibwe has determined that these 324 individuals are members of the Mille Lacs Band of Ojibwe and they are socially and economically affiliated with the Mille Lacs Band of Ojibwe.

The expanded area, including Crow Wing and Morrison counties in the State of Minnesota, maintains a common boundary with the current PRCDA consisting of Aitkin, Kanebec, Mille Lacs, and Pine counties in the State of Minnesota.

The Mille Lacs Band of Ojibwe will use its existing Federal allocation for PRC funds to provide services to the expanded population. IHS will allocate no additional financial resources to the Mille Lacs Band of Ojibwe to provide services to Mille Lacs Band of Ojibwe members residing in Crow Wing and Morrison counties in the State of Minnesota.

Public Comments: IHS did not receive any public comments in response to the proposed notice of redesignation.

Tribe/reservation	County/state
Ak Chin Indian Community	Pinal, AZ.
Alabama-Coushatta Tribes of Texas	Polk, TX.[1]
Alaska	Entire State.[2]
Arapahoe Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Aroostook Band of Micmacs	Aroostook, ME.[3]
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana.	Daniels, MT, McCone, MT, Richland, MT, Roosevelt, MT, Sheridan, MT, Valley, MT.
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin.	Ashland, WI, Iron, WI.
Bay Mills Indian Community, Michigan	Chippewa, MI.
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana	Glacier, MT, Pondera, MT.
Brigham City Intermountain School Health Center, Utah	Permanently closed on May 17, 1984.[4]
Burns Paiute Tribe	Harney, OR.
California	Entire State, except for the counties listed in the footnote.[5]
Catawba Indian Nation (AKA Catawba Tribe of South Carolina)	All Counties in SC,[6] Cabarrus, NC, Cleveland, NC, Gaston, NC, Mecklenburg, NC, Rutherford, NC, Union, NC.
Cayuga Nation	Alleghany, NY,[7] Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Chickahominy Indian Tribe	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[8]
Chickahominy Indian Tribe—Eastern Division	New Kent, VA, James City, VA, Charles City, VA, Henrico, VA.[9]
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota.	Corson, SD, Dewey, SD, Haakon, SD, Meade, SD, Perkins, SD, Potter, SD, Stanley, SD, Sully, SD, Walworth, SD, Ziebach, SD.
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana	Chouteau, MT, Hill, MT, Liberty, MT.
Chitimacha Tribe of Louisiana	St. Mary Parish, LA.
Cocopah Tribe of Arizona	Yuma, AZ, Imperial, CA.
Coeur D'Alene Tribe	Benewah, ID, Kootenai, ID, Latah, ID, Spokane, WA, Whitman, WA.

Tribe/reservation	County/state
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California.	La Paz, AZ, Riverside, CA, San Bernardino, CA, Yuma, AZ.
Confederated Salish and Kootenai Tribes of the Flathead Reservation ..	Flathead, MT, Lake, MT, Missoula, MT, Sanders, MT.
Confederated Tribes and Bands of the Yakama Nation	Klickitat, WA, Lewis, WA, Skamania, WA,[10] Yakima, WA.
Confederated Tribes of Siletz Indians of Oregon	Benton, OR,[11] Clackamas, OR, Lane, OR, Lincoln, OR, Linn, OR, Marion, OR, Multnomah, OR, Polk, OR, Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Chehalis Reservation	Grays Harbor, WA, Lewis, WA, Thurston, WA.
Confederated Tribes of the Colville Reservation	Chelan, WA,[12] Douglas, WA, Ferry, WA, Grant, WA, Lincoln, WA, Okanogan, WA, Stevens, WA.
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians	Coos, OR,[13] Curry, OR, Douglas, OR, Lane, OR, Lincoln, OR.
Confederated Tribes of the Goshute Reservation, Nevada and Utah	The entire State of Nevada, Juab, UT, Toole, UT.
Confederated Tribes of the Grand Ronde Community of Oregon	Marion, OR, Multnomah, OR, Polk, OR,[14] Tillamook, OR, Washington, OR, Yamhill, OR.
Confederated Tribes of the Umatilla Indian Reservation	Umatilla, OR, Union, OR.
Confederated Tribes of the Warm Springs Reservation of Oregon	Clackamas, OR, Jefferson, OR, Linn, OR, Marion, OR, Wasco, OR.
Coquille Indian Tribe	Coos, OR, Curry, OR, Douglas, OR, Jackson, OR, Lane, OR.
Coushatta Tribe of Louisiana	Allen Parish, LA, the city limits of Elton, LA.[15]
Cow Creek Band of Umpqua Tribe of Indians	Coos, OR,[16] Deshutes, OR, Douglas, OR, Jackson, OR, Josephine, OR, Klamath, OR, Lane, OR.
Cowlitz Indian Tribe	Clark, WA, Cowlitz, WA, King, WA, Lewis, WA, Peirce, WA, Skamania, WA, Thurston, WA, Columbia, OR,[17] Kittitas, WA, Wahkiakum, WA.
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota	Brule, SD, Buffalo, SD, Hand, SD, Hughes, SD, Hyde, SD, Lyman, SD, Stanley, SD.
Crow Tribe of Montana	Big Horn, MT, Carbon, MT, Treasure, MT,[18] Yellowstone, MT, Big Horn, WY, Sheridan, WY.
Eastern Band of Cherokee Indians	Cherokee, NC, Graham, NC, Haywood, NC, Jackson, NC, Swain, NC.
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming	Hot Springs, WY, Fremont, WY, Sublette, WY.
Flandreau Santee Sioux Tribe of South Dakota	Moody, SD.
Forest County Potawatomi Community, Wisconsin	Forest, WI, Marinette, WI, Oconto, WI.
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana.	Blaine, MT, Phillips, MT.
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon.	The entire State of Nevada, Malheur, OR.
Fort McDowell Yavapai Nation, Arizona	Maricopa, AZ.
Fort Mojave Indian Tribe of Arizona, California and Nevada	The entire State of Nevada, Mohave, AZ, San Bernardino, CA.
Gila River Indian Community of the Gila River Indian Reservation, Arizona.	Maricopa, AZ, Pinal, AZ.
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan	Antrim, MI,[19] Benzie, MI, Charlevoix, MI, Grand Traverse, MI, Leelanau, MI, Manistee, MI.
Hannahville Indian Community, Michigan	Delta, MI, Menominee, MI.
Haskell Indian Health Center	Douglas, KS.[20]
Havasupai Tribe of the Havasupai Reservation, Arizona	Coconino, AZ, Mohave, AZ.[21]
Ho-Chunk Nation of Wisconsin	Adams, WI,[22] Clark, WI, Columbia, WI, Crawford, WI, Dane, WI, Eau Claire, WI, Houston, MN, Jackson, WI, Juneau, WI, La Crosse, WI, Marathon, WI, Monroe, WI, Sauk, WI, Shawano, WI, Vernon, WI, Wood, WI.
Hoh Indian Tribe	Jefferson, WA.
Hopi Tribe of Arizona	Apache, AZ, Coconino, AZ, Navajo, AZ.
Houlton Band of Maliseet Indians	Aroostook, ME.[23]
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona	Coconino, AZ, Mohave, AZ, Yavapai, AZ.
Iowa Tribe of Kansas and Nebraska	Brown, KS, Doniphan, KS, Richardson, NE.
Jamestown S'Klallam Tribe	Clallam, WA, Jefferson, WA.
Jena Band of Choctaw Indians	Grand Parish, LA,[24] LaSalle Parish, LA, Rapides, LA.
Jicarilla Apache Nation, New Mexico	Archuleta, CO, Rio Arriba, NM, Sandoval, NM.
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona.	Coconino, AZ, Mohave, AZ, Kane, UT.
Kalispel Indian Community of the Kalispel Reservation	Pend Oreille, WA, Spokane, WA.
Kewa Pueblo, New Mexico (previously listed as the Pueblo of Santo Domingo).	Sandoval, NM, Santa Fe, NM.
Keweenaw Bay Indian Community, Michigan	Baraga, MI, Houghton, MI, Ontonagon, MI.
Kickapoo Traditional Tribe of Texas	Maverick, TX.[25]
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas	Brown, KS, Jackson, KS.
Klamath Tribes	Klamath, OR.[26]
Koi Nation of Northern California (formerly known as Lower Lake Rancheria, California).	Lake, CA, Sonoma, CA.[27]
Kootenai Tribe of Idaho	Boundary, ID.
Lac Courte Oreilles Band of Superior Chippewa Indians of Wisconsin	Sawyer, WI.
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin.	Iron, WI, Oneida, WI, Vilas, WI.
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan	Gogebic, MI.
Little River Band of Ottawa Indians, Michigan	Kent, MI,[28] Muskegon, MI, Newaygo, MI, Oceana, MI, Ottawa, MI, Manistee, MI, Mason, MI, Wexford, MI, Lake, MI.
Little Shell Tribe of Chippewa Indians of Montana	Blaine, MT, Cascade, MT, Glacier, MT, Hill, MT.[29]

Tribe/reservation	County/state
Little Traverse Bay Bands of Odawa Indians, Michigan	Alcona, MI,[30] Alger, MI, Alpena, MI, Antrim, MI, Benzie, MI, Charlevoix, MI, Cheboygan, MI, Chippewa, MI, Crawford, MI, Delta, MI, Emmet, MI, Grand Traverse, MI, Iosco, MI, Kalkaska, MI, Leelanau, MI, Luce, MI, Mackinac, MI, Manistee, MI, Missaukee, MI, Montmorency, MI, Ogemaw, MI, Oscoda, MI, Otsego, MI, Presque Isle, MI, Schoolcraft, MI, Roscommon, MI, Wexford, MI.
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota	Brule, SD, Buffalo, SD, Hughes, SD, Lyman, SD, Stanley, SD.
Lower Elwha Tribal Community	Clallam, WA.
Lower Sioux Indian Community in the State of Minnesota	Redwood, MN, Renville, MN.
Lummi Tribe of the Lummi Reservation	Whatcom, WA.
Makah Indian Tribe of the Makah Indian Reservation	Clallam, WA.
Mashantucket Pequot Indian Tribe	New London, CT.[31]
Mashpee Wampanoag Tribe	Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[32]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan	Allegan, MI,[33] Barry, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Menominee Indian Tribe of Wisconsin	Langlade, WI, Menominee, WI, Oconto, WI, Shawano, WI.
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico	Chaves, NM, Lincoln, NM, Otero, NM.
Miccosukee Tribe of Indians	Broward, FL, Collier, FL, Miami-Dade, FL, Hendry, FL.
Minnesota Chippewa Tribe, Minnesota, Bois Forte Band (Nett Lake)	Itasca, MN, Koochiching, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Fond du Lac Band	Carlton, MN, St. Louis, MN.
Minnesota Chippewa Tribe, Minnesota, Grand Portage Band	Cook, MN.
Minnesota Chippewa Tribe, Minnesota, Leech Lake Band	Beltrami, MN, Cass, MN, Hubbard, MN, Itasca, MN.
Minnesota Chippewa Tribe, Minnesota, Mille Lacs Band	Aitkin, MN, Crow Wing, MN,[34] Kanebec, MN, Mille Lacs, MN, Morrison, MN,[35] Pine, MN.
Minnesota Chippewa Tribe, Minnesota, White Earth Band	Becker, MN, Clearwater, MN, Mahnomen, MN, Norman, MN, Polk, MN.
Mississippi Band of Choctaw Indians	Attala, MS, Jasper, MS,[36] Jones, MS, Kemper, MS, Leake, MS, Neshoba, MS, Newton, MS, Noxubee, MS,[37] Scott, MS,[38] Winston, MS.
Mohegan Tribe of Indians of Connecticut	Fairfield, CT, Hartford, CT, Litchfield, CT, Middlesex, CT, New Haven, CT, New London, CT, Tolland, CT, Windham, CT.
Monacan Indian Nation	Amherst, VA, Nelson, VA, Albemarle, VA, Buckingham, VA, Appomattox, VA, Campbell, VA, Bedford, VA, Botetourt, VA, Rockbridge, VA, Augusta, VA, and the independent cities of Lynchburg, VA, Lexington, VA, Buena Vista, VA, Staunton, VA, Waynesboro, VA, and Charlottesville, VA.[39]
Muckleshoot Indian Tribe	King, WA, Pierce, WA.
Nansemond Indian Tribe	The independent cities of Chesapeake, VA, Hampton, VA, Newport News, VA, Norfolk, VA, Portsmouth, VA, Suffolk, VA, and Virginia Beach, VA.[40]
Narragansett Indian Tribe	Washington, RI.[41]
Navajo Nation, Arizona, New Mexico, & Utah	Apache, AZ, Bernalillo, NM, Cibola, NM, Coconino, AZ, Kane, UT, McKinley, NM, Montezuma, CO, Navajo, AZ, Rio Arriba, NM, Sandoval, NM, San Juan, NM, San Juan, UT, Socorro, NM, Valencia, NM.
Nevada	Entire State.[42]
Nez Perce Tribe	Clearwater, ID, Idaho, ID, Latah, ID, Lewis, ID, Nez Perce, ID.
Nisqually Indian Tribe	Pierce, WA, Thurston, WA.
Nooksack Indian Tribe	Whatcom, WA.
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana.	Big Horn, MT, Carter, MT,[43] Rosebud, MT.
Northwestern Band of Shoshone Nation	Box Elder, UT,[44] Davis, UT, Salt Lake, UT, Weber, UT.[45]
Nottawaseppi Huron Band of the Pottawatomi, Michigan	Allegan, MI,[46] Barry, MI, Branch, MI, Calhoun, MI, Kalamazoo, MI, Kent, MI, Ottawa, MI.
Oglala Sioux Tribe	Bennett, SD, Cherry, NE, Custer, SD, Dawes, NE, Fall River, SD, Jackson, SD,[47] Mellette, SD, Pennington, SD, Shannon, SD, Sheridan, NE, Todd, SD.
Ohkay Owingeh, New Mexico	Rio Arriba, NM.
Oklahoma	Entire State.[48]
Omaha Tribe of Nebraska	Burt, NE, Cuming, NE, Monona, IA, Thurston, NE, Wayne, NE.
Oneida Nation (previously listed as the Oneida Tribe of Indians of Wisconsin).	Brown, WI, Outagamie, WI.
Oneida Indian Nation (previously listed as the Oneida Nation of New York).	Chenango, NY, Cortland, NY, Herkimer, NY, Madison, NY, Oneida, NY, Onondaga, NY.
Onondaga Nation	Onondaga, NY.
Paiute Indian Tribe of Utah	Iron, UT,[49] Millard, UT, Sevier, UT, Washington, UT.
Pamunkey Indian Tribe	Caroline, VA, Hanover, VA, Henrico, VA, King William, VA, King and Queen, VA, New Kent, VA, and the independent city of Richmond, VA.[50]
Pascua Yaqui Tribe of Arizona	Pima, AZ.[51]
Passamaquoddy Tribe	Aroostook, ME,[52] [53] Hancock, ME,[54] Washington, ME.
Penobscot Nation	Aroostook, ME,[55] Penobscot, ME.
Poarch Band of Creeks	Baldwin, AL,[56] Elmore, AL, Escambia, AL, Mobile, AL, Monroe, AL, Escambia, FL.

Tribe/reservation	County/state
Pokagon Band of Pottawatomi Indians, Michigan and Indiana	Allegan, MI,[57] Berrien, MI, Cass, MI, Elkhart, IN, Kosciusko, IN, La Porte, IN, Marshall, IN, St. Joseph, IN, Starke, IN, Van Buren, MI.
Ponca Tribe of Nebraska	Boyd, NE,[58] Burt, NE, Charles Mix, SD, Douglas, NE, Hall, NE, Holt, NE, Knox, NE, Lancaster, NE, Madison, NE, Platte, NE, Pottawatomie, IA, Sarpy, NE, Stanton, NE, Wayne, NE, Woodbury, IA.
Port Gamble S'Klallam Tribe	Kitsap, WA.
Prairie Band of Pottawatomi Nation	Jackson, KS.
Prairie Island Indian Community in the State of Minnesota	Goodhue, MN.
Pueblo of Acoma, New Mexico	Cibola, NM.
Pueblo of Cochiti, New Mexico	Sandoval, NM, Santa Fe, NM.
Pueblo of Isleta, New Mexico	Bernalillo, NM, Torrance, NM, Valencia, NM.
Pueblo of Jemez, New Mexico	Sandoval, NM.
Pueblo of Laguna, New Mexico	Bernalillo, NM, Cibola, NM, Sandoval, NM, Valencia, NM.
Pueblo of Nambe, New Mexico	Santa Fe, NM.
Pueblo of Picuris, New Mexico	Taos, NM.
Pueblo of Pojoaque, New Mexico	Rio Arriba, NM, Santa Fe, NM.
Pueblo of San Felipe, New Mexico	Sandoval, NM.
Pueblo of San Ildefonso, New Mexico	Los Alamos, NM, Rio Arriba, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Sandia, New Mexico	Bernalillo, NM, Sandoval, NM.
Pueblo of Santa Ana, New Mexico	Sandoval, NM.
Pueblo of Santa Clara, New Mexico	Los Alamos, NM, Sandoval, NM, Santa Fe, NM.
Pueblo of Taos, New Mexico	Colfax, NM, Taos, NM.
Pueblo of Tesuque, Mexico	Santa Fe, NM.
Pueblo of Zia, New Mexico	Sandoval, NM.
Puyallup Tribe of the Puyallup Reservation	King, WA, Pierce, WA, Thurston, WA.
Quechan Tribe of the Fort Yuma Indian Reservation, Arizona and California.	Yuma, AZ, Imperial, CA.
Quileute Tribe of the Quileute Reservation	Clallam, WA, Jefferson, WA.
Quinault Indian Nation	Grays Harbor, WA, Jefferson, WA.
Rapid City, South Dakota	Pennington, SD.[59]
Rappahannock Tribe, Inc.	King and Queen County, VA, Caroline County, VA, Essex County, VA, King William County, VA.[60]
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin	Bayfield, WI.
Red Lake Band of Chippewa Indians, Minnesota	Beltrami, MN, Clearwater, MN, Koochiching, MN, Lake of the Woods, MN, Marshall, MN, Pennington, MN, Polk, MN, Roseau, MN.
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota	Bennett, SD, Cherry, NE, Gregory, SD, Lyman, SD, Mellette, SD, Todd, SD, Tripp, SD.
Sac & Fox Nation of Missouri in Kansas and Nebraska	Brown, KS, Richardson, NE.
Sac & Fox Tribe of the Mississippi in Iowa	Tama, IA.
Saginaw Chippewa Indian Tribe of Michigan	Arenac, MI,[61] Clare, MI, Isabella, MI, Midland, MI, Missaukee, MI.
Saint Regis Mohawk Tribe	Franklin, NY, St. Lawrence, NY.
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona.	Maricopa, AZ.
Samish Indian Nation	Clallam, WA,[62] Island, WA, Jefferson, WA, King, WA, Kitsap, WA, Pierce, WA, San Juan, WA, Skagit, WA, Snohomish, WA, Whatcom, WA.
San Carlos Apache Tribe of the San Carlos Reservation, Arizona	Apache, AZ, Cochise, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Pinal, AZ.
San Juan Southern Paiute Tribe of Arizona	Coconino, AZ, San Juan, UT.
Santee Sioux Nation, Nebraska	Bon Homme, SD, Knox, NE.
Sauk-Suiattle Indian Tribe	Snohomish, WA, Skagit, WA.
Sault Ste. Marie Tribe of Chippewa Indians, Michigan	Alger, MI,[63] Chippewa, MI, Delta, MI, Luce, MI, Mackinac, MI, Marquette, MI, Schoolcraft, MI.
Seminole Tribe of Florida	Broward, FL, Collier, FL, Miami-Dade, FL, Glades, FL, Hendry, FL.
Seneca Nation of Indians	Alleghany, NY, Cattaraugus, NY, Chautauqua, NY, Erie, NY, Warren, PA.
Shakopee Mdewakanton Sioux Community of Minnesota	Scott, MN.
Shinnecock Indian Nation	Nassau, NY,[64] Suffolk, NY.
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation	Pacific, WA.
Shoshone-Bannock Tribes of the Fort Hall Reservation	Bannock, ID, Bingham, ID, Caribou, ID, Lemhi, ID,[65] Power, ID.
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada	The entire state of Nevada, Owyhee, ID.
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota.	Codington, SD, Day, SD, Grant, SD, Marshall, SD, Richland, ND, Roberts, SD, Sargent, ND, Traverse, MN.
Skokomish Indian Tribe	Mason, WA.
Skull Valley Band of Goshute Indians of Utah	Tooele, UT.
Snoqualmie Indian Tribe	King, WA,[66] Snohomish, WA, Pierce, WA, Island, WA, Mason, WA.
Sokaogon Chippewa Community, Wisconsin	Forest, WI.
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado	Archuleta, CO, La Plata, CO, Montezuma, CO, Rio Arriba, NM, San Juan, NM.
Spirit Lake Tribe, North Dakota	Benson, ND, Eddy, ND, Nelson, ND, Ramsey, ND.
Spokane Tribe of the Spokane Reservation	Ferry, WA, Lincoln, WA, Stevens, WA.
Squaxin Island Tribe of the Squaxin Island Reservation	Mason, WA.
St. Croix Chippewa Indians of Wisconsin	Barron, WI, Burnett, WI, Pine, MN, Polk, WI, Washburn, WI.

Tribe/reservation	County/state
Standing Rock Sioux Tribe of North & South Dakota	Adams, ND, Campbell, SD, Corson, SD, Dewey, SD, Emmons, ND, Grant, ND, Morton, ND, Perkins, SD, Sioux, ND, Walworth, SD, Ziebach, SD.
Stillaguamish Tribe of Indians of Washington	Snohomish, WA.
Stockbridge Munsee Community, Wisconsin	Menominee, WI, Shawano, WI.
Suquamish Indian Tribe of the Port Madison Reservation	Kitsap, WA.
Swinomish Indian Tribal Community	Skagit, WA.
Tejon Indian Tribe	The State of California including Kern, CA.[67]
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota	Dunn, ND, Mercer, ND, McKenzie, ND, McLean, ND, Mountrail, ND, Ward, ND.
Tohono O'odham Nation of Arizona	Maricopa, AZ, Pima, AZ, Pinal, AZ.
Tolowa Dee-ni' Nation (formerly known as Smith River Rancheria of California).	California, Curry, OR.[68]
Tonawanda Band of Seneca	Genesee, NY, Erie, NY, Niagara, NY.
Tonto Apache Tribe of Arizona	Gila, AZ.
Trenton Service Unit, North Dakota and Montana	Divide, ND,[69] McKenzie, ND, Williams, ND, Richland, MT, Roosevelt, MT, Sheridan, MT.
Tulalip Tribes of Washington	Snohomish, WA.
Tunica-Biloxi Indian Tribe	Avoyelles, LA, Rapides, LA.[70]
Turtle Mountain Band of Chippewa Indians of North Dakota	Rolette, ND.
Tuscarora Nation	Niagara, NY.
Upper Mattaponi Tribe	Caroline, VA, Charles City, VA, Essex, VA, Hanover, VA, Henrico, VA, James City, VA, King and Queen, VA, King William, VA, Middlesex, VA, New Kent, VA, Richmond, VA and the independent city of Richmond, VA.[71]
Upper Sioux Community, Minnesota	Chippewa, MN, Yellow Medicine, MN.
Upper Skagit Indian Tribe	Skagit, WA.
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah	Carbon, UT, Daggett, UT, Duchesne, UT, Emery, UT, Grand, UT, Rio Blanco, CO, Summit, UT, Uintah, UT, Utah, UT, Wasatch, UT.
Ute Mountain Ute Tribe	Apache, AZ, La Plata, CO, Montezuma, CO, San Juan, NM, San Juan, UT.
Wampanoag Tribe of Gay Head (Aquinnah)	Dukes, MA,[72] Barnstable, MA, Bristol, MA, Norfolk, MA, Plymouth, MA, Suffolk, MA.[73]
Washoe Tribe of Nevada & California	The State of Nevada, The State of California except for the counties listed in footnote.
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona	Apache, AZ, Coconino, AZ, Gila, AZ, Graham, AZ, Greenlee, AZ, Navajo, AZ.
Wilton Rancheria, California	The State of California including Sacramento, CA.[74]
Winnebago Tribe of Nebraska	Dakota, NE, Dixon, NE, Monona, IA, Thurston, NE, Wayne, NE, Woodbury, IA.
Yankton Sioux Tribe of South Dakota	Bon Homme, SD, Boyd, NE, Charles Mix, SD, Douglas, SD, Gregory, SD, Hutchinson, SD, Knox, NE.
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona	Yavapai, AZ.
Yavapai-Prescott Indian Tribe	Yavapai, AZ.
Ysleta Del Sur Pueblo of Texas	El Paso, TX.[75]
Zuni Tribe of the Zuni Reservation, New Mexico	Apache, AZ, Cibola, NM, McKinley, NM, Valencia, NM.

[1] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

[2] The Entire State of Alaska is included as a CHSDA by regulation (42 CFR 136.22(a)(1)).

[3] Aroostook Band of Micmacs was recognized by Congress on November 26, 1991, through the Aroostook Band of Micmac Settlement Act. Aroostook County, ME, was defined as the SDA.

[4] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Brigham City Intermountain School Health Center, Utah (Pub. L. 88–358).

[5] Entire State of California, excluding the counties of Alameda, Contra Costa, Los Angeles, Marin, Orange, Sacramento, San Francisco, San Mateo, Santa Clara, Kern, Merced, Monterey, Napa, San Benito, San Joaquin, San Luis Obispo, Santa Cruz, Solano, Stanislaus, and Ventura, is designated a CHSDA (25 U.S.C. 1680).

[6] The counties were recognized after the January 1984 CHSDA FRN was published, in accordance with Public Law 103–116, Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993, dated October 27, 1993.

[7] There is no reservation for the Cayuga Nation; the service delivery area consists of those counties identified by the Cayuga Nation.

[8] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[9] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Chickahominy Indian Tribe—Eastern Division as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[10] Skamania County, WA, has historically been a part of the Yakama Service Unit population since 1979.

[11] In order to carry out the Congressional intent of the Siletz Restoration Act, Public Law 95–195, as expressed in H. Report No. 95–623, at page 4, members of the Confederated Tribes of Siletz Indians of Oregon residing in these counties are eligible for contract health services.

[12] Chelan County, WA, has historically been a part of the Colville Service Unit population since 1970.

[13] Pursuant to Public Law 98–481 (H. Rept. No. 98–904), Coos, Lower Umpqua and Siuslaw Restoration Act, members of the Tribe residing in these counties were specified as eligible for Federal services and benefits without regard to the existence of a Federal Indian reservation.

[14] The Confederated Tribes of Grand Ronde Community of Oregon were recognized by Public Law 98–165 which was signed into law on November 22, 1983, and provides for eligibility in these six counties without regard to the existence of a reservation.

[15] The CHSDA for the Coushatta Tribe of Louisiana was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include city limits of Elton, LA.

[16] Cow Creek Band of Umpqua Tribe of Indians recognized by Public Law 97–391, signed into law on December 29, 1983. House Rept. No. 97–862 designates Douglas, Jackson, and Josephine Counties as a service area without regard to the existence of a reservation. The IHS later administratively expanded the CHSDA to include the counties of Coos, OR, Deschutes, OR, Klamath, OR, and Lane, OR.

[17] The Cowlitz Indian Tribe was recognized in July 2002 as documented at 67 FR 46329, July 12, 2002. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638. The CHSDA was administratively expanded to included Columbia County, OR, Kittitas, WA, and Wahkiakum County, WA, as published at 67884 FR December 21, 2009.

[18] Treasure County, MT, has historically been a part of the Crow Service Unit population.

[19] The counties listed have historically been a part of the Grand Traverse Service Unit population since 1980.

[20] Haskell Indian Health Center has historically been a part of Kansas Service Unit since 1979. Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility rather than the eligibility regulations. Historically services have been provided at Haskell Indian Health Center (H. Rept. No. 95–392).

[21] The PRCDA for the Havasupai Tribe of Arizona was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include Mohave County in the State of Arizona.

[22] CHSDA counties for the Ho-Chunk Nation of Wisconsin were designated by regulation (42 CFR 136.22(a)(5)). Dane County, WI, was added to the reservation by the Bureau of Indian Affairs in 1986.

[23] Public Law 97–428 provides that any member of the Houlton Band of Maliseet Indians in or around the Town of Houlton shall be eligible without regard to existence of a reservation.

[24] The Jena Band of Choctaw Indian was Federally acknowledged as documented at 60 FR 28480, May 31, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[25] Kickapoo Traditional Tribe of Texas, formerly known as the Texas Band of Kickapoo, was recognized by Public Law 97–429, signed into law on January 8, 1983. The Act provides for eligibility for Kickapoo Tribal members residing in Maverick County without regard to the existence of a reservation.

[26] The Klamath Indian Tribe Restoration Act (Pub. L. 99–398, Sec. 2(2)) states that for the purpose of Federal services and benefits ''members of the tribe residing in Klamath County shall be deemed to be residing in or near a reservation''.

[27] The Koi Nation of Northern California, formerly known as the Lower Lake Rancheria, was reaffirmed by the Secretary of the Bureau of Indian Affairs on December 29, 2000. The counties listed were designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[28] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4 (b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[29] In Public Law 116–92, that became law on December 20, 2019, Congress federally recognized the Little Shell Tribe of Chippewa Indians of Montana. Consistent with Public Law 116–92, the IHS designated the counties as the PRCDA for the Little Shell Tribe of Chippewa Indians of Montana.

[30] The Little Traverse Bay Bands of Odawa Indians and the Little River Band of Ottawa Indians Act recognized the Little River Band of Ottawa Indians and the Little Traverse Bay Bands of Odawa Indians. Pursuant to Public Law 103–324, Sec.4 (b) the counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[31] Mashantucket Pequot Indian Claims Settlement Act, Public Law 98–134, signed into law on October 18, 1983, provides a reservation for the Mashantucket Pequot Indian Tribe in New London County, CT.

[32] The Mashpee Wampanoag Tribe was recognized in February 2007, as documented at 72 FR 8007, February 22, 2007. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[33] The Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan was recognized in October 1998, as documented at 63 FR 56936, October 23, 1998. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[34] The PRCDA for the Mille Lacs Band of Ojibwe was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include the counties of Crow Wing and Morrison in the State of Minnesota.

[35] The PRCDA for the Mille Lacs Band of Ojibwe was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include the counties of Crow Wing and Morrison in the State of Minnesota.

[36] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

[37] Members of the Mississippi Band of Choctaw Indians residing in Jasper and Noxubee Counties, MS, are eligible for contract health services; these two counties were inadvertently omitted from 42 CFR 136.22.

[38] Scott County, MS, has historically been a part of the Choctaw Service Unit population since 1970.

[39] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Monacan Indian Nation as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[40] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Nansemond Indian Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[41] The Narragansett Indian Tribe was recognized by Public Law 95–395, signed into law September 30, 1978. Lands in Washington County, RI, are now Federally restricted and the Bureau of Indian Affairs considers them as the Narragansett Indian Reservation.

[42] Entire State of Nevada is included as a CHSDA by regulation (42 CFR 136.22 (a)(2)).

[43] Carter County, MT, has historically been a part of the Northern Cheyenne Service Unit population since 1979.

[44] Land of Box Elder County, Utah, was taken into trust for the Northwestern Band of Shoshone Nation in 1986.

[45] The PRCDA for the Northwestern Band of Shoshone Nation was expanded administratively by the Director, IHS, through regulation (42 CFR 136.22(b)) to include the counties of Davis, Salt Lake, and Weber, in the State of Utah.

[46] The Nottawaseppi Huron Band of the Potawatomi, Michigan, formerly known as the Huron Band of Potawatomi, Inc., was recognized in December 1995, as documented at 60 FR 66315, December 21, 1995. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[47] Washabaugh County, SD, merged and became part of Jackson County, SD, in 1983; both were/are CHSDA counties for the Oglala Sioux Tribe.

[48] Entire State of Oklahoma is included as a CHSDA by regulation (42 CFR 136.22 (a)(3)).

[49] Paiute Indian Tribe of Utah Restoration Act, Public Law 96–227, provides for the extension of services for the Paiute Indian Tribe of Utah to these four counties without regard to the existence of a reservation.

[50] In the FEDERAL REGISTER on July 8, 2015 (80 FR 39144), the Pamunkey Indian Tribe was officially recognized as an Indian Tribe within the meaning of Federal law. The counties listed were designated administratively as the PRCDA, for the purposes of operating a PRC program.

[51] Legislative history (H.R. Report No. 95–1021) to Public Law 95–375, Extension of Federal Benefits to Pascua Yaqui Indians, Arizona, expresses congressional intent that lands conveyed to the Pascua Yaqui Tribe of Arizona pursuant to Act of October 8, 1964. (Pub. L. 88–350) shall be deemed a Federal Indian Reservation.

[52] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide contract health services to the Passamaquoddy Tribe and the Penobscot Nation.

[53] The Passamaquoddy Tribe has two reservations: Indian Township and Pleasant Point. The PRCDA for the Passamaquoddy Tribe at Indian Township, ME, is Aroostook County, ME, Washington County, ME, and Hancock County, ME. The PRCDA for the Passamaquoddy Tribe at Pleasant Point, ME, is Washington County, ME, south of State Route 9, and Aroostook County, ME.

[54] The Passamaquoddy Tribe's counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[55] The Maine Indian Claims Settlement Act of 1980 (Pub. L. 96–420; H. Rept. 96–1353) includes the intent of Congress to fund and provide PRC to the Passamaquoddy Tribe and the Penobscot Nation.

[56] Counties in the Service Unit designated by Congress for the Poarch Band of Creek Indians (see H. Rept. 98–886, June 29, 1984; Cong. Record, October 10, 1984, Pg. H11929).

[57] Public Law 103–323 restored Federal recognition to the Pokagon Band of Potawatomi Indians, Michigan and Indiana, in 1994 and identified counties to serve as the SDA.

[58] The Ponca Restoration Act, Public Law 101–484, recognized members of the Ponca Tribe of Nebraska in Boyd, Douglas, Knox, Madison or Lancaster counties of Nebraska or Charles Mix county of South Dakota as residing on or near a reservation. Public Law 104–109 made technical corrections to laws relating to Native Americans and added Burt, Hall, Holt, Platte, Sarpy, Stanton, and Wayne counties of Nebraska and Pottawatomie and Woodbury counties of Iowa to the Ponca Tribe of Nebraska SDA.

[59] Special programs have been established by Congress irrespective of the eligibility regulations. Eligibility for services at these facilities is based on the legislative history of the appropriation of funds for the particular facility, rather than the eligibility regulations. Historically services have been provided at Rapid City (S. Rept. No. 1154, FY 1967 Interior Approp. 89th Cong. 2d Sess.).

[60] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Rappahannock Tribe, Inc. as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[61] Historically part of Isabella Reservation Area for the Saginaw Chippewa Indian Tribe of Michigan and the Eastern Michigan Service Unit population since 1979.

[62] The Samish Indian Tribe Nation was Federally acknowledged in April 1996 as documented at 61 FR 15825, April 9, 1996. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[63] CHSDA counties for the Sault Ste. Marie Tribe of Chippewa Indians, Michigan, were designated by regulation (42 CFR 136.22(a)(4)).

[64] The Shinnecock Indian Nation was Federally acknowledged in June 2010 as documented at 75 FR 34760, June 18, 2010. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[65] Lemhi County, ID, has historically been a part of the Fort Hall Service Unit population since 1979.

[66] The Snoqualmie Indian Tribe was Federally acknowledged in August 1997 as documented at 62 FR 45864, August 29, 1997. The counties listed were designated administratively as the SDA, to function as a CHSDA, for the purposes of operating a CHS program pursuant to the ISDEAA, Public Law 93–638.

[67] On December 30, 2011 the Office of Assistant Secretary-Indian Affairs reaffirmed the Federal recognition of the Tejon Indian Tribe. Kern County, CA, was designated administratively as part of the Tribe's CHSDA in addition to the CHSDA established by Congress for the State of California. Kern County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[68] The counties listed are designated administratively as the SDA, to function as a PRC SDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[69] The Secretary acting through the Service is directed to provide contract health services to Turtle Mountain Band of Chippewa Indians that reside in Trenton Service Unit, North Dakota and Montana, in Divide, Mackenzie, and Williams counties in the state of North Dakota and the adjoining counties of Richland, Roosevelt, and Sheridan in the state of Montana (Sec. 815, Pub. L. 94–437).

[70] Rapides County, LA, has historically been a part of the Tunica Biloxi Service Unit population since 1982.

[71] The Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017, Public Law 115–121, officially recognized the Upper Mattaponi Tribe as an Indian Tribe within the meaning of Federal law, and specified an area for the delivery of Federal services. The IHS administratively designated the Tribe's PRCDA, for the purposes of operating a PRC program, consistent with the Congressional intent expressed in the Recognition Act.

[72] according to Public Law 100–95, Sec. 12, members of the Wampanoag Tribe of Gay Head (Aquinnah) residing on Martha's Vineyard are deemed to be living on or near an Indian reservation for the purposes of eligibility for Federal services.

[73] The counties listed are designated administratively as the SDA, to function as a PRCDA, for the purposes of operating a PRC program pursuant to the ISDEAA, Public Law 93–638.

[74] The Wilton Rancheria, California had Federal recognition restored in July 2009 as documented at 74 FR 33468, July 13, 2009. Sacramento County, CA, was designated administratively as part of the Rancheria's CHSDA in addition to the CHSDA established by Congress for the State of California. Sacramento County was not covered when Congress originally established the State of California as a CHSDA excluding certain counties including Sacramento County (25 U.S.C. 1680).

[75] Public Law 100–89, Restoration Act for Ysleta Del Sur and Alabama and Coushatta Tribes of Texas establishes service areas for "members of the Tribe" by sections 101(3) and 105(a) for the Pueblo and sections 201(3) and 206(a) respectively.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Addressing Dementia in Indian Country: Models of Care

Announcement Type: New.

Funding Announcement Number: HHS–2022–IHS–ALZ–0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.933.

Key Dates

Application Deadline Date: July 18, 2022.

Earliest Anticipated Start Date: August 31, 2022.

I. Funding Opportunity Description

Statutory Authority

The Indian Health Service (IHS) is accepting applications for cooperative agreements for Addressing Dementia in Indian Country. This program is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 1665a(c)(5)(F) and 1660e. This program is described in the Assistance Listings located at *https://sam.gov/content/home* (formerly known as the CFDA) under 93.933.

Background

Alzheimer's disease and Alzheimer's disease-related dementias affect lives in every Tribal and Urban Indian community. Alzheimer's disease is the most common cause of dementia—a progressive cognitive impairment that adversely affects function. Other forms

of dementia include vascular dementia, Lewy-Body Disease, Fronto-Temporal Dementia, alcohol-related dementia, dementia related to traumatic brain injury, and mixed dementia (attributable to more than one cause of cognitive impairment). Age is the most significant risk factor for Alzheimer's disease. Although the average age of American Indians and Alaska Natives (AI/AN) is younger than the population as a whole, the group age 65 and older is growing more rapidly than the United States (U.S.) population. The Centers for Disease Control and Prevention (CDC) notes that the number of AI/AN age 65 and older is expected to triple in the next 30 years, with the oldest—those 85 years and older—increasing even more rapidly. While age is the most substantial risk factor for Alzheimer's disease, early-onset occurs in younger populations and in persons with Down Syndrome or Trisomy 21, who are at markedly increased risk for Alzheimer's Disease. Conditions such as diabetes, cardiovascular disease, chronic kidney disease, chronic liver disease, and traumatic brain injury increase the risk of dementia and can lead to a more rapid worsening.

Dementia of all types is under-recognized, underdiagnosed, and undertreated in all populations in the U.S., and anecdotal evidence suggests that this is very much true for the AI/AN population. Many individuals go unrecognized in the community, never seeking care and living with impaired cognition that puts them at risk for financial exploitation, poor health outcomes, and accidental injury. Individuals and their families may not recognize the cognitive changes that dementia brings. They may think the changes are due to normal aging or may accept the changes and not seek care out of concern for the elder's dignity. Failure to recognize dementia may also stem from the stigma associated with dementia and from lack of awareness of resources available. Often it takes a crisis or illness to bring attention to the condition. Diagnosis of dementia is most often made in the primary care office or clinic, with specialty referral needed when the presentation is not typical or apparent. But primary care providers may lack the confidence to make the diagnosis or plan effective care and may not have access to an interdisciplinary team to support care or specialists through consultation or referral to support diagnosis and management decisions. Effective management of dementia crosses many boundaries, involving medical care, personal care, social services, legal and financial services, and housing. Management of dementia requires coordination between clinical services and community-based services. Those living with dementia and their caregivers are too often left to coordinate this complex care themselves. Most persons living with dementia receive some care and assistance from caregivers, and sometimes from family members. Care for the person living with dementia should include consideration for their caregivers but, unfortunately, this is not common.

Effective models for addressing dementia in Tribal and Urban Indian communities will be supported by evidence and will emerge through development or adaptation and evaluation from those communities. A recent report by the Agency for Healthcare Research and Quality and the National Academies of Science, Engineering, and Medicine point to the Resources for Enhancing Alzheimer's Caregiver Health II (REACH II) caregiver support intervention and models of coordinated care as interventions that have evidence for benefit and are ready for implementation and further evaluation.[1] The REACH into Indian Country initiative successfully trained public and community health nurses to provide the REACH intervention in Tribal communities. Communities across the country, including some Tribal communities, use the Dementia-Friendly Communities approach to building community-based efforts to improve care for persons living with dementia and their families.[2] The Healthy Brain Initiative Roadmap for Indian Country, developed by the CDC and the Alzheimer's Association, is designed to support discussion about dementia and caregiving with Tribal communities and encourage a public health approach as part of a larger holistic response.[3] These models can help inform the design of Tribal and Urban Indian health models.

Purpose

The purpose of this program is to support the development of models of comprehensive and sustainable dementia care and services in Tribal and Urban Indian communities that are responsive to the needs of persons living with dementia and their caregivers. Awardees will:

1. Plan and implement a comprehensive approach to care and services for persons living with dementia and their caregivers that addresses:

- Awareness and Recognition. Enhance awareness and early recognition of dementia in the community and increase referral to clinical care for evaluation leading to diagnosis. The United States Preventive Services Task Force has concluded that ''current evidence is insufficient to assess the benefits and harms of screening for cognitive impairment in older adults.'' Still, there is broad consensus supporting case findings to promote early recognition and diagnosis of dementia.
- Accurate and Timely Diagnosis. Individuals and their families should have confidence that concerns about potential cognitive impairment will be evaluated thoroughly and lead to an accurate and timely diagnosis. Most diagnoses of dementia can be made in primary care, but clinical programs should have referral and consultation mechanisms in place (either in person or via telehealth) to support diagnosis when needed.
- Interdisciplinary Assessment. Persons living with dementia will have complex and evolving care needs. An interdisciplinary assessment helps identify goals of care and gaps in services and sets the stage for appropriate care and services. In best practice, this assessment includes an attempt to understand the cultural, religious, and personal values that will guide goals and preferences for care. It assesses family and other caregiving resources and the needs and capabilities of those partners in care, as well as housing security and safety risks.
- Management and Referral. Care for the person living with dementia is guided by the assessment and most often requires coordination of health care and social services to meet their needs and support caregivers. Those living with dementia and their caregivers often need support and assistance in navigating through the various systems providing this care.
- Support for Caregivers. Care for persons living with dementia includes care for their caregivers. Families and other caregivers need help in navigating services and mobilizing respite care, help in understanding what to expect and how to respond to the challenges of living with dementia, and support for

[1] National Academies of Sciences, Engineering, and Medicine. 2021. Meeting the challenge of caring for persons living with dementia and their care partners and caregivers: A way forward. Washington, DC: The National Academies Press. *https://doi.org/10.17226/26026.*

[2] Dementia Friendly America *https://www.dfamerica.org https://iasquared.org/news-release-ia2-is-now-a-national-dementia-friends-sub-licensee-for-american-indian-and-alaska-native-tribal-communities/.*

[3] *https://www.cdc.gov/aging/healthybrain/indian-country-roadmap.html.*

self-care. Interventions that provide that care and support (*e.g.,* REACH) and provide education and training (*e.g.,* Savvy Caregiver) have been adapted for use in Tribal communities.

2. Develop, in collaboration with the IHS, best and promising practices to include tools, resources, reports, and presentations accessible to Federal, Tribal, and urban health programs as they plan and implement their own programs.

3. Identify and implement reimbursement and funding streams that will support service delivery and facilitate sustainability. Opportunities for reimbursement and funding streams dependent on the specific interventions planned, but potential sources might include:

- Medicare reimbursement through the Physician Fee Schedule, including Cognitive Assessment and Planning codes and Chronic and Complex Care Management codes.
- Medicaid and other state programs.
- Purchased and Referred Care resources.
- IHS and Third Party Revenue.

The IHS Alzheimer's Grant Program will provide technical assistance to grantees in development of a plan for sustainability.

II. Award Information

Funding Instrument—Cooperative Agreement

Estimated Funds Available

The total funding identified for fiscal year (FY) 2022 is approximately $1,000,000. Individual award amounts for the first budget year are anticipated to be between $100,000 and $200,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Anticipated Number of Awards

Approximately five awards will be issued under this program announcement.

Period of Performance

The period of performance is for 2 years.

Cooperative Agreement

Cooperative agreements awarded by the Department of Health and Human Services (HHS) are administered under the same policies as grants. However, the funding agency, IHS, is anticipated to have substantial programmatic involvement in the project during the entire period of performance. Below is a detailed description of the level of involvement required of the IHS.

Substantial Agency Involvement Description for Cooperative Agreement

A. The IHS Office of Clinical and Preventive Services (OCPS), Division of Clinical and Community Services (DCCS), will collaborate with recipients throughout the process of planning and implementation and assist in the identification of tools, resources, reports, and presentations for dissemination to other Tribal, the IHS, and urban programs. The DCCS will also provide technical assistance in developing a sustainability plan.

B. The IHS will convene recipients periodically, not more often than monthly, to share ideas, strategies, and tools to accelerate design and implementation progress.

C. DCCS will link recipients with Federal agencies and non-governmental organizations working to improve the care of persons living with dementia and their caregivers.

D. DCCS will coordinate reporting (*e.g.,* identified metrics utilized, achieved goals, identified best practices, etc.) and technical assistance (*e.g.,* programmatic support to Tribal communities) as required.

III. Eligibility Information

1. Eligibility

To be eligible under this announcement, an applicant must be one of the following, as defined by 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term ''Indian Tribe'' means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term ''Tribal organization'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304(1)): ''Tribal organization'' means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.
- An Urban Indian organization as defined by 25 U.S.C. 1603(29). The term ''Urban Indian organization'' means a nonprofit corporate body situated in an urban center, governed by an urban Indian controlled board of directors, and providing for the maximum participation of all interested Indian groups and individuals, which body is capable of legally cooperating with other public and private entities for the purpose of performing the activities described in 25 U.S.C. 1653(a). Applicants must provide proof of non-profit status with the application, *e.g.,* 501(c)(3).

The program office will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of non-profit status, etc.

2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the period of performance outlined under Section II Award Information, Period of Performance, are considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any Tribe or Tribal organization selected for funding. An applicant that is proposing a project affecting another Indian Tribe must include resolutions from all

affected Tribes to be served. However, if an official, signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official, signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Tribes organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

IV. Application and Submission Information

1. Obtaining Application Materials

The application package and detailed instructions for this announcement are available at *https://www.Grants.gov.*

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443–2114 or (301) 443–5204.

2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
- Application forms:

1. SF–424, Application for Federal Assistance.

2. SF–424A, Budget Information—Non-Construction Programs.

3. SF–424B, Assurances—Non-Construction Programs.

- Project Narrative (not to exceed 10 pages). See Section IV.2.A, Project Narrative for instructions.

1. Background information on the organization.

2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.

- Budget Justification and Narrative (not to exceed five pages). See Section IV.2.B, Budget Narrative for instructions.
- One-page Timeframe Chart.
- Tribal Resolution(s), if applicable.
- Letters of Support from organization's Board of Directors (optional).
- 501(c)(3) Certificate, if applicable.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF–LLL), if applicant conducts reportable lobbying.
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost (IDC) rate agreement (required in order to receive IDC).
- Organizational Chart.
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports. Applicants can find these on the FAC website at *https://facdissem.census.gov/*.

Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See *https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html.*

Requirements for Project and Budget Narratives

A. Project Narrative

This narrative should be a separate document that is no more than 10 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger (applicants may use 10 point font for tables); (3) be single-spaced; and (4) be formatted to fit standard letter paper (8–1/2 x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and will not be reviewed. The 10-page limit for the narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget justifications, narratives, and/or other items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Sharing with Other Tribes, Tribal Organizations, and Urban Indian Organizations. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

Part 1: Program Information (Limit—4 Pages)

Section 1: Tribal or Organizational Overview

Provide a brief description of the Tribe, Tribal organization, or Urban Indian health program, health care delivery system and resources, elderly services and resources, long-term services and supports, and other Tribal or community-based services that might be involved.

Section 2: Needs

Provide any data available about the number of persons living with dementia and their needs and the needs of their caregivers. If data is not currently available, indicate this here and in Part 2 below, and describe in detail how the applicant will obtain or develop this data in the first year of the program.

Section 3: Other Funded Initiatives

Provide information about other funded initiatives addressing dementia that the applicant is or will be participating in that are relevant to this proposal. Indicate any HHS grants addressing dementia (*e.g.* Dementia Capability in Indian Country Grant program of the Administration for Community Living) the applicant has been awarded whose period of performance may overlap the period of performance of this grant opportunity.

Part 2: Program Planning and Evaluation (Limit—4 Pages)

Section 1: Program Plans

Describe fully and clearly the applicant's plan to implement a comprehensive approach to care and services for persons living with dementia and their caregivers and identify funding streams that will support service delivery. The plan should include a vision for a comprehensive approach to care, recognizing that achievement of the fully implemented approach may not be feasible within the period of performance.

Section 2: Program Evaluation

Describe fully and clearly the elements of the comprehensive approach to care described in Section 1 that the applicant expects to implement

over the period of performance. Describe the metrics that will be used to assess the achievement of these goals. If the applicant will need to obtain or develop data about the number of persons living with dementia and their needs and the needs of their caregivers as an element of this award, the applicant should indicate that data and describe how that data will be developed or acquired in the first year.

Part 3: Sharing With Other Tribes, Tribal Organizations, and Urban Indian Organizations (Limit—2 Pages)

Section 1

Describe how your program will develop, in collaboration with the IHS, best and promising practices that includes tools, resources, reports, and presentations, accessible to stakeholders across the Tribal health system including Tribal and urban health partners.

B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF–424A (Budget Information for Non-Construction Programs). The budget narrative can include a more detailed spreadsheet than is provided by the SF–424A. The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the ''Other'' category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1, Application Review Information, Evaluation Criteria), the narrative should highlight the changes from year 1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*). If problems persist, contact Mr. Paul Gettys (*Paul.Gettys@ihs.gov*), Deputy Director, DGM, by telephone at (301) 443–2114 or (301) 443–5204. Please be sure to contact Mr. Gettys at least 10 days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement may be awarded per applicant.

6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the *https://www.Grants.gov* website to submit an application. Find the application by selecting the ''Search Grants'' link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Deputy Director, DGM. A written waiver request must be sent to *GrantsPolicy@ihs.gov* with a copy to *Paul.Gettys@ihs.gov.* The waiver request must: (1) Be documented in writing (emails are acceptable) before submitting an application by some other method; and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m. Eastern Time on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in *https://www.Grants.gov* by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at *https://www.Grants.gov*).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through *https://fedgov.dnb.com/webform,* or call (866) 705–5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (''Transparency Act''), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS recipients must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has

provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at *https://sam.gov* (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at *https://sam.gov.*

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page at *https://www.ihs.gov/dgm/policytopics/.*

V. Application Review Information

Possible points assigned to each section are noted in parentheses. The project narrative and budget narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See ''Multi-year Project Requirements'' at the end of this section for more information. The project narrative should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the page limit for the narratives. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

1. Evaluation Criteria

A. Introduction and Need for Assistance (10 Points)

1. Description of the clinical services, elder services and resources, long-term care services, and supports available through the applicant's organization, either as a direct service or through agreement, contract, or Purchased and Referred Care (PRC). Applicants must be able to provide ambulatory care services directly or through coordination with IHS Direct Services and must be able to coordinate with elder services.

2. Description of the number of individuals living with dementia to be served, any data available about the prevalence of risk factors for dementia (including age as reflected in the population's demographics), and any limitations of the data available.

3. Identification of the most urgent and pressing gaps in availability or quality of care and services for persons living with dementia and their families. If this information is not available, the acquisition of this information should be a detailed part of the Project Objective(s), Work Plan, and Approach.

4. If the applicant is the recipient of other HHS grants that will provide funding to address dementia over the same time period (*e.g.* Dementia Capability in Indian Country Grant program of the Administration for Community Living), address how funding under this opportunity will address the need without overlapping the activities of other funded awards, if applicable.

B. Project Objective(s), Work Plan, and Approach (30 Points)

1. The overall vision for a comprehensive approach to care and services for persons living with dementia and their caregivers, including:

- Awareness and recognition.
- Timely and accurate diagnosis.
- Multidisciplinary assessment.
- Management and referral.
- Caregiver Support.

2. The elements of this vision that the awardee anticipates implementing, including planning activities and assessment of need, if not already available.

3. The work plan and approach, including planning activities and assessment of need, if not already available. This work plan should be responsive to the most urgent and pressing gaps in availability and quality of care and services for persons living with dementia and their families. This work plan must include, at the minimum, both the provision of clinical services, either directly or through coordination with IHS Direct Services, and the engagement of elder services.

4. The work plan and approach should include developing tools, resources, reports, and presentations to support the development of programs by other Tribes, Tribal organizations, or Urban Indian health programs.

5. If the applicant is the recipient of other HHS grants that will provide funding to address dementia over the same time period (*e.g.* Dementia Capability in Indian Country Grant program of the Administration for Community Living), indicate how the work plan and approach supported through this funding will complement and not supplant or overlap that already-funded work.

C. Program Evaluation (30 Points)

1. Clearly identify plans for program evaluation to ensure that objectives of the program are met at the conclusion of the period of performance.

2. Include SMART (Specific, Measurable, Achievable, Relevant and Time-based) goals to establish a specific set of evaluation criteria to ensure the objectives are attainable within the period of performance.

3. Evaluation should minimally include metrics that provide insight into the implementation of those elements of a comprehensive approach to care and services for persons living with dementia and their families that the applicant has proposed to implement. The evaluation should also include metrics for important outcomes of care for persons living with dementia and their family, such as avoidance of crisis-driven care (*e.g.* emergent transfers and undesired out-of-home placement) as well as processes of care that contribute to better outcomes (*e.g.* reduction of medications that impair cognition).

D. Organizational Capabilities, Key Personnel, and Qualifications (20 Points)

1. Include an organizational capacity statement that demonstrates the ability to execute program strategies within the period of performance.

2. Project management and staffing plan. Detail that the organization has the current staffing and expertise to address each of the program activities. If capacity does not exist, please describe the applicant's actions to fulfill this gap within a specified timeline.

3. Identify any partnerships or collaborations that will be needed to implement the work plan and include letters of support or intent to coordinate or collaborate with those partners.

4. Demonstrate that the applicant has previous successful experience providing technical or programmatic support to Tribal communities.

E. Categorical Budget and Budget Justification (10 Points)

1. Provide a detailed budget and accompanying narrative to explain the activities being considered and how they are related to proposed program objectives.

Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*. These can include:

- Work plan, logic model and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.* data tables, key news articles, etc.).

2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS DCCS within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF–424) of the application.

A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the award, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for 1 year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

VI. Award Administration Information

1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

A. The Criteria as Outlined in This Program Announcement

B. Administrative Regulations for Grants

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at *https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf.*
- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at *https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372.*

C. Grants Policy

- HHS Grants Policy Statement, Revised January 2007, at *https://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf.*

D. Cost Principles

- Uniform Administrative Requirements for HHS Awards, ''Cost Principles,'' located at 45 CFR part 75 subpart E.

E. Audit Requirements

- Uniform Administrative Requirements for HHS Awards, ''Audit Requirements,'' located at 45 CFR part 75 subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

2. Indirect Costs

This section applies to all recipients that request reimbursement of IDC in their application budget. In accordance with HHS Grants Policy Statement, Part II–27, the IHS requires applicants to obtain a current IDC rate agreement, and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award's budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, ''any non-Federal entity (NFE) [*i.e.,* applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the NFE chooses to negotiate for a rate, which the NFE may apply to do at any time.''

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS recipients are negotiated with the Division of Cost Allocation at *https://rates.psc.gov/* or the Department of the Interior (Interior

Business Center) at *https://ibc.doi.gov/ICS/tribal.* For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under ''Agency Contacts'' or the main DGM office at (301) 443–5204.

3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a ''Grant Note'' in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at *https://pms.psc.gov.* Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the Period of Performance.

Recipients are responsible and accountable for reporting accurate information on all required reports: The Progress Reports, the Federal Cash Transaction Report, and the Federal Financial Report.

C. Data Collection and Reporting

The grantee will participate in periodic (not more frequently than monthly) web-based calls with the program office or designee and the other recipients to share their progress, experience, and tools and resource that might be useful for other recipients. The grantee will be expected to work with the program office to develop a driver diagram (an action-oriented logic model) that describes the comprehensive approach to care and services for persons living with dementia and their caregivers and identifies key performance metrics based on their evaluation plan.

The grantee will be expected to share, on a semi-annual basis, the tools, resources, reports, and presentations produced that may support the development of programs by other Tribes, Tribal organizations, or Urban Indian health programs.

D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

The IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a $25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at *https://www.ihs.gov/dgm/policytopics/.*

E. Non-Discrimination Legal Requirements for Recipients of Federal Financial Assistance

Should you successfully compete for an award, recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex (including gender identity, sexual orientation, and pregnancy). This includes ensuring programs are accessible to persons with limited English proficiency and persons with disabilities. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see *https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html* and *https://www.hhs.gov/civil-rights/for-individuals/nondiscrimination/index.html.*

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. For guidance on meeting your legal obligation to take reasonable steps to ensure meaningful access to your programs or activities by limited English proficiency individuals, see *https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html* and *https://www.lep.gov.*
- For information on your specific legal obligations for serving qualified individuals with disabilities, including reasonable modifications and making services accessible to them, see *https://www.hhs.gov/civil-rights/for-individuals/disability/index.html.*
- HHS funded health and education programs must be administered in an environment free of sexual harassment. See *https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html.*
- For guidance on administering your program in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws, see *https://www.hhs.gov/conscience/conscience-protections/index.html* and *https://www.hhs.gov/conscience/religious-freedom/index.html.*

F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the FAPIIS, at *https://www.fapiis.gov/fapiis/#/home*

before making any award in excess of the simplified acquisition threshold (currently $250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 appendix XII of the Uniform Guidance, NFEs are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than $10,000,000 for any period of time during the period of performance of an award/project.

Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

All applicants and recipients must disclose in writing, in a timely manner, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to:

U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Deputy Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include ''Mandatory Grant Disclosures'' in subject line), Office: (301) 443–5204, Fax: (301) 594–0899, Email: *Paul.Gettys@ihs.gov*

And

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: *https://oig.hhs.gov/fraud/report-fraud/* (Include ''Mandatory Grant Disclosures'' in subject line), Fax: (202) 205–0604 (Include ''Mandatory Grant Disclosures'' in subject line), or Email: *MandatoryGranteeDisclosures@oig.hhs.gov*

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR part 180 and 2 CFR part 376).

VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Dr. Marcy Ronyak, Director, DCCS, Office of Clinical and Preventive Services, Division of Clinical and Community Services, Indian Health Service, 5600 Fishers Lane, Mailstop: 08N34–A, Rockville, MD 20857, Phone: (301) 443–6458, Fax: (301) 594–6213, Email: *Marcella.Ronyak@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: Donald Gooding, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2298, Email: *Donald.Gooding@ihs.gov.*

3. Questions on systems matters may be directed to: Paul Gettys, Deputy Director, Division of Grants Management, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443–2114; or the DGM main line (301) 443–5204, Email: *Paul.Gettys@ihs.gov.*

VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

Elizabeth A. Fowler,

Acting Director, Indian Health Service.

[FR Doc. 2022–08249 Filed 4–15–22; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Phase II SBIR Topic 107.

Date: May 24, 2022.

Time: 9:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Rajiv Kumar, Ph.D., Branch Chief, Blood and Vascular Branch, Office of Scientific Review, National Heart, Lung and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–W, Bethesda, MD 20892, (301) 435–0270, *rajiv.kumar@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Systems Biology and Pulmonary Disease.

Date: May 27, 2022.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shelley S. Sehnert, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–T, Bethesda, MD 20892–7924, (301) 827–7984, *ssehnert@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08202 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Sensory-Motor Neuroscience Study Section.

Date: May 25–26, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 12, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08199 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Deferred Application From CHHD–C Developmental Biology.

Date: April 29, 2022.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes Health, 6710B Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 451–0000, *jolanta.topczewska@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08205 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Yogikala Prabhu, Ph.D., 301–761–7789; *prabhuyo@niaid.nih.gov.* Licensing information may be obtained by communicating with the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases (NIAID), 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished information related to the invention.

SUPPLEMENTARY INFORMATION: Technology description follows:

Novel Methods of MHC–I—LILRB Checkpoint Inhibition

Description of Technology: The technology encompasses antibodies and methods that may overcome the shortcomings of commercial checkpoint inhibitors (CPIs). Scientists at NIAID have identified MHC–I specific antibodies that selectively inhibit interactions with inhibitory leukocyte immunoglobin-like receptors (LILRs) but not T-cell receptors. Administration of the antibodies increased proliferation and activation of both innate and adaptive immune system cells, and lead to anti-tumor and anti-viral activity in an array of relevant mouse models of disease.

Immune CPIs that target PD–1/PD–L1, CTLA–4 and other well-known molecules can provide significant clinical benefit as part of a mono or combination immunotherapy regimen. However, many patients do not respond to treatment, leading to an ongoing search for novel checkpoint targets. One attractive family of targets are the inhibitory Leukocyte Immunoglobin-like receptors (LILRB1–5). LILRB1, LILRB2, and LILRB5 can inhibit immune cell function by binding to many MHC–I subtypes. However, LILRB1/2/5 expression is variable and the three members cannot be targeted by any single blocking anti-LILB antibody, possibly limiting the efficacy of targeting LILRBs. NIAID scientists have circumvented these issues by identifying antibodies that can inhibit LILRB function by binding to MHC–I without interfering with T-cell receptor engagement.

To date, the MHC–I specific antibodies have been shown to induce activation and proliferation of human T cells and NK cells in xenogeneic models using NSG mice.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37

CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Anti-tumor checkpoint inhibitor
- Anti-viral checkpoint inhibitor

Competitive Advantages:

- Activation of innate (NK) and adaptive ($CD8^+$ and $CD4^+$) immune cell types
- Causes proliferation and activation of immune effector cells regardless of target expression in tumors

Development Stage:

- Pre-clinical

Inventors: Ethan M. Shevach, M.D. (NIAID), Abir Panda, Ph.D. (NIAID), David H. Margulies, M.D., Ph.D. (NIAID), and Kannan Natarajan, Ph.D. (NIAID).

Publications: Panda, Abir, et al. ''Cutting Edge: Inhibition of the interaction of NK inhibitory receptors with MHC class I augments anti-viral and anti-tumor immunity.'' J Immunol. 2020.04.01.437942

Intellectual Property: HHS Reference No. E–160–2021–0; US provisional application No. 63/262,120 filed on October 5, 2021.

Licensing Contact: To license this technology, please contact Yogikala Prabhu, Ph.D., 301–761–7789; *prabhuyo@niaid.nih.gov,* and reference E–160–2021–0.

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact Yogikala Prabhu, Ph.D., 301–761–7789; *prabhuyo@niaid.nih.gov.*

Dated: April 12, 2022.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2022–08150 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be held as a virtual meeting and is open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://videocast.nih.gov/*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: May 23, 2022.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: May 24, 2022.

Open: 11:00 a.m. to 4:00 p.m.

Agenda: Opening Remarks, Administrative Matters, Director's Report, Presentations, and Other Business of the Council.

Place: National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Monica Webb Hooper, Ph.D., Deputy Director, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Boulevard, Suite 800, Bethesda, Maryland 20892–5465, 301–402–1366, *monica.hooper@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: NIMHD: *https://www.nimhd.nih.gov/about/advisory-council/,* where an agenda and any additional information for the meeting will be posted when available.

Dated: April 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08201 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R25 Application Review.

Date: April 27, 2022.

Time: 10:00 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John F. Connaughton, Ph.D., Chief, Scientific Review Branch, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7007, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 12, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08196 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Council of Councils.

The meeting will be held as a virtual meeting and will be open to the public as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*https://videocast.nih.gov*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.
Open: May 19, 2022.
Time: 10:30 a.m. to 2:30 p.m.
Agenda: Call to Order and Introductions; Announcements and Updates; NIH Program Updates; Scientific Talks and Other Business of the Committee.
Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Name of Committee: Council of Councils.
Closed: May 20, 2022.
Time: 10:30 a.m. to 11:30 a.m.
Agenda: Review of Grant Applications.
Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Open: May 20, 2022.
Time: 11:50 a.m. to 3:10 p.m.
Agenda: NIH Program Updates; Scientific Talks and Other Business of the Committee.
Place: National Institutes of Health, Building 1, One Center Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Robin Kawazoe, Acting Executive Secretary, Council of Councils, Deputy Director, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, Building 1, Room 260, One Center Drive, Bethesda, MD 20892, *kawazoer@mail.nih.gov,* 301–402–9852.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Council of Council's home page at *https://dpcpsi.nih.gov/council/* where an agenda will be posted before the meeting date.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: April 12, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08200 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Applications (P01 Clinical Trial Not Allowed).
Date: May 12, 2022.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20892 (Virtual Meeting).
Contact Person: Annie Walker-Abbey, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E70A, Rockville, MD 20852, 240–627–3390, *aabbey@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 12, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08204 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Cognitive Systems.
Date: June 7, 2022.
Time: 11:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Greg Bissonette, Ph.D., Scientific Review Officer, National Institute on Aging, National Institutes of Health, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–1622, *bissonettegb@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 12, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08193 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be held as a virtual meeting and is open to the public, as indicated below. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The open session will be videocast and can be accessed from the NIH Videocasting and Podcasting website (*http://videocast.nih.gov/*).

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The intramural programs and projects as well as the grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with intramural programs and projects as well as the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: May 10, 2022.

Closed: 11:00 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Closed: 12:15 p.m. to 12:45 p.m.

Agenda: Report to Council from the Board of Scientific Counselors (BSC).

Open: 1:15 p.m. to 4:45 p.m.

Agenda: Presentations and other business of the Council.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan R.B. Weiss, Ph.D., Director, Division of Extramural Research, Office of the Director, National Institute on Drug Abuse, NIH, Three White Flint North, RM 09D08, 11601 Landsdown Street, Bethesda, MD 20852, 301–443–6480, *sweiss@nida.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 12, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08267 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Peter Soukas, J.D., 301–496–2644; *peter.soukas@nih.gov.* Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases (NIAID), 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows:

Expression of Prefusion-Stabilized Spike S Glycoprotein of SARS CoV–2 From Avian Paramyxovirus Type 3 (APMV3)

Description of Technology: Severe acute respiratory syndrome coronavirus 2 (SARS–CoV–2) emerged in 2019 as the causative agent of coronavirus disease 2019 (COVID–19) and has created a pandemic and global crisis in public health. Vaccines for SARS–CoV–2 are increasingly available under emergency use authorizations; however, authorizations for use are currently limited to individuals five (5) years or older. They also involve intramuscular immunization, which does not directly stimulate local immunity in the respiratory tract, the primary site of SARS–CoV–2 infection, shedding and spread. Ideally, a vaccine should be effective as a single dose and should induce systemic and mucosal immunity with the ability to restrict SARS–CoV–2 infection and respiratory shedding.

The application relates to a live virus-vectored intranasal vaccine candidate to prevent infection and transmission of SARS–CoV–2. Avian paramyxovirus type 3 (APMV3) was used as a vaccine vector to express the spike (S) protein stabilized in prefusion conformation by six proline substitutions (APMV3/S–6P). The S protein was from the first available SARS–CoV–2 sequence. A lack of pre-existing immunity in humans and attenuation by host range restriction make APMV3 a vector of interest. Unlike avian paramyxovirus 1 (Newcastle Disease Virus), APMV3 is not a significant pathogen in poultry. The APMV3/S–6P vaccine is expected to induce durable and broad systemic and respiratory mucosal immunity against SARS–CoV–2. In the hamster model, a single intranasal dose of APMV3/S–6P induced a strong serum neutralizing antibody response to the vaccine-matched SARS–CoV–2 isolate WA1, and a strong serum IgG and IgA response to S protein and its receptor-binding domain. Serum antibodies of APMV3/S–6P-immunized hamsters effectively neutralized SARS–CoV–2 of lineages B.1.1.7 (Alpha) and B.1.351(Beta). Immunized hamsters challenged with SARS–CoV–2, strain WA1, did not exhibit weight loss and lung inflammation, and SARS–CoV–2 replication in the upper and lower respiratory tract was low or undetectable. Thus, a single intranasal dose of APMV3/S–6P fully protected hamsters from SARS–CoV–2 challenge, suggesting that APMV3/S–6P is suitable for clinical development.

Based on experience with this and other live-attenuated virus-vectored vaccine candidates in previous clinical studies, the present candidate is anticipated to be well-tolerated in humans. The National Institute of Allergy and Infectious Diseases has extensive experience and capability in evaluating live-attenuated respiratory

virus vaccine candidates in pediatric clinical studies, and opportunity for collaboration exists.

This technology is available for nonexclusive licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications:

- Viral diagnostics
- Vaccine research

Competitive Advantages:

- Ease of manufacture
- B cell and T cell activation
- Low-cost vaccines
- Intranasal administration/needle-free delivery

Development Stage:

- *In vivo* data assessment (animal)

Inventors: Ursula Buchholz (NIAID), Shirin Munir (NIAID), Cyril Le Nouen (NIAID), Hongsu Park (NIAID), Cindy Luongo (NIAID), Peter Collins (NIAID).

Intellectual Property: HHS Reference No. E–238–2020–0—U.S. Provisional Application No. 63/280,884, filed November 18, 2021.

Licensing Contact: Peter Soukas, J.D., 301–496–2644; *peter.soukas@nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize for development of a vaccine for respiratory or other infections. For collaboration opportunities, please contact Peter Soukas, J.D., 301–496–2644; *peter.soukas@nih.gov.*

Dated: April 12, 2022.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2022–08154 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; T Cells and Aging.

Date: May 26, 2022.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Anita H. Undale, Ph.D., MD, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2W200, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 827–7428, *anita.undale@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 12, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–08206 Filed 4–15–22; 8:45 am]

BILLING CODE 4140–01–P

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Request for Nominations to the Board of Trustees

AGENCY: Institute of American Indian and Alaska Native Culture and Arts Development (aka Institute of American Indian Arts).

ACTION: Notice; request for nominations.

SUMMARY: The Board directs the Administration of the Institute of American Indian and Alaska Native Culture and Arts Development, including soliciting, accepting, and disposing of gifts, bequests, and other properties for the benefit of the Institute. The Institute provides scholarly study of and instruction in Indian art and culture and establishes programs which culminate in the awarding of degrees in the various fields of Indian art and culture. The Board consists of thirteen members appointed by the President of the United States, by and with the consent of the U.S. Senate, who are American Indians or persons knowledgeable in the field of Indian art and culture. This notice requests nominations to fill two expiring terms on the Board of Trustees.

ADDRESSES: Institute of American Indian Arts, 83 Avan Nu Po Road, Santa Fe, New Mexico 87508.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Martin, President, 505–424–2301.

Dated: April 6, 2022.

Robert Martin,

President.

[FR Doc. 2022–08264 Filed 4–15–22; 8:45 am]

BILLING CODE 4312–W4–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–ES–2022–N227; FVHC98220410150–XXX–FF04H00000]

Deepwater Horizon Oil Spill Natural Resource Damage Assessment, Florida Trustee Implementation Group Draft Phase V.4 Florida Coastal Access Project: Restoration Plan and Supplemental Environmental Assessment

AGENCY: Department of the Interior.

ACTION: Notice of availability; request for public comments; announcement of webinar and in-person meeting.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and Consent Decree, the Federal and State natural resource trustee agencies for the Florida Trustee Implementation Group (FL TIG) have prepared the *Draft Phase V.4 Florida Coastal Access Project: Restoration Plan and Supplemental Environmental Assessment* (Phase V.4 RP/SEA). The FL TIG is proposing a fourth phase of the Florida Coastal Access Project. The preferred alternative includes the acquisition of the Dickerson Bay parcel: A 114-acre undeveloped coastal inholding in Wakulla County, Florida, within the approved boundary of St. Marks National Wildlife Refuge (NWR). This would continue the process of restoring lost recreational use in the Florida Restoration Area resulting from the *Deepwater Horizon* (DWH) oil spill. We invite comments on the Draft Phase V.4 RP/SEA.

DATES:

Submitting Comments: We will consider public comments on the Draft Phase V.4 RP/SEA received on or before May 18, 2022.

Public Meeting: The FL TIG will host a webinar on May 10, 2022, at 3 p.m. Eastern Time (ET), and an in-person public meeting on May 12 at 5:30 p.m.

ET. The public meeting and webinar will include a presentation on the Draft Phase V.4 RP/SEA. Additional information about the meeting and webinar, including public meeting location and webinar registration information, can be found at *https://www.gulfspillrestoration.noaa.gov/restoration-areas/florida.* After registering, participants will receive a confirmation email with instructions for joining the webinar. Instructions for commenting will be provided during the webinar. Shortly after the webinar is concluded, the presentation material will be posted on the website above.

ADDRESSES:

Obtaining Documents: You may download the Draft Phase V.4 RP/SEA from any of the following websites:

- *http://www.doi.gov/deepwaterhorizon*
- *http://www.gulfspillrestoration.noaa.gov/restoration-areas/florida*
- *http://dep.state.fl.us/deepwaterhorizon/default.htm*

Hard copies are available for review at the Wakulla County Library, Gulf Specimen Marine Lab, and the St. Marks NWR visitor center. You may request a CD (compact disc) of the Draft Phase V.4 RP/SEA (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Comments: You may submit comments on the Draft Phase V.4 RP/SEA by one of the following methods:

- *Via the Web: http://www.gulfspillrestoration.noaa.gov/restoration-areas/florida.*
- *Via U.S. Mail:* U.S. Fish and Wildlife Service, P.O. Box 29649, Atlanta, GA 30345. In order to be considered, mailed comments must be postmarked on or before the comment deadline given in **DATES**.
- *In Person:* Verbal comments may be provided at the public meeting and webinar.

FOR FURTHER INFORMATION CONTACT:

Nanciann Regalado, via email at *nanciann_regalado@fws.gov* or via telephone at 678–296–6805. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Introduction

The Florida Coastal Access Project was selected for funding and implementation in Phase V of DWH early restoration. In the 2011 *Framework Agreement for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill* (Framework Agreement), BP Exploration and Production, Inc. (BP) agreed to provide to the Trustees up to $1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the DWH oil spill. The Framework Agreement represented a preliminary step toward the restoration of injured natural resources and was intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. In the five phases of the early restoration process, the Trustees selected, and BP agreed to fund, a total of 65 early restoration projects expected to cost a total of approximately $877 million, including the Florida Coastal Access Project for approximately $45.4 million. The Trustees selected these projects after public notice, public meetings, and consideration of public comments.

The Consent Decree terminated and replaced the Framework Agreement and provided that the Trustees shall use remaining early restoration funds as specified in the early restoration plans and in accordance with the Consent Decree. The Trustees have determined that decisions concerning any unexpended early restoration funds are to be made by the appropriate TIG, in this case the FL TIG.

Background

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252—MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The *Deepwater Horizon* oil spill is the largest oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship, including the loss of use and services from those resources from the time of injury until the completion of restoration to baseline (the resource quality and conditions that would exist if the spill had not occurred).

The *Deepwater Horizon* Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service (USFWS), and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

The Trustees reached and finalized a settlement of their natural resource damage claims with BP in an April 4, 2016, Consent Decree approved by the U.S. District Court for the Eastern District of Louisiana. Pursuant to that Consent Decree, restoration projects in the Florida Restoration Area are now chosen and managed by the FL TIG. The FL TIG is composed of the following six Trustees: State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; DOI; NOAA; EPA; and USDA.

Overview of the FL TIG Draft Phase V.4 RP/SEA

The Draft Phase V.4 RP/SEA is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–1508, and

the Final PDARP/PEIS and Consent Decree. The Phase V.4 RP/SEA provides an OPA analysis for the proposed fourth phase of the Florida Coastal Access Project and supplements the NEPA analysis completed in the first, second, and third phases of the project (2016 Final Phase V Early Restoration Plan and Environmental Assessment, 2017 Final Phase V.2 Restoration Plan and Supplemental Environmental Assessment, and 2019 Final Phase V.3 Restoration Plan and Supplemental Environmental Assessment, respectively). In the Draft Phase V.4 RP/SEA, the FL TIG proposes the acquisition of the Dickerson Bay parcel, a 114-acre undeveloped coastal inholding in Wakulla County, Florida, within the approved boundary of St. Marks National Wildlife Refuge. Acquisition of the Dickerson Bay parcel would continue the process of restoring natural resources and services injured or lost as a result of the DWH oil spill. The cost to carry out the proposed action would be approximately $685,000.

Next Steps

As described above, the Trustees will hold a public meeting and webinar to facilitate the public review and comment process. After the public comment period ends, the Trustees will consider and address the comments received before issuing a Final Phase V.4 RP/SEA.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Administrative Record

The documents comprising the Administrative Record for the Phase V.4 RP/SEA can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

Mary Josie Blanchard,

Director of Gulf of Mexico Restoration, Department of the Interior.

[FR Doc. 2022–07729 Filed 4–15–22; 8:45 am]

BILLING CODE 4310–10–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1303]

Certain Products Containing Pyraclostrobin and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based Upon a Consent Order Stipulation; Issuance of Consent Orders; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review initial determinations (''ID'') (Order No. 5) of the presiding chief administrative law judge (''ALJ'') terminating the investigation in its entirety based upon a consent order stipulation. The Commission has entered consent orders against the respondents.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–3042. 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 2, 2022, the Commission instituted this investigation based on a complaint filed by BASF SE of Ludwigshafen, Germany and BASF Corporation of Florham Park, New Jersey (collectively, ''BASF''). 87 FR 11730–31 (Mar. 2, 2022). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products containing pyraclostrobin and components thereof by reason of infringement of claims 1–17 of U.S. Patent No. 7,816,392. *Id.* The Commission's notice of investigation named the following entities as respondents: Sharda Cropchem Ltd. of Mumbai, India; and Sharda USA LLC, of Norristown, Pennsylvania (collectively, ''Sharda''). The Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On March 4, 2022, Sharda moved to terminate the investigation in its entirety based on a consent order stipulation and entry of consent orders. On March 14, 2022, BASF filed a statement of non-opposition to Sharda's motion.

On March 16, 2022, the ALJ issued the subject ID (Order No. 5) granting the motion. The ID noted that ''Sharda certifies that 'there are no other agreements, written or oral, express or implied between the parties concerning the subject matter of the Investigation.' '' Order No. 5 at 1. The ID found that the consent order stipulation and proposed consent orders comply with Commission Rule 210.21(c)(3) and (4) (19 CFR 210.21(c)(3) and (4)). *Id.* at 1–2. The ID further found that terminating the investigation would not be contrary to the public interest. *Id.* at 2.

The Commission has determined not to review the subject ID and to issue consent orders. The investigation is hereby terminated in its entirety.

The Commission vote for this determination took place on April 12, 2022.

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: April 12, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08211 Filed 4–15–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1296]

Notice of the Commission's Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of Settlement; Termination of the Investigation; Certain Adalimumab, Processes for Manufacturing or Relating to Same, and Products Containing Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 6) terminating the investigation on the basis of settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda Pitcher Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. 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: The Commission instituted this investigation on January 31, 2022, based on a complaint filed by AbbVie Inc. of Chicago, Illinois, AbbVie Biotechnology Ltd of Bermuda, and AbbVie Operations Singapore Pte. Ltd. of Singapore. 87 FR 4912–13 (Jan. 31, 2022). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale of certain adalimumab, processes for manufacturing or relating to same, and products containing same by reason of the misappropriation of trade secrets and tortious interference with contractual relations, the threat or effect of which is to destroy or substantially injure an industry in the United States. The complaint, as amended, further alleged that a domestic industry exists. The notice of investigation named as respondents Alvotech hf. of Iceland; Alvotech Germany GmbH of Germany; Alvotech Swiss AG of Zurich, Switzerland; Alvotech USA Inc. of Arlington, Virginia, and Ivers-Lee AG of Bern, Switzerland. *Id.* The Office of Unfair Import Investigations (''OUII'') was also named as a party to the investigation. *Id.*

On March 11, 2022, the private parties jointly moved to terminate the investigation on the basis of settlement. OUII filed a response in support of the motion. On March 28, 2022, the presiding ALJ issued Order No. 6, granting the joint motion. The ID found that the parties complied with Commission Rule 210.21(b). The ID also found that termination of the investigation will not adversely affect the public interest. No one petitioned for review of the ID.

The Commission has determined not to review the ID. The investigation is terminated.

The Commission vote for this determination took place on April 12, 2022.

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: April 12, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08212 Filed 4–15–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1232]

Certain Chocolate Milk Powder and Packaging Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting a Motion To Amend the Complainant and Notice of Investigation and To Review an Initial Determination Extending the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 18) of the presiding chief administrative law judge (''CALJ''), granting complainant's motion to amend the complaint and notice of investigation. The Commission has also determined on its own initiative to review an ID (Order No. 20) extending the target date for completion of the investigation to June 21, 2022. On review, the Commission extends the target date to August 31, 2022.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2532. 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, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On December 1, 2020, the Commission instituted this investigation based on a complaint filed by Meenaxi Enterprise Inc. of Edison, New Jersey (''Meenaxi''). 85 FR 77237 (Dec. 1, 2020). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, due to the importation into the United States, sale for importation, or sale in the United States after importation of certain chocolate milk powder and packaging thereof that infringe U.S. Trademark Registration No. 4,206,026. *Id.* The complaint also alleges the existence of a domestic industry. *Id.* The notice of investigation names 21 respondents: Bharat Bazar Inc. of Union City, California (''Bharat Bazar''); Madras Group Inc. d/b/a Madras Groceries of Sunnyvale, California; Organic Food d/b/a Namaste Plaza Indian Super Market of Fremont, California (''Organic Food''); India Cash & Carry of Sunnyvale California; New India Bazar Inc. d/b/a New India Bazar of San Jose, California (''New India''); Aapka Big Bazar of Jersey City, New Jersey; Siya Cash & Carry Inc. d/b/a Siya Cash & Carry of Newark, New Jersey; JFK Indian Grocery LLC d/b/a D-Mart Super Market of Jersey City, New Jersey; Trinethra Indian Super Markets of Newark, California; Apna Bazar Cash & Carry Inc. d/b/a Apna Bazar Cash & Carry of Edison, New Jersey; Subzi Mandi Cash & Carry Inc. d/b/a Mandi Cash & Carry of Piscataway, New Jersey;

Patidar Cash & Carry Inc. d/b/a Patidar Cash & Carry of South Plainfield, New Jersey; Keemat Grocers of Sugarland, Texas; KGF World Food Warehouse Inc. d/b/a World Food Mart of Houston, Texas; Telfair Spices of Sugarland Texas; Indian Groceries and Spices Inc. d/b/a *iShopIndia.com* of Milwaukee, Wisconsin; Rani Foods LP d/b/a Rani's World Foods of Houston, Texas; Tathastu Trading LLC of South Plainfield, New Jersey; and Choice Trading LLC of Guttenberg, New Jersey. *Id.* The Office of Unfair Import Investigation (''OUII'') was named as a party. *Id.*

On February 10, 2021, the former presiding ALJ issued an ID (Order No. 6) finding all respondents in default. OUII supported the motion. On March 2, 2021, the Commission issued a notice determining not to review Order No. 6.

On May 24, 2021, Meenaxi moved for a summary determination of a section 337 violation by all of the respondents, each of whom had previously been found in default. On June 16, 2021, OUII responded in support of the motion. On December 1, 2021, the former presiding ALJ granted the motion as an ID (Order No. 15). The ID raised a question whether at least one of the defaulting respondents—Organic Food—had properly been served and therefore found in default. Order No. 15, at 1, n.1.

On January 18, 2022, the Commission reviewed Order No. 15, and remanded the investigation to the ALJ in order to ''consider whether a default finding is appropriate in view of the manner of service of documents on'' Organic Food. Notice at 3 (Jan. 18, 2022). The remand afforded the ALJ the authority to cure defects, if any, as to Organic Food, and to identify and cure defects, if any, as to other respondents. *Id.* In view of these concerns, the Commission reconsidered its decision not to review Order No. 6, which, as noted above, found all respondents in default. *Id.*

On remand, Meenaxi moved for leave to amend the complaint and notice of investigation to:

(i) Substitute Organic Food with proposed respondent Organic Ingredients Inc. d/b/a Namaste Plaza Indian Super Market, with an address of 12220 World Trade Dr #200, San Diego, California 92128 (''Organic Ingredients'');

(ii) correct the address of respondent New India to 2850 Quimby Road, San Jose, California 95148;

(iii) correct the address of respondent Bharat Bazar to 34301 Alvarado Niles Road, Union City, California 94587; and

(iv) supplement the Complaint with Exhibits 9–a, 9–b, and 9–c, which address Organic Food and/or Organic Ingredients.

Unopposed Mot. of Compl't for Leave to Amend the Compl. and Notice of Investigation at 3–4, 9–10 (Feb. 23, 2022).

On March 11, 2022, the CALJ issued one of the subject IDs (Order No. 18) granting the motion for leave to amend the complaint and notice of investigation. No petitions for review of Order No. 18 were filed. The Commission has determined not to review Order No. 18.

On March 15, 2020, the CALJ issued the second of the two subject IDs (Order No. 20) extending the target date to June 21, 2022, and stating that any remand ID will issue no later than May 20, 2022. Order No. 20, at 1. No petitions for review of Order No. 20 were filed.

The Commission has determined to review Order No. 20 on its own initiative. *See* 19 CFR 210.44. On review, the Commission sets the target date for completion of the investigation to August 31, 2022. As stated in the Order Remanding the Investigation, the remand ID on summary determination of violation shall become final 45 days after issuance absent Commission review. *See* Order Remanding the Investigation at 4, ¶ 6 (Jan. 18, 2022). The Commission understands that the remand ID concerning summary determination on violation of section 337 will issue on or before May 20, 2022. *See* Order No. 20, at 1.

The Commission vote for these determinations took place on April 12, 2022.

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: April 12, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–08185 Filed 4–15–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–NEW]

Agency Information Collection Activities; Proposed eCollection of eComments Requested; ATF Citizens Academy Application—ATF Form 3000.12

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ) will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for an additional 30 days until May 18, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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;

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* New Information Collection.

(2) *The Title of the Form/Collection:* ATF Citizens Academy Application.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number: ATF Form 3000.12.

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:*

Primary: Individuals or households.
Other: None.

Abstract: The ATF Citizens Academy Application—ATF form 300.12 will be used to collect personally identifiable information to determine an individual's eligibility to participate in the Citizens Academy training program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 750 respondents will prepare responses for this collection once annually, and it will take each respondent approximately 5 minutes to complete their responses.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 63 hours, which is equal to 750 (total respondents) * 1 (# of response per respondent) * .0833333 (5 minutes or the time taken to prepare each response).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Mail Stop 3.E–405A, Washington, DC 20530.

Dated: April 12, 2022

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–08161 Filed 4–15–22; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Judgment Under the Comprehensive Environmental Response, Compensation, and Liability Act

On April 12, 2022, the Department of Justice lodged a proposed Consent Judgment with the United States District Court for the Eastern District of New York in a lawsuit entitled *United States* v. *Northrop Grumman Systems Corporation et al.,* Civil Action No. 22–cv–02101.

In this action, the United States seeks, as provided under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), recovery of response costs from Northrop Grumman Systems Corporation and Northrop Grumman Corporation (collectively ''Grumman'') related to its historical operations at the Naval Weapons Industrial Reserve Plant, Bethpage, New York, and adjacent former facilities owned and operated by Grumman's predecessors (''the Sites''). The proposed Consent Judgment resolves the United States' claims against Grumman for the United States' response costs, and related contribution claims, at the Sites.

Under the proposed Consent Judgment, the United States will receive $35,000,000 from Grumman. Of the settlement proceeds, $17,500,000 will go to the Department of the Navy's Environmental Restoration account, and $17,500,000 will go to the United States Treasury.

The settlement (Section IX) provides, in exchange for the above payments, the United States releases and covenants not to sue or to take administrative action against Grumman with respect to claims arising from or relating to the Sites or the related groundwater contamination, including claims for response costs and contribution under CERCLA or other laws. Further, under Section XI, Grumman releases, and covenants not to sue the United States with respect to claims arising from or relating to the Sites or related groundwater contamination, including claims for response costs and contribution under CERCLA or other laws. The Consent Judgment more fully describes these covenants, and Section X identifies certain exceptions to each of the above-referenced covenants.

Under the Consent Judgment, the parties will each continue with their respective response actions and commitments to take response actions to address the Sites, as described in Section VII of the Consent Judgment. Further, the Parties will coordinate and cooperate with each other in implementing their respective response actions to address the Sites, as described in Section VII.

The publication of this notice opens a period for public comment on the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Northrop Grumman Systems Corp. et al.,* Civil Action No. 22–cv–02101, D.J. Ref. No. 90–11–3–10336. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Judgment may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* A paper copy of the Consent Judgment will be provided upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–08209 Filed 4–15–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–NEW]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Reinstatement, With Change, of Previously Approved Collection: National Inmate Survey in Jails (NIS–4J)

AGENCY: Bureau of Justice Statistics, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, 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 June 17, 2022.

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 Amy Lauger, Supervisory Statistician, Institutional Research and Special Projects Unit, Bureau of Justice

Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: *Amy.Lauger@usdoj.gov;* telephone: 202–307–0711).

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.

Overview of This Information Collection

1. *Type of Information Collection:* Reinstatement, with change, of a previously approved collection. A new OMB number is needed, as this collection was previously under 1121–0311 with the collection of prison data. They are now two separate collections.

2. *The Title of the Form/Collection:* National Inmate Survey in Jails (NIS–4J).

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number at this time. The applicable component within the Department of Justice is the Bureau of Justice Statistics, in the Office of Justice Programs.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will primarily be State or Local Government entities. The work under this clearance will be used to produce estimates for the incidence and prevalence of sexual victimization within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79). The Bureau of Justice Statistics uses this information in published reports and for the U.S. Congress, Executive Office of the President, practitioners, researchers, students, the media, and others interested in criminal justice statistics.

In 2003, the Prison Rape Elimination Act (PREA or the Act) was signed into law. The Act requires BJS to ''carry out, for each calendar year, a comprehensive statistical review and analysis of the incidence and effects of prison rape.'' The Act further instructs BJS to collect survey data: ''. . . the Bureau shall . . . use surveys and other statistical studies of current and former inmates . . .''

To implement the Act, BJS developed the National Prison Rape Statistics Program (NPRS), which includes four separate data collection efforts: The Survey on Sexual Violence (SSV), the National Inmate Survey (NIS), the National Survey of Youth in Custody (NSYC), and the National Former Prisoner Survey (NFPS). The NIS collects information on sexual victimization self-reported by inmates held in adult correctional facilities, both prisons and jails. The NIS has been conducted three times, in 2007 (NIS–1), in 2008–09 (NIS–2), and in 2011–12 (NIS–3). Each iteration of NIS was conducted in at least one facility in all 50 states and the District of Columbia. In each iteration of the survey, inmates completed the survey using an audio computer-assisted self-interview (ACASI), whereby they heard questions and instructions via headphones and responded to the survey items via a touch-screen interface.

The collection requested in this notice is the fourth iteration of the National Inmate Survey. For NIS–4, administration of the survey in prisons will take place separately from survey administration in jails. This collection request is specific to conducting the survey in adult jail facilities.

The survey instrument for the NIS–4 in Jails is slightly modified from the previous iterations. The main difference is the addition of a new set of incident-specific questions administered to respondents who affirmatively indicate they were sexually victimized at some point in the previous 12 months while housed in their current jail facility. These incident-specific questions will provide information to the public on the nature of sexual victimization in jails, such as where incidents occurred within the facility, the relationship between the victim and the alleged perpetrator(s), and whether the victim suffered any injuries as a result of the incident, among other incident characteristics.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Prior to data collection commencing in 2023, BJS will coordinate the logistics of NIS–4 survey administration with staff at state, local, and tribal correction facilities. Because the administration of this survey in prisons is not included in this request, the overall number of burden hours is lower than in the last request approved in 2010. It is estimated that 290 facility administrators will devote 150 minutes of time to this coordination effort. During data collection in 2023, jail staff will escort an estimated 65,360 jail inmates to/from the interviews, which consists of a short consent administration and an approximately 35-minute survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* This collection was previously approved for implementation in both adult prisons and jails. The current request will only be implemented in adult jails, thereby reducing the total number of facility staff and respondents required to participate. The total estimated NIS–4 Jails public burden, inclusive of facility staff and respondent burden estimates, is 64,010 hours. This comprises 17,065 hours of facility staff burden and 46,945 hours of respondent interviewing burden. This burden estimate assumes 100% participation from both facilities and inmates, but historically both facility and inmate participation have not reached 100%. For purposes of comparison, during Year 3 of the NIS, the total maximum burden was estimated at 45,034 hours for the jail sample. The total burden actually used was 29,943 hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: April 12, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–08158 Filed 4–15–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0001]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection Procedures for the Administration of Section 5 of the Voting Rights Act of 1965

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Civil Rights Division, Voting Section 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 30 days until May 18, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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 Civil Rights Division, 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.

Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None (Civil Rights Division).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: None. Abstract: Jurisdictions specially covered under the Voting Rights Act are required to comply with Sections 3 or 5 of the Act before they may implement any change in a standard, practice, or procedure affecting voting. One option for such compliance is to submit that change to Attorney General for review and establish that the proposed voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

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 1 respondent will complete each form within approximately 3.0 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 3.0 total hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: April 12, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–08187 Filed 4–15–22; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

OSHA Training Institute (OTI) Education Center; Notice of Competition and Request for Applications

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of competition and request for applications for the OSHA Training Institute Education Center program.

SUMMARY: This notice announces the opportunity for interested non-profit organizations, including eligible educational institutions, trade associations, labor unions, and community-based and faith-based organizations, that are not an agency of a state or local government to submit applications to become authorized as an OSHA Training Institute Education Center and deliver standard classroom instruction on a regional basis. This notice also contains information on a pre-proposal conference designed to provide potential applicants with information about the OSHA Training Institute Education Center program.

DATES: Applications (three copies) must be received no later than 4:30 p.m. Central Time on June 17, 2022. Requests for extension of this application deadline will not be granted.

A pre-proposal conference will be held on Wednesday, May 18, 2022, at the OSHA Office of Training and Education, 2020 South Arlington Heights Road, Arlington Heights, Illinois 60005–4102. Attendees are required to pre-register for this conference. Specific details are discussed in the ''Pre-Proposal Conference'' section of this notice.

ADDRESSES: Submit applications (three copies) to the OSHA Office of Training and Education, Division of Training Programs and Administration, Attn: James Brock, 2020 South Arlington Heights Rd., Arlington Heights, Illinois 60005–4102.

Applicants selected for authorization as an OSHA Training Institute Education Center must attend a mandatory orientation meeting. The venue, method, times, and dates are to be determined.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of

Labor; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. James Brock, Branch Chief Training Programs, U.S. Department of Labor; telephone: (847) 725–7803; email: *brock.james.e@dol.gov.*

SUPPLEMENTARY INFORMATION: The supplemental information contains details concerning the following:

Table of Content

A. Background Information

Interested non-profit organizations, including eligible educational institutions, trade associations, labor unions, and community-based and faith-based organizations, that are not an agency of a state or local government to submit applications to become authorized as an OSHA Training Institute Education Center and deliver standard classroom instruction on a regional basis. State or local government-supported institutions of higher education are eligible to apply. Eligible organizations can apply independently or in partnership with other eligible organizations, but in such a case, a lead organization must be identified along with a list of any consortium partners. Current OSHA-authorized OSHA Training Institute Education Centers required to renew their status must submit a new application, and be re-authorized by OSHA, in order to continue their authorization as an OSHA Training Institute Education Center. If the corporate identity of an applicant, or its membership has changed, the new entity must submit an application. Applications will only be accepted during the solicitation period and will be evaluated on a competitive basis. Complete application instructions are contained in this notice.

A pre-proposal conference will review OSHA expectations for OSHA Training Institute Education Centers, courses and methods of instruction, and administrative and program requirements for OSHA Training Institute Education Centers and the OSHA Outreach Training Program. Applicants are strongly encouraged to attend the pre-proposal conference.

OSHA will enter into five-year, non-financial cooperative agreements with successful applicants. These authorization agreements are intended to facilitate the ongoing monitoring and evaluation of safety training provided by authorized OSHA Training Institute Education Centers. These cooperative agreements will not constitute a grant or financial assistance instrument, and OSHA will provide no compensation to authorized OSHA Training Institute Education Centers. Such non-financial cooperative agreements are renewable, at the government's sole option, for one five-year period, if the organization has performed satisfactorily during the initial term. Please see discussion under ''Cooperative Agreement Duration,'' later in this notice for more information.

1. Overview of the OSHA Office of Training and Education (OTE)

OTE, located in Arlington Heights, Illinois, supports the agency's mission and performance goals of securing safe and healthful workplaces and increasing workers' voice in the workplace through the development and delivery of training courses and educational programs. The Office has three distinct functional areas: The OSHA Training Institute (OTI), the Division of Training Programs and Administration, and the Division of Training Educational Development (DTEP). The OTI provides training for Federal and state compliance officers and State consultants. The Division of Training Programs and Administration administers three distinct external training programs: The OSHA Training Institute (OTI) Education Center Program, the Outreach Training Program, and the Susan Harwood Training Grants Program. DTEP develops training and educational materials that support OTI and OTI Education Center courses and the agency's compliance assistance initiatives.

2. Overview of the OSHA Training Institute (OTI)

The OTI is OSHA's primary training provider for Federal and state compliance officers and state consultation program staff. OTI offers over 50 unique course offerings on an annual basis. Training includes job hazard recognition as well as OSHA standards, policies, and procedures for persons responsible for enforcing or directly supporting the Occupational Safety and Health Act of 1970. The OTI does not provide training for private and public sector personnel.

3. Overview of OTI Education Center Program

The OTI Education Centers are a national network of non-profit organizations authorized by OSHA to deliver occupational safety and health training for the advancement of safe and healthful workplaces for private and public sector workers, supervisors, and employers on behalf of OSHA. The OTI Education Center Program was initiated in 1992 when OSHA began partnering with other training and educational institutions to conduct OSHA courses. The OTI Education Center Program supports OSHA's training and education mission through a variety of occupational safety and health programs.

OTI Education Center courses include OSHA standards and Outreach Training Program trainer and update courses. The OTI Education Centers offer more than 50 courses on various safety and health topics, including recordkeeping, machine guarding, confined space, electrical standards, ergonomics, safety and health management, and fall protection. Information regarding the OTI Education Center Program background, including a complete list of current OTI Education Centers, OSHA numbered course offerings, and course descriptions can be found on the OSHA website at: *https://www.osha.gov/otiec.*

OTI Education Centers are selected through a national competitive process and receive no funding from OSHA; they support their OSHA training through their normal tuition and fee structures. OTI Education Centers are located in all OSHA Regions and work closely with OSHA Regional and Area offices to meet the needs of their regional constituencies. OTI Education Centers are encouraged to conduct courses at host training organizations in addition to their own facilities. OTI Education Centers are also integral to OSHA's process for authorizing

Outreach trainers, processing Outreach trainer card requests, and conducting Outreach trainer monitoring activities for the OSHA Outreach Training Program.

4. Overview of the OSHA Outreach Training Program

OSHA established the Outreach Training Program (OTP)to provide an overview of OSHA and to disseminate basic occupational safety and health workplace hazard information to workers using independent OSHA authorized trainers. OSHA administers the OTP including the establishment of program requirements and providing program review and oversight. Courses are intended to provide information on worker rights and employer responsibilities and to focus on work-related hazards. OTP courses do not focus on or teach OSHA standards. Workers who complete the construction industry, general industry, maritime industry, or disaster site worker Outreach courses receive OSHA student course completion cards from the authorized trainer who conducted the training. OSHA Outreach trainers are authorized by OSHA exclusively through the OTI Education Centers. OTI Education Centers are responsible for administering the Outreach Training Program, including issuing course completion cards to authorized Outreach trainers and conducting monitoring activity such as record audits and training observations.

The Outreach Training Program is a voluntary program; however some cities and states have enacted laws mandating the training. Some employers, unions, organizations, or other jurisdictions may also require this training. OSHA recommends Outreach Training Program courses as an introduction to occupational safety and health hazard recognition for workers. Please note that Outreach Training Program courses do not meet specific training requirements contained in OSHA standards. OSHA publishes Outreach Training Program requirements and procedures to provide instructions and information to Outreach trainers. Items addressed in the requirements and procedures include course topic requirements, minimum contact hours for course topics, advertising restrictions, records retention, and reporting requirements. OSHA Outreach Training Program requirements and procedures can be accessed at: *https://www.osha.gov/training/outreach.*

B. Organizational Responsibilities

1. OTI Education Center Responsibilities

OTI Education Centers must:

(1) Adhere to all OSHA/OTE program requirements, policies, and procedures.

(2) Maintain updated course curriculum to support learning objectives determined by OSHA/OTE.

(3) Ensure instructors are qualified in the courses/subjects they will be teaching in accordance with OSHA instructor qualification policies.

(4) Meet annual program goals that include the following:

(a) Achieve annual student training and course offering goals as established by OSHA/OTE. Program goals are evaluated and revised annually. For the Federal fiscal year 2022, each OTI Education Center is expected to train 1,700 students and offer 95 courses annually.

(b) Provide standard classroom instruction training throughout their region and target underserved areas and worker populations. All consortium members must offer, deliver, and/or support the delivery of open-enrollment standard classroom instruction throughout their region.

(c) Conduct courses on a year-round basis with each required, elective, and short course being offered in accordance with annual program goals. Required, elective, and short courses are subject to change. (See Appendix A for a current list of required, elective, and short courses)

(5) Publicize and promote the availability of open enrollment courses to ensure attendance and the delivery of the scheduled courses.

(6) Register students, provide course materials, and issue course completion certificates to students. This includes:

(a) Ensuring students have met all prerequisites prior to registration.

(b) Collecting and retaining student registration and attendance records in accordance with OSHA/OTE guidelines.

(7) Comply with reporting requirements as identified by OSHA/OTE. This includes:

(a) Providing OSHA/OTE with monthly training summary reports.

(b) Providing OSHA/OTE with training and instructor records for quarterly audits and semi-annual and annual performance reporting.

(c) Collecting student surveys in accordance with OSHA procedures and providing to OSHA as requested.

(8) Administer Outreach Training Program activities. This includes:

(a) Distributing student cards to authorized Outreach trainers.

(b) Monitoring Outreach trainers including conducting record audits and training observations.

(c) Processing exception requests in accordance with Outreach Training Program requirements.

(d) Guiding and mentoring new Outreach trainers to assist them with program compliance and delivery of quality training.

(9) Attend the semi-annual OSHA Training Institute Education Center Directors meetings. Directors meetings are intended for OTI Education Center Directors. Key staff may also attend.

(10) Collaborate with other OTI Education Centers including participation on project teams and providing financial and personnel support for OTI Education Center marketing initiatives.

(11) Provide dedicated staff for program management and administration including an OTI Education Center Director and necessary support staff to achieve program goals.

(12) Offer open enrollment OTI Education Center courses to all areas within their region, supported by all consortium members.

(13) Ensure remote synchronous offerings restrict registrations to students located within the OTI Education Center's region.

(14) Ensure all course offerings maintain a lecture to higher-level interactive training ratio of 1/3:2/3.

2. OSHA OTE Responsibilities

OTE will:

(1) Develop program policies, procedures, and requirements.

(2) Provide answers and technical assistance related to OSHA policy and program requirements.

(3) Provide learning objectives for all courses, update existing course curricula, and provide new course curricula as needed.

(4) Coordinate the development of new OTI Education Center courses.

(5) Monitor the performance of the OTI Education Centers through on-site program visits, conference calls, training observations, and programmatic audits.

(6) Participate in the OTI Education Center Program Executive Committee.

(7) Evaluate the effectiveness of the OTI Education Centers and provide each OTI Education Center with an annual performance appraisal.

(8) Conduct investigations of alleged OTI Education Center non-compliance with the Non-Financial Cooperative Agreement and OSHA policies and procedures.

C. OSHA Jurisdiction

OSHA is a Federal agency within the United States. The agency covers workers and employers in the 50 United States and certain territories and

jurisdictions under Federal authority. Those jurisdictions include the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Wake Island, Johnston Island, and the Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act.

D. Geographic Distribution

There is currently at least one OTI Education Center in each OSHA Region. However, OSHA may elect to select more than one OTI Education Center in some or all OSHA Regions. The OSHA Regions contain the following states and U.S. territories.

Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Region II: New Jersey, New York, Puerto Rico, and Virgin Islands.

Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Region IV: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Region V: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Region VII: Iowa, Kansas, Missouri, and Nebraska.

Region VIII: Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Region IX: American Samoa, Arizona, California, Guam, Hawaii, Nevada, and Commonwealth of the Northern Mariana Islands.

Region X: Alaska, Idaho, Oregon, and Washington.

E. Application Submission Requirements

Submissions that are not in accordance with the application submission requirements listed below will not be considered. The application must include the following:

(1) *Program Summary.* The program summary is a one to two page double-spaced abstract that succinctly summarizes the applicant's and any consortium partners' background, experience, and qualifications in occupational safety and health and training. The program summary must also provide:

(a) Contact information including the following:

- The name, address, and phone number of the lead organization and all consortium partners. A post office box will not be accepted.
- The name, title, address, telephone number, and email address of the program director who can answer questions regarding the application.

(b) Information on which OTI Education Center courses may be offered and any relevant language or target audience information.

(2) *Program Narrative.* The program narrative must be numbered and not exceed 30 double-spaced pages. Attachments will not be included in the page count.

(3) *Applicant Eligibility.* In order to be eligible, each organization must document the following. Organizations that do not address the following will not be given further consideration.

(a) *Non-Profit Status.* Include evidence of non-profit status of the lead organization and each member organization if applying as a consortium. A letter from the Internal Revenue Service, State, or a statement included in a recent audit report is preferred. In the absence of these, a copy of the articles of incorporation showing the non-profit status will be accepted.

(b) *Authority to Apply.* Provide a letter on letterhead signed by the company president, Chief Executive Officer, Board of Directors, Board of Regents, or other governing body of the applicant approving the submittal of an application to OSHA to become authorized as an OTI Education Center.

(c) *Occupational Safety and Health Training Experience.* Demonstrate previous experience delivering occupational safety and health training to adults.

(d) *Status as a Training Organization.* (This applies only to applicants that are not colleges or universities.) Document that training or education is a principal activity of the applicant. Through audit reports, annual reports, or other documentation, the applicant must clearly demonstrate that for the last two calendar years more than 50 percent of the applicant's funds have been used for training and education activities and more than 50 percent of staff resources have also been used for this purpose.

(e) *Curriculum Development.* Explain the applicant's process for developing and updating occupational safety and health curricula to meet learning objectives provided by OSHA.

(f) *Training Facilities.* Provide detail regarding available classrooms, laboratories, and testing facilities. The applicant must have training facilities that are under their direct control.

(g) *Training Throughout the OSHA Region.* Provide details regarding the applicant's ability to provide standard in-person classroom training across the OSHA Region in which the applicant is physically located. Each consortium member must contribute to this effort.

(h) *Nondiscrimination.* Provide copies of the applicant's nondiscrimination policies covering staff and students. In the absence of a written policy, explain how the applicant will ensure that staff and students are selected without regard to race, ethnicity, religion, national origin, gender, age, or disability.

(4) *Diversity, Equity, Inclusion, and Accessibility (DEIA).* OSHA is committed to ensuring DEIA principles are integrated into its training programs. DEIA represents consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons who otherwise adversely affected by persistent poverty or inequity. Applicants who demonstrate their commitment to DEIA in their organization description and can demonstrate the extent they have institutionalized DEIA principles within their operations, outreach, and training will receive one bonus point. Additionally, applicants are encouraged to describe how training programs will be accessible to the most prominent linguistic communities located within your region. Applicants who address this will receive one bonus point.

F. Selection Guidelines

OSHA does not have a predetermined number of applicants to be selected to act as authorized OTI Education Centers. The number of applicants selected will be determined on a competitive basis using the selection criteria contained in this announcement.

G. Selection Criteria

Applications that meet the factors listed in the ''Applicant Eligibility'' section above will be reviewed by a technical panel based on the criteria listed below.

(1) Organizational Commitment (10 Points)

(a) Explicit commitment of the highest-ranking executive of the applicant's organization (*e.g.,* company president, Chief Executive Officer, Board of Directors, Board of Regents, or other governing body) to fully utilize all available organizational resources

necessary to support a large-scale occupational safety and health training program.

(b) To fully address this element, the proposal must:

(i) Include a signed Letter of Commitment from company president, Chief Executive Officer, Board of Directors, Board of Regents, or other governing body of the applicant detailing how they will support the initial startup, the short-term viability, and the long-term growth of an OTI Education Center.

(ii) Clearly state the metrics and outcomes the applicant will use to formally evaluate and assess the success of an OTI Education Center program.

(2) Organizational Experience and Qualifications (20 Points)

(a) Experience delivering occupational safety and health training in the construction, general, and maritime industries.

(b) Experience training adult learners.

(c) Ability to deliver required, elective, and short OTI Education Center courses; (See Appendix A for a current list of required, elective and short courses).

(d) Provision for a systematic process for developing and updating occupational safety and health curricula to support learning objectives provided by OSHA.

(e) Resources for supporting a large-scale occupational safety and health training program, such as appropriate management, instructional staff, and administrative staff to fulfill all program requirements including marketing, registration, student training materials, instruction, reporting, and Outreach Training Program administration.

(f) To fully address this element, the proposal must:

(i) Describe experience delivering occupational safety and health training including the number of classes offered, number of students taught in each class, and number of student contact hours for each course during the last three calendar years.

(ii) Include copies of catalogs and other marketing materials that provide descriptive material about occupational safety and health training courses.

(iii) Describe ability to deliver OTI Education Center courses including required, elective, and short courses. Please note the required, elective and short course offerings are subject to change. A current list of required, elective and short courses may be found at Appendix A. The complete list of courses and descriptions is available online at *https://www.osha.gov/otiec/courses/all.*

(iv) Indicate the number of occupational safety and health courses for which the applicant has developed curricula within the last three calendar years including the title and student contact hours for each course.

(v) Indicate the number of synchronous remote delivery and instructor-led in-person classroom training occupational safety and health courses the applicant has conducted within the last three calendar years including title, student contact hours, and number of trainees.

(vi) Describe applicant's process for evaluating course content as it relates to student learning outcomes and process for reviewing and updating curricula and course materials.

(vii) Demonstrate that the applicant, and when applicable the applicant's consortium, is capable of providing in-person classroom training throughout the OSHA Region in which the lead organization and consortium partner(s) are physically located. Applicants with consortium members must identify the portion of the region or target audiences for which each consortium member is responsible.

(3) Staff Experience and Qualifications (15 Points)

(a) Staff experience in delivering training courses to adults in occupational safety and health in construction, maritime, and general industries.

(b) Staff experience with occupational safety and health training topics including the application of OSHA standards to the recognition, avoidance, abatement, and prevention of workplace hazards.

(c) Professional certifications related to occupational safety and health held by staff such as such as Certified Safety Professional, Professional Engineer, Marine Chemist, or Certified Industrial Hygienist.

(d) Staff experience in managing and administering a training program including student registration and enrollment, class scheduling, course preparation, records maintenance, and marketing.

(e) To fully address this element, the proposal must:

(i) Include an organizational chart of the department responsible for training. Indicate number and titles of staff positions that will be dedicated to the OTI Education Center program along with the expected annual number of man-hours that will be allocated to the Program.

(ii) Describe staff knowledge of and experience with OSHA standards and their application to hazard recognition and hazard abatement.

(iii) Describe applicant's process for evaluating instructor effectiveness in the classroom. Provide copies of evaluation measures, checklists, and forms used to evaluate instructors.

(iv) Include resumes for current staff and instructors responsible for conducting OSHA courses. Provide position descriptions for positions to be filled.

(4) Location and Training Facilities (10 Points)

(a) Ability to conduct standard classroom instruction training throughout the applicant's region.

(b) Classroom facilities available for delivery of training including room capacity, availability of audiovisual equipment, and appropriate laboratories and other facilities available for hands-on exercises.

(c) Availability of testing center, evaluation center, or comparable facility.

(d) Provisions for accessibility for persons with disabilities.

(e) Accessibility of the training facility to population centers, including such factors as distance from a major airport, transportation from the airport to hotels, and distance from the interstate system.

(f) Availability and affordability of lodging and accommodations, food service, and restaurants available both in the area in which the classes will be held and in the area where the hotels are located.

(g) Availability of local transportation, including how students will be transported between the hotels and classes using hotel shuttles, public transportation, or other means.

(h) To fully address this element, the proposal must:

(i) Describe the accessibility of the training facility for students within local commuting area.

(ii) Clearly identify the applicant has classrooms, laboratories, and testing facilities available. Training facilities must be under the direct control of the applicant. Floor plans are encouraged and may be included as an attachment.

(iii) Include such items as distance from a major airport, number of airlines serving the airport, transportation from the airport to hotels, and distance from the interstate system.

(iv) Provide a representative listing of hotels available for student accommodation and give sample room rates. Explain how students will be transported between the hotels and classes. Describe restaurants available both in the area in which the classes

will be held and in the area where the hotels are located.

(v) Describe the applicant's ability and plan to provide off-site and host training organization site training within their respective region including procedures to assure classroom facilities and accommodations are adequate. Off-site training includes the ability to conduct courses at sites other than the applicant's facilities and in other states and U.S. territories within your region. Host training organizations must be non-profit organizations and proof of non-profit status is required.

(5) Marketing (15 Points)

(a) Experience in marketing training to adults.

(b) Ability to effectively market occupational safety and health training programs.

(c) Utilization of various media to support marketing efforts.

(d) Ability to solicit and deliver training on a contract basis.

(e) Resources sufficient to support participation in national industry conferences in order to market the OTI Education Center programs.

(f) To fully address this element, the proposal must:

(i) Explain applicant's procedures for marketing training courses and recruiting adult learners.

(ii) Include examples of current course marketing materials such as catalogs, flyers, brochures, emails, website URLs and screen shots, postcards, use of social media, and any other associated relevant materials.

(iii) Explain how applicant will promote its status as an OTI Education Center.

(iv) Describe applicant's experience in exhibiting at conferences and trade shows.

(6) Administrative Capabilities (20 Points)

(a) Ability to administer a large-scale occupational safety and health training program including employment of clerical and support staff and customer service capabilities to fulfill program requirements.

(b) Ability to administer the Outreach Training Program, including processing card requests for Outreach trainers and conducting Outreach monitoring activities such as record audits and training observations.

(c) Ability to compile and submit reports and other training data.

(d) Capability to provide mandatory reports consistent with current OSHA requirements, including the ability to submit reports based on templates provided by OSHA/OTE. Please note, OSHA periodically revises reporting requirements.

(e) Ability to respond to inquiries from OSHA and the public.

(f) Ability to manage student records.

(g) To fully address this element, the proposal must:

(i) Describe registration procedures and provisions for course cancellation, and processes for providing course materials to students, verifying course prerequisites are met in advance of registration, and collecting tuition or fees.

(ii) Describe capabilities to process and issue course completion documents to students.

(iii) Describe personnel and resources available to conduct Outreach monitoring activities, including record audits and training observations.

(iv) Include information about applicant's record retention policy and ability to issue replacement course completion documents. Please note OSHA requires records to be maintained for a minimum of five years.

(v) Explain the procedures that will be implemented for reporting to OSHA/OTE.

(vi) Provide specific details regarding the applicant's full-time customer service staff, capabilities, and/or planned approach for responding to questions from students; handling questions and concerns related to occupational safety and health; resolving problems associated with a class, whether received via student satisfaction surveys or direct communication from a student; and issuing replacement course completion certificates in a timely manner, including verification of student identity and training completion.

(vii) Provide a copy of the applicant's tuition and fee schedule; explain how tuition or fees will be computed for each OTI Education Center numbered course, referencing the applicant's tuition and fee schedule; and describe tuition and fee procedures including provisions for the collection of tuition, cancellation fees, and issuing refunds.

(7) Evaluation (10 Points)

OSHA utilizes Kirkpatrick's Levels of Evaluation as described below. Each OTI Education Center is responsible for collecting and submitting student surveys.

Satisfaction Survey (Level I Evaluation) to Measure Reaction. Each student must receive a satisfaction survey to assess student perceptions of the quality of the training.

Testing (Level II Evaluation) to Measure Learning. Learning assessments measure the skills and knowledge that the trainees retain as a result of the training. Testing is mandatory at the end of the OSHA General Industry, Construction, and Maritime standards courses and the Outreach trainer courses.

Follow-up Impact Survey (Level III Evaluation) to Measure Results. Each applicant must be knowledgeable and be capable of assessing training effectiveness using Level III evaluations.

(a) Ability to administer student surveys in a classroom setting.

(b) Ability to administer exams and ensure test integrity.

(c) Ability to assess the effectiveness of training after an elapsed time period.

(d) Ability to summarize and report evaluation results.

(e) To fully address this element, the proposal must:

(i) Describe the applicant's experience in evaluating training programs.

(ii) Describe applicant's experience in administering student surveys. Provide examples of student surveys presently in use.

(iii) Describe applicant's experience in administering classroom exams and the process for ensuring test integrity.

(iv) Describe applicant's experience conducting follow-up evaluations that measure behavior and/or results.

(8) DEIA (1 Bonus Point)

Applicants demonstrating their organization's commitment to DEIA may submit their organization's equity plan and demonstrate the extent they have institutionalized DEIA principles within their operations will receive one bonus point.

(9) Language Accessibility (1 Bonus Point)

Applicants describing how training programs will be accessible to the most prominent linguistic communities located within their region will receive one bonus point.

H. Consortia and Partnerships

Applicants may join with one or more other non-profit organizations in their region to apply as a consortium. A training or education institution may elect to apply for this program in partnership with a safety and health organization that is not primarily a training organization. For example, a university could enter into an agreement with a labor union that provides for the use of university classrooms and faculty supplemented by union safety and health professionals. All consortium partners must be physically located in the same OSHA region. Partners must designate a lead organization that will be responsible for program reporting

and Outreach Training Program administration including Outreach card distribution. OTI Education Centers may request to change the lead organization within a consortium in writing. OTE will only consider changes to the lead organization when all consortium members support the change.

I. Funding Provisions

OSHA provides no funding to OTI Education Centers. OTI Education Centers are expected to support their training through their normal tuition and fee structures.

J. Cooperative Agreement Duration

Selected applicants will sign five-year non-financial cooperative agreements with OSHA. Such an agreement may be renewed at the government's sole discretion without the additional competition otherwise required by this notice for one additional five-year period, provided that: (1) OSHA found the OTI Education Center's performance during the cooperative agreement to be satisfactory; (2) the OTI Education Center has not altered its existing membership of constituent organizations (*i.e.,* the member organizations that comprise its consortium); and (3) the OTI Education Center has not had any significant findings of program non-compliance or served any period of probation or suspension.

The agency reserves the right to revoke the authorization of an OTI Education Center. Either party may terminate the cooperative agreement with advance written notice, provided both parties continue to meet all obligations of the agreement for the duration of the advance notice period.

K. Pre-Proposal Conference

A pre-proposal conference will be held to provide potential applicants with information about the OTI Education Center Program. The conference will also review OSHA expectations for OTI Education Centers, courses and methods of instruction, and administrative and program requirements for OTI Education Centers and the OSHA Outreach Training Program. Attendance at the pre-proposal conference is not mandatory, but applicants are strongly encouraged to attend.

The pre-proposal conference is scheduled for Wednesday, May 18, 2022, at the OSHA Directorate of Training and Education, 2020 S. Arlington Heights Road, Arlington Heights, Illinois 60005–4102.

Attendees are required to register for this pre-proposal conference. Applicants interested in attending this conference must register by emailing *otiecreports@dol.gov.*

Required registration information includes:

(1) Name and street address of the organization; and

(2) Name, title, telephone number, and email address of the attendee(s).

Registration information must be submitted no later than Wednesday, May 11, 2022.

L. Application Submission

Applications must be submitted to the attention of James Brock, Branch Chief, Training Programs, OSHA Office of Training and Education, 2020 S Arlington Heights Road, Arlington Heights, Illinois 60005–4102.

Applicants must submit three copies of the application. Applications may be bound. The program narrative must not exceed 30 pages. Attachments will not be included in the page count. Applications must be double-spaced, in 12-point font, with all pages numbered, including attachments. Attachments must only include essential documents that are relevant to this program.

M. Application Deadline

Applications must be received by the OSHA Office of Training and Education no later than 4:30 p.m., Central Time, on June 17, 2022. Requests for extension to this application deadline will not be granted.

N. Application Evaluation and Selection Process

Applications will be reviewed by technical panels comprised of OSHA staff. The technical panels will review applications based on criteria listed in this notice to determine which applicants best meet the stated requirements. As part of the evaluation and selection process, OSHA may request additional information from applicants. This may include written requests for clarification, phone or in-person interviews, access to existing programs, and on-site visits of applicant facilities. OSHA will attempt to select qualified applicants who have the ability to provide training throughout their region based on program needs. The panels' recommendations to the Assistant Secretary are advisory in nature. The final decision will be made by the Assistant Secretary of Labor for Occupational Safety and Health.

O. Notification of Selection

Applicants will be notified by a representative of the Assistant Secretary of Labor for Occupational Safety and Health if their organization is selected to be authorized as an OSHA Training Institute Education Center. Applicants selected to be authorized as OSHA Training Institute Education Centers must attend a mandatory orientation meeting at a time and date to be provided after selection.

An organization may not deliver OSHA Training Institute Education Center courses until the program has been authorized, the organization has signed a non-financial cooperative agreement with OSHA, and the organization has participated in the orientation meeting.

P. Freedom of Information Act

Information submitted in the respondent's application is not considered confidential. Organization's application data may be releasable under the Freedom of Information Act.

Q. Paperwork Reduction Act

Interested parties must submit an application as discussed under section ''Application Submission Requirements.'' According to the Paperwork Reduction Act, an agency may not conduct or sponsor, and no persons are required to respond to, a collection of information unless such collection displays a valid Office of Management and Budget (OMB) control number. The application provides to OSHA basic information about the applicant. Information will be used to evaluate the qualifications of the applicants, including their ability to serve the regional population; determine ability to conduct OSHA courses for private sector personnel and Federal personnel from agencies other than OSHA; and to evaluate the applicant's competence to provide the proposed training (including the qualifications of the personnel to manage and implement the training). OSHA estimates employer burden for the completion of this application is sixty hours per application. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The application was previously reviewed and approved for use by OMB under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The assigned OMB control number is 1218–0262

R. Transparency

The Department of Labor is committed to conducting a transparent selection process and publicizing information about program outcomes. Applications or abstracts may be posted

on public websites as a means of promoting and sharing innovative ideas.

S. Notification of Non-Selection

Applicants will be notified in writing if their organization is not selected to be authorized as an OSHA Training Institute Education Center.

T. Non-Selection Appeal

All decisions by the Assistant Secretary of Labor for Occupational Safety and Health are final. The Department of Labor does not provide an appeal procedure for applicants that are not selected.

Authority and Signature

Douglas L. Parker, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Secretary of Labor's Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC.

Douglas Parker,

Assistant Secretary of Labor for Occupational Safety and Health.

Appendix A—Current List of Required, Elective and Short Courses [1]

(1) Present OTI Courses

(a) FY 2017 rating criterion is 95 courses conducted annually with a minimum of four in-person courses per month.

(b) Present all OTI Courses as follows:

(i) OTI Education Centers are required to present the following ten courses annually:

(1) #500 Trainer Course in Occupational Safety and Health Standards for the Construction Industry
(2) #501 Trainer Course in Occupational Safety and Health Standards for General Industry
(3) #502 Update for Construction Industry Outreach Trainers
(4) #503 Update for General Industry Outreach Trainers
(5) #510 Occupational Safety and Health Standards for the Construction Industry
(6) #511 Occupational Safety and Health Standards for General Industry
(7) #3095 Electrical Standards
(8) #3115 Fall Protection
(9) #7500 Introduction to Safety and Health Management
(10) #7845 Recordkeeping Rule Seminar

(ii) OTI Education Centers are required to present at least five of the following elective courses annually:

(1) #521 OSHA Guide to Industrial Hygiene
(2) #2015 Hazardous Materials
(3) #2045 Machinery and Machine Guarding Standards
(4) #2055 Cranes in Construction
(5) #2225 Respiratory Protection
(6) #2255 Principles of Ergonomics
(7) #2264 Permit-Required Confined Space Entry
(8) #3015 Excavation, Trenching, and Soil Mechanics
(9) #3085 Principles of Scaffolding
(10) #5029 Cal/OSHA Update for Construction Industry Outreach Trainers
(11) #5039 Cal/OSHA Update for General Industry Outreach Trainers
(12) #5109 Cal/OSHA Standards for the Construction Industry
(13) #5119 Cal/OSHA Standards for General Industry
(14) #5400 Trainer Course in Occupational Safety and Health Standards for the Maritime Industry
(15) #5402 Maritime Industry Trainer Update Course
(16) #5410 Occupational Safety and Health Standards for the Maritime Industry
(17) #5600 Disaster Site Worker Trainer Course
(18) #5602 Update for Disaster Site Worker Trainer Course
(19) #5810 Hazards Recognition and Standards for On Shore Oil and Gas Exploration and Production
(20) #6005 Collateral Duty Course for Other Federal Agencies
(21) #6015 Occupational Safety and Health Course for Other Federal Agencies

(iii) OTI Education Centers are required to present at least three of the following short courses annually:

(1) #7000 OSHA Training Guidelines for Safe Patient Handling
(2) #7005 Public Warehousing and Storage
(3) #7100 Introduction to Machinery and Machine Safeguarding
(4) #7105 Evacuation and Emergency Planning
(5) #7110 Safe Bolting: Principles and Practices
(6) #7115 Lockout/Tagout
(7) #7120 Introduction to Combustible Dust Hazards
(8) #7200 Bloodborne Pathogen Exposure Control
(9) #7205 Health Hazard Awareness
(10) #7210 Pandemic Illness Preparedness
(11) #7215 Silica in Construction, Maritime, and General Industries
(12) #7225 Transitioning to Safer Chemicals
(13) #7300 Understanding OSHA's Permit-Required Confined Space Standard
(14) #7400 Occupational Noise Exposure Hazards
(15) #7405 Fall Hazard Awareness for the Construction Industry
(16) #7410 Managing Excavation/Trenching Operations
(17) #7415 OSHA Construction Industry Requirements (Major Hazards and Prevention)
(18) #7505 Introduction to Incident (Accident) Investigation
(19) #7510 Introduction to OSHA for Small Business

[1] Subject to change based on agency initiatives, yearly annual performance criteria and national emphasis programs.

[FR Doc. 2022–07652 Filed 4–15–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Agency Information Collection Activities; Comment Request; Pharmacy Billing Requirement

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Pharmacy Billing Requirements.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received June 17, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free by contacting Anjanette Suggs by telephone at (202) 354–9660 (this is not toll-free number) or by email at *suggs.anjanette@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Office of Workers' Compensation Programs, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; by email: *suggs.anjanette@dol.gov.*

FOR FURTHER INFORMATION: Contact Anjanette Suggs by telephone at (202) 354–9660 (this is not a toll-free number) or by email at *suggs.anjanette@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the OMB for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Office of Workers' Compensation Programs (OWCP) is the agency responsible for administration of the Federal Employees' Compensation Act

(FECA), 5 U.S.C. 8101 *et seq.,* the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.,* and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA), 42 U.S.C. 7384 *et seq.* All three of these statutes require that OWCP pay for covered medical treatment provided to beneficiaries; this medical treatment can include medicinal drugs dispensed by pharmacies. In order to determine whether amounts billed for drugs are appropriate, OWCP must receive the required data elements, including the name of the patient/beneficiary, the National Drug Code (NDC) number of the drugs prescribed, the quantity provided, the prescription number and the date the prescription was filled. The regulations implementing these statutes require the collection of information needed to enable OWCP to determine if bills for drugs submitted directly by pharmacies, or reimbursement requests submitted by claimants, should be paid. There is no standardized paper form for submission of the billing information collected in this Information Collection Request (ICR). Over the past several years, almost all pharmacy bills submitted to OWCP have been submitted electronically using one of the industry-wide standard formats for the electronic transmission of billing data through nationwide data clearinghouses devised by the National Council for Prescription Drug Programs (NCPDP). None of the electronic billing formats have been designed by or provided by OWCP; they are billing formats commonly accepted by other Federal programs and in the private health insurance industry for drugs. Nonetheless, the three programs (FECA, BLBA and EEOICPA) provide instructions for the submission of necessary pharmacy bill data elements in provider manuals distributed or made available to all pharmacies enrolled in the programs.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention 1240–0050.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. The DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

The DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–OWCP.

Type of Review: Extension.

Title of Collection: Pharmacy Billing Requirements.

OMB Control Number: 1240–0050.

Affected Public: Individuals or households.

Estimated Number of Respondents: 874,414.

Frequency: Annually.

Total Estimated Annual Responses: 874,414.

Estimated Average Time per Response: 1 minute.

Estimated Total Annual Burden Hours: 14,481.

Total Estimated Annual Other Cost Burden: $784,103.58.

Authority: 44 U.S.C. 3506(c)(2)(A).

Anjanette Suggs,

Agency Clearance Officer.

[FR Doc. 2022–08224 Filed 4–15–22; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Proof of Concept Application for New Charter Organizing Groups

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the following extension of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments should be received on or before June 17, 2022 to be assured consideration.

ADDRESSES: Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at *PRAComments@NCUA.gov.* Given the limited in-house staff because of the COVID–19 pandemic, email comments are preferred.

FOR FURTHER INFORMATION CONTACT: Address requests for additional information to Dawn Wolfgang at the address above or telephone 703–548–2279.

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0202.

Title: Proof of Concept Application (POC) for New Charter Organizing Groups.

Type of Review: Extension of a currently approved collection.

Abstract: The Office of Credit Union Resources and Expansion (CURE) is responsible for the review and approval of charter applications submitted by organizing groups. CURE has implemented a charter modernization process to improve the quality of charter applications received. This will help ensure organizing groups submit a well-thought out, well-developed charter plan to minimize the back-and-forth communication and improve overall chartering processing times. CURE management implemented the Proof of Concept (POC) data collection through the CyberGrants system, which documents the four most critical elements for establishing a new charter. This is ''Phase 1'' of the process. The CyberGrants system is accessed online.

The four areas are usually the greatest challenge for organizers to accomplish.

When the organizers successfully address the four critical elements, organizing groups are invited to proceed to ''Phase 2'', submission of most remaining charter documents and plans.

The ''Phase 1'' data is reviewed by NCUA to determine the adequacy of a group's chartering concept and to provide guidance as needed. The purpose of this information collection is to identify the level of understanding an organizing group has before they make a formal charter application submission as prescribed by Appendix B to 12 CFR part 701 (12 U.S.C. 1758, 1759).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated No. of Respondents: 26.

Estimated No. of Responses per Respondent: 1.

Estimated Total Annual Responses: 26.

Estimated Burden Hours per Response: 4.

Estimated Total Annual Burden Hours: 104.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on April 12, 2022.

Dated: April 13, 2022.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2022–08223 Filed 4–15–22; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: LIGO Annual Site Visit Review of Operations for the Division of Physics (1208).

Date and Time: All times are Pacific Daylight Time:

June 1, 2022; 8:00 a.m.–5:30 p.m.

June 2, 2022; 8:00 a.m.–11:00 a.m.

June 2, 2022; 4:30 p.m.–5:30 p.m.

June 3, 2022; 8:00 a.m.–10:30 a.m.

Place: LIGO Hanford Observatory, 127124 N Route 10, Richland, WA 99354.

Type of Meeting: Part-Open.

Contact Person: Mark Coles, Program Director, Division of Physics, National Science Foundation, 2415 Eisenhower Avenue, Room 9219, Alexandria, VA 22314; Telephone: (703) 292–4432.

Purpose of Meeting: Site visit to provide an evaluation of the progress of the projects at the host site for the Division of Physics at the National Science Foundation.

Agenda: Agenda (all times Pacific Daylight Time [PDT]):

June 1 (Wednesday)

8:00 a.m.–8:30 a.m.—Executive Session (Closed)

8:30 a.m.–5:00 p.m.—Presentations by LIGO (Open)

5:00 p.m.–5:30 p.m.—Executive Session (Closed)

June 2 (Thursday)

8:00 a.m.–8:30 a.m.—Executive Session (Closed)

8:30 a.m.–11:00 a.m.—Presentations and discussion (Open)

4:30 p.m.–5:30 p.m.—Discussion (Open)

June 3 (Friday)

8:00 a.m.–10:00 a.m.—Executive Session (Closed)

10:00 a.m.–10:30 a.m.—Closeout presentation by review panel (Open)

Reason for Closing: The work being reviewed during closed portions of the site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 13, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–08256 Filed 4–15–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–52 and CP2022–56]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 20, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–52 and CP2022–56; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 5 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 12, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* April 20, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–08234 Filed 4–15–22; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94706; File No. SR–CBOE–2022–018]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 5.22

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers, currently codified in Rule 5.22. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*https://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 5.22 to make permanent the Market-Wide Circuit Breaker (''MWCB'') pilot program. The proposal is substantively identical to New York Stock Exchange LLC (''NYSE'') Rule 7.12 and NYSE American LLC (''NYSE American'') Rule 7.12E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 5.22, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 5.22).[5] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April

[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).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–

2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 5.22 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange then filed to extend the pilot to the close of business on October 18, 2020,[11] October 18, 2021,[12] March 18, 2022,[13] and April 18, 2022.[14]

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the ''Study'') to the Commission.[15] The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.[16]

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On March 16, 2022, the Commission approved NYSE's proposal.[18]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(e) of Rule 5.22) be made permanent. To accomplish this, the Exchange proposes to remove certain text within Rule 5.22, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(e) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (f), (g), and (h) to Rule 5.22 as follows:

(f) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Trading Permit Holders designated pursuant to paragraph (b) of Rule 5.24 to participate in Disaster Recovery are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that a Trading Permit Holder participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (f)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Trading Permit Holders not designated pursuant to standards established in paragraph (b) of Rule 5.24 are permitted to participate in any MWCB test.

(g) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the ''MWCB Working Group''), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(h) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group

CBOE–2011–087) (Approval Order); and 68770 (January 30, 2013), 78 FR 8211 (February 5, 2013) (SR–CBOE–2013–011) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Delay the Operative Date of a Rule Change To Exchange Rule 6.3B).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See* Securities Exchange Act Release No. 85616 (April 11, 2019), 84 FR 16093 (April 17, 2019) (SR–CBOE–2019–020) (proposal to extend the pilot for certain options pilots, including Rule 5.22, prior Rule 6.3B).

[11] *See* Securities Exchange Act Release No. 87341 (October 18, 2019), 84 FR 57081 (October 24, 2019) (SR–CBOE–2019–100).

[12] *See* Securities Exchange Act Release No. 90165 (October 13, 2020), 85 FR 66391 (October 19, 2020) (SR–CBOE–2020–098).

[13] *See* Securities Exchange Act Release No. 93372 (October 18, 2021), 86 FR 58709 (October 22, 2021) (SR–CBOE–2021–060).

[14] *See* Securities Exchange Act Release No. 94454 (March 17, 2022), 87 FR 16512 (March 17, 2022) (SR–CBOE–2022–013).

[15] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[16] *Id* at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR–NYSE–2021–40) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12).

recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 5.22 are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (f) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.[21]

The Exchange believes that proposed paragraph (g) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* 17 CFR 240.17a–1.

5.22 and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 5.22 in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (h) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 5.22 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 5.22, the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6)[23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–018 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–018. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–018 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08180 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94704; File No. SR–NASDAQ–2022–029]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Implementation Date of Nasdaq's Post-Trade Risk Management Product to Q2 2022

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the implementation date of its Post-Trade Risk Management product to Q2 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is filing this proposal to extend the implementation date of its Post-Trade Risk Management tool to Q2 2022.

Nasdaq proposed to enhance its connectivity, surveillance and risk management services by launching three re-platformed products: (i) WorkX, (ii) Real-Time Stats and (iii) Post-Trade Risk Management. These changes were filed by Nasdaq on April 20, 2021 and published in the **Federal Register** on May 7, 2021.[3]

Nasdaq initially proposed that WorkX and Real-Time Stats would launch on April 12, 2021 and Post-Trade Risk Management would launch no later than Q3 2021.[4] Due to re-prioritization in the Nasdaq product pipeline, on September 14, 2021, Nasdaq proposed to delay the implementation date of Post-Trade Risk Management until Q1 2022.[5] Due to continued re-prioritization, Nasdaq is further delaying the implementation of Post-Trade Risk Management until Q2 2022.[6] The Exchange will announce the new implementation date in an Equity Trader Alert at least ten days in advance of implementing the Post-Trade Risk Management product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The purpose of this proposal is to modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The introduction of the Post-Trade Risk Management product was proposed in a rule filing that was submitted to the SEC, and the Exchange is not proposing with this filing, any changes other than to modify the implementation date for the Post-Trade Risk Management product. Nasdaq is delaying the implementation date in order to complete testing in line with Nasdaq's re-prioritized product pipeline.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As explained above, the purpose of this proposal is to modify the timing of the planned implementation for the Post-Trade Risk Management product and to inform the SEC and market participants of that change. The existing Nasdaq Risk Management product will continue to be available, and the implementation delay will impact all market participants equally. The Exchange does not expect the date change to place any burden on competition and clearing brokers will continue to have use of Nasdaq Risk Management service to monitor correspondent activity against limit settings and manage credit risk exposure.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

[27] 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. 91744 (May 3, 2021), 86 FR 24685 (May 7, 2021) (NASDAQ–2021–025) (''Proposal'').

[4] *See* Proposal *supra* n. 3 at 24685.

[5] *See* Securities Exchange Act Release No. 93125 (September 24, 2021), 86 FR 54255 (September 30, 2021).

[6] As a result of the delay, the Exchange is designating Equity 7, Section 116–A, the Post-Trade Risk Management Rule, to be operative in Q2 2022.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) under the Act[11] normally does not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. Waiver of the operative delay would allow the Exchange to immediately delay the implementation date of the Post-Trade Risk Management product to Q2 2022, so that the Exchange may complete testing in line with its re-prioritized product pipeline. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–029 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–2022–029. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–029 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08178 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, April 21, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: April 14, 2022.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2022–08344 Filed 4–14–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94688; File No. SR–CboeEDGX–2022–021]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (''EDGX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule for its options trading platform (''EDGX Options''). Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product (''Product'') listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.[3] For example, a firm that currently subscribes to EDGX Options Top would be eligible to receive a free 30-day trial of EDGX Options Depth, whether in a display-only format or for non-display use. However, a firm that currently receives EDGX Options Depth for non-display use would not be eligible to receive a free 30-day trial of EDGX Options Depth in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[7]

The Exchange believes that adopting a free trial program for real-time market data products listed in its Fees Schedule is equitable and reasonable. Particularly, providing Exchange real-time market data products to new Users and Distributors free-of-charge for the first 30 days is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Distributors to enlist more Users to subscribe to Exchange market data products in an effort to broaden the products' distribution. Making a new market data product available for free for a trial period is also consistent with offerings of other exchanges. For example, NYSE and Nasdaq offer similar free trial programs.[8]

The Exchange believes the proposal to provide the Exchange market data products to new Users or Distributors free-of-charge for their first 30 days subscribing or distributing the data, as applicable, is equitable and not unfairly discriminatory because it applies to any first-time User or Distributor, regardless of the use they plan to make of the feed. As proposed, any first-time User or Distributor would not be charged any applicable fee listed in the Fee Schedule for any of the Exchange's real-time

[3] For example, if a User that has elected to participate in the free trial program for EDGX Options Top data is approved on April 15, 2022, that User will not be subject to any applicable fees (*i.e.,* User Fee) through May 14, 2022.

[4] *See* The Nasdaq Stock Market LLC (''Nasdaq'') Equity 7 Pricing Schedule, Section 112(b)(1) and New York Stock Exchange LLC (''NYSE'') Proprietary Market Data Fees Schedule, General.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78k–1.

[8] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

market data products listed in the Fee Schedule for 30 days. The Exchange believes it is equitable to restrict the availability of this free trial to Users or Distributors that have not previously subscribed to, or distributed, respectively the particular market data product, since Users or Distributors who are current or previous subscribers or Distributors, respectively of that product are already familiar with the product and whether it would suit their needs.

The Exchange believes that the proposed rule change providing for a free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all Users subscribing to, and all Distributors distributing, an Exchange Product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between Users and Distributors that are subscribing to or distributing a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and Users and Distributors that are already receiving or distributing the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for 30 days would ease administrative burdens for data recipients to subscribe to or distribute a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time Users and Distributors on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.[9] The proposed amendments are also designed to enhance competition by providing an incentive to Distributors to enlist new subscribers and Users to subscribe to Exchange real-time market data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–021 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08167 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94707]

Order Granting Application by The Nasdaq Stock Market LLC and Five Affiliated National Securities Exchanges for Exemption, Pursuant to Section 36(a) of the Exchange Act, From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

April 12, 2022.

The Nasdaq Stock Market LLC (''Nasdaq'') and its affiliated national securities exchanges Nasdaq PHLX LLC (''Phlx''), Nasdaq BX, Inc. (''BX''), Nasdaq ISE, LLC (''ISE''), Nasdaq GEMX, LLC (''GEMX''), and Nasdaq MRX, LLC (''MRX'') (each a ''Nasdaq Exchange'' and collectively the ''Nasdaq Exchanges'') have filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC'') an application [1] for exemption under Section 36(a) of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 0–12 thereunder [3] from the rule filing requirements of Section 19(b) of the Exchange Act [4] with respect to the rules of the Nasdaq Exchanges relating to arbitration. Section 36 of the Exchange Act authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions, from any provision or provisions of the Exchange Act or of any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

The Nasdaq Exchanges have requested that the Commission: (i) Grant Nasdaq an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to rules on arbitration in the ''General 6'' section of Nasdaq's rulebook (the ''General 6 Rules'') effected solely by virtue of changes to rules on arbitration in the Rule 12000 Series and Rule 13000 Series of the Financial Industry Regulatory Authority, Inc. (''FINRA'') Manual (Code of Arbitration Procedures for Customer Disputes and Code of Arbitration Procedures for Industry Disputes) (''FINRA Arbitration Rules'') that are incorporated by reference into the General 6 Rules; and (ii) grant the remaining Nasdaq Exchanges an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to their rules on arbitration that are effected solely by virtue of a change to the General 6 Rules that are incorporated into the remaining Nasdaq Exchanges' rules by reference. Specifically, the Nasdaq Exchanges request that they be permitted to incorporate by reference changes made to the FINRA Arbitration Rules and Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the Nasdaq Exchanges' rules without the need for each Nasdaq Exchange to separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA or Nasdaq (as applicable). The Nasdaq Exchanges believe that these exemptions are appropriate because they will promote consistency among the Nasdaq Exchanges' rules pertaining to arbitration, which are not trading rules.[5]

As a condition of the requested exemption, the Nasdaq Exchanges have agreed to provide written notice to their members whenever a change is proposed to FINRA Arbitration Rules or Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the rules of the Nasdaq Exchanges.[6] Such notice will alert the Nasdaq Exchanges' members to the proposed FINRA or Nasdaq rule change and give them an opportunity to comment on the proposal.[7] The Nasdaq Exchanges will similarly inform members in writing when the Commission approves any such proposed changes.[8]

The Commission has issued exemptions similar to the Nasdaq Exchanges' request.[9] In granting one such exemption in 2010, the Commission repeated an earlier Commission statement that it would consider similar future exemption requests from other self-regulatory organizations (''SROs''), provided that:

- An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act;
- The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and
- The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[10]

The Commission believes that the Nasdaq Exchanges have satisfied each of these conditions. The Commission also believes that granting the Nasdaq Exchanges an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of Commission and exchange resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.[11] The Commission therefore finds it appropriate in the public interest, and consistent with the protection of investors, to exempt the Nasdaq

[1] *See* Letter from Stephen Matthews, Principal Associate General Counsel, Nasdaq, to J. Matthew DeLesDernier, Assistant Secretary, SEC, dated February 12, 2021 (''Exemptive Request'').

[2] 15 U.S.C. 78mm.

[3] 17 CFR 240.0–12 (Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act).

[4] 15 U.S.C. 78s(b).

[5] Exemptive Request, *supra* note 1, at 2–3. An SRO wishing to incorporate rules of another SRO by reference may submit a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, if, among other things, the rules to be incorporated are categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration). *See* Exchange Act Release No. 49260 (Feb. 17, 2004), 69 FR 8500 (Feb. 24, 2004).

[6] The Nasdaq Exchanges will provide such notice via a posting on the same website location where they post their own rule filings pursuant to and within the timeframe required by Rule 19b–4(1) under the Exchange Act. The website posting will include a link to the location on Nasdaq's website where the applicable proposed rule change is posted. Exemptive Request, *supra* note 1, at 3 & n.7.

[7] Exemptive Request, *supra* note 1, at 3.

[8] *Id.*

[9] *See, e.g.,* Release No. 34–83040 (Apr. 12, 2018), 83 FR 17198 (Apr. 18, 2018) (order granting MIAX PEARL, LLC, an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Miami International Securities Exchange, LLC); Release No. 34–61534 (Feb. 18, 2010), 75 FR 8760 (Feb. 25, 2010) (order granting BATS Exchange, Inc., an exemption under Section 36(a) of the Exchange Act from the rule filing requirements of Section 19(b) of the Exchange Act with respect to certain of its rules incorporating by reference rules of the Chicago Board Options Exchange, Incorporated, Financial Industry Regulatory Authority, Inc., and the New York Stock Exchange, LLC) (''BATS Order'').

[10] *See* Release No. 34–83040, *supra* note 17, at 75 FR 17199 (footnotes omitted).

[11] *Id.* at 75 FR 17199 & n.15.

Exchanges from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described rules they have incorporated by reference.

Accordingly, it is ordered, pursuant to Section 36 of the Exchange Act,[12] that the Nasdaq Exchanges are exempt from the rule filing requirements of Section 19(b) of the Exchange Act with respect to changes to their rules on arbitration resulting solely from changes made to the FINRA Arbitration Rules or the Nasdaq General 6 Rules (as applicable) that are incorporated by reference into the Nasdaq Exchanges' rules without the need for each Nasdaq Exchange to separately file, pursuant to Section 19(b) of the Exchange Act, a proposed rule change similar to the one filed by FINRA or Nasdaq, provided that the Nasdaq Exchanges promptly provide written notice to their members whenever a change is proposed to the FINRA Arbitration Rules or the Nasdaq General 6 Rules, and provided that they inform their members in writing when the Commission approves any such proposed change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08181 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94701; File No. SR–CboeEDGA–2022–008]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.16

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers, currently codified in Rule 11.16(a)–(d), (f) and (g). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is available on the Exchange's website (*https://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.16 to make permanent the Market-Wide Circuit Breaker (''MWCB'') pilot program. The proposal is substantively identical to New York Stock Exchange LLC (''NYSE'') Rule 7.12 and NYSE American LLC (''NYSE American'') Rule 7.12E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 11.16(a)–(d), (f) and (g), provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 11.16(a)–(d), (f) and (g)).[5] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April

[12] 15 U.S.C. 78mm.

[13] 17 CFR 200.30–3(a)(76).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–EDGA–2011–31) (Approval Order); and 68806 (February 1, 2013), 78 FR 8670 (February 6, 2013) (SR–EDGA–2013–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Operative Date of Changes to the Rule

Continued

2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.16 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange then filed to extend the pilot to the close of business on October 18, 2020,[11] October 18, 2021,[12] March 18, 2022,[13] and April 18, 2022.[14]

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the ''Study'') to the Commission.[15] The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.[16]

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On March 16, 2022, the Commission approved NYSE's proposal.[18]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d), (f) and (g) of Rule 11.16) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 11.16, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–d), (f) or (g) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (h), (i), and (j) to Rule 11.16 as follows:

(h) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to paragraph (b) of Rule 2.4 to participate in Mandatory Participation in Testing of Backup Systems are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that an Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (h)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to standards established in paragraph (b) of Rule 2.4 are permitted to participate in any MWCB test.

(i) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the ''MWCB Working Group''), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(j) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and

for Halting Trading in All Stocks Due to Extraordinary Market Volatility).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See* Securities Exchange Act Release No. 85668 (April 11, 2019), 84 FR 16743 (April 22, 2019) (SR–CboeEDGA–2019–006).

[11] *See* Securities Exchange Act Release No. 87335 (October 17, 2019), 84 FR 56858 (October 23, 2019) (SR–CboeEDGA–2019–016).

[12] *See* Securities Exchange Act Release No. 90127 (October 8, 2020), 85 FR 65085 (October 14, 2020) (SR–CboeEDGA–2020–026).

[13] *See* Securities Exchange Act Release No. 93366 (October 15, 2021), 86 FR 58330 (October 21, 2021) (SR–CboeEDGA–2021–023).

[14] *See* Securities Exchange Act Release No. 94463 (March 18, 2022), 87 FR 16775 (March 24, 2022) (SR–CboeEDGA–2022–006).

[15] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[16] *Id* at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR–NYSE–2021–40) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12).

recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 11.16(a)–(d), (f) and (g) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (h) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.[21]

The Exchange believes that proposed paragraph (i) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 11.16(a)–(d), (f) and (g) and prepare a report of its analysis and recommendations would permit the Exchange, along with other market

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* 17 CFR 240.17a–1.

participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 11.16(a)–(d), (f) and (g) in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (j) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 11.16(a)–(d), (f)–(j) be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 11.16(a)–(d), (f)–(j), the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6)[23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGA–2022–008 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-CboeEDGA–2022–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

publicly. All submissions should refer to File Number SR-CboeEDGA–2022–008 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08176 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94699; File No. SR–CboeEDGX–2022–023]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.16

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers, currently codified in Rule 11.16(a)–(d), (f) and (g). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*https://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.16 to make permanent the Market-Wide Circuit Breaker (''MWCB'') pilot program. The proposal is substantively identical to New York Stock Exchange LLC (''NYSE'') Rule 7.12 and NYSE American LLC (''NYSE American'') Rule 7.12E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 11.16(a)–(d), (f) and (g), provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 11.16(a)–(d), (f) and (g)).[5] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.16 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange then filed to extend the pilot to the close of business on October 18, 2020,[11] October

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–EDGX–2011–30) (Approval Order); and 68787 (February 1, 2013), 78 FR 8615 (February 6, 2013) (SR–EDGX–2013–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Operative Date of Changes to the Rule for Halting Trading in All Stocks Due to Extraordinary Market Volatility).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See* Securities Exchange Act Release No. 85667 (April 16, 2019), 84 FR 16736 (April 22, 2019) (SR–CboeEDGX–2019–023).

[11] *See* Securities Exchange Act Release No. 87339 (October 17, 2019), 84 FR 56882 (October 23, 2019) (SR–CboeEDGX–2019–061).

18, 2021,[12] March 18, 2022,[13] and April 18, 2022.[14]

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the ''Study'') to the Commission.[15] The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.[16]

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On March 16, 2022, the Commission approved NYSE's proposal.[18]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d), (f) and (g) of Rule 11.16) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 11.16, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d), (f) or (g) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (h), (i), and (j) to Rule 11.16 as follows:

(h) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to paragraph (b) of Rule 2.4 to participate in Mandatory Participation in Testing of Backup Systems are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that a Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (h)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to standards established in paragraph (b) of Rule 2.4 are permitted to participate in any MWCB test.

(i) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the ''MWCB Working Group''), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(j) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

[12] *See* Securities Exchange Act Release No. 90147 (October 9, 2020), 85 FR 65453 (October 15, 2020) (SR–CboeEDGX–2020–047).

[13] *See* Securities Exchange Act Release No. 93353 (October 15, 2021), 86 FR 58349 (October 21, 2021) (SR–CboeEDGX–2021–046).

[14] *See* Securities Exchange Act Release No. 94462 (March 18, 2022), 87 FR 16805 (March 24, 2022) (SR–CboeEDGX–2022–019).

[15] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[16] *Id* at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR–NYSE–2021–40) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

The Pilot Rules set out in Rule 11.16(a)–(d), (f) and (g) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (h) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.[21]

The Exchange believes that proposed paragraph (i) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 11.16(a)–(d), (f) and (g) and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 11.16(a)–(d), (f) and (g) in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (j) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

[21] *See* 17 CFR 240.17a–1.

Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 11.16(a)–(d), (f)–(j) be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 11.16(a)–(d), (f)–(j), the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6)[23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–CboeEDGX–2022–023 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–023 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08175 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94692; File No. SR–DTC–2022–002]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change To Provide Settlement Services for Transactions Entered Into Under the Proposed Securities Financing Transaction Clearing Service of the National Securities Clearing Corporation

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2022, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change of DTC would amend the Rules, the Settlement Guide, and the Fee Guide [3] in order to provide Participants that are also members of the National Securities Clearing Corporation (''NSCC'') with settlement services in connection with a proposed optional securities financing transaction clearing service of NSCC (''NSCC SFT Service'').

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Rules, the Settlement Guide, and the Fee Guide in order to provide Participants that are also members of NSCC with settlement services in connection the NSCC SFT Service. The proposed NSCC SFT Service would provide central clearing for equity securities financing transactions, which are, broadly speaking, transactions where the parties exchange equity securities against cash and simultaneously agree to exchange the same securities and cash, plus or minus a rate payment, on a future date (each, an ''SFT'').[4] SFTs between counterparties that are members of NSCC (each, an ''NSCC SFT Counterparty'') [5] would be settled through their respective Participant Accounts at DTC.[6]

Pursuant to the proposed rule change, DTC would (i) expand the types of instructions that NSCC, as the representative (''Special Representative'') of each Participant that is also a member of NSCC, can submit to DTC on behalf of a Participant with respect to an Account of the Participant, (ii) establish a new type of payment order for the crediting and debiting of payment amounts relating to SFT activity at NSCC (''SFT Price Differential'' or ''SFT PD'') [7] to and from the Accounts of the Participants that are NSCC SFT Counterparties, (iii) apply a modified look-ahead process to the new Account that NSCC would maintain at DTC in connection with the NSCC SFT Service (the ''NSCC SFT Account'' or ''Special Representative SFT Account''),[8] and (iv) establish a fee for the payor and payee of an SFT Price Differential payment order. Finally, DTC is proposing to make clarifying and conforming changes, as discussed below.

(i) Overview of Proposed Rule Change

DTC understands that, pursuant to the Proposed NSCC Rules and consistent with the manner in which NSCC accepts cash market transactions, SFTs would be submitted to NSCC by an Approved SFT Submitter [9] already matched as between the pre-novation NSCC SFT Counterparties (*i.e.,* on a locked in basis).[10] Once the SFT instruction is processed by NSCC, NSCC would submit Delivery Versus Payment (''DVP'') instructions or SFT PD payment orders to DTC in accordance with the NSCC Proposed Rules. Pursuant to the NSCC Proposed Rules and the proposed rule change, NSCC would typically only submit pairs of instructions to DTC, as follows: (i) One instruction on its own behalf, with respect to the NSCC SFT Account, and (ii) one instruction on behalf of a Participant, as its Special Representative, with respect to the DTC Account of the Participant.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Each capitalized term not otherwise defined herein has its respective meaning as set forth in DTC's rules, including, but not limited to, the Rules, By-Laws and Organization Certificate of DTC (''Rules''), the DTC Settlement Service Guide (''Settlement Guide''), and the Guide to the 2022 DTC Fee Schedule (''Fee Guide''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[4] On March 28, 2022, NSCC filed a proposed rule change and an advance notice to establish the NSCC SFT Service (''NSCC Proposed Rules''). *See* SR–NSCC–2022–003 and SR–NSCC–2022–801, which were filed with Commission and the Board of Governors of the Federal Reserve System, respectively, but have not been published in the **Federal Register**. Copies of the proposed rule change and the advance notice are *available at http://www.dtcc.com/legal/sec-rule-filings.aspx.*

[5] DTC understands that the NSCC SFT Service would offer the clearance of SFT transactions between a buy-side entity (a ''Sponsored Member'') and the member of NSCC that sponsored that entity for the NSCC SFT Service (''Sponsoring Member''). This proposed rule change by DTC does not relate to Sponsoring Members, Sponsored Members, or their SFT transactions at NSCC. All SFT transactions between a Sponsored Member and its Sponsoring Member would settle on the books of the Sponsoring Member. These SFT transactions and the related activity would occur outside of DTC and would not settle at DTC. The term ''NSCC SFT Counterparty,'' as used in this filing, does not refer to Sponsored Members or Sponsoring Members.

[6] DTC understands that, pursuant to the NSCC Proposed Rules, NSCC would establish a new membership category for agent clearing members (each, an ''Agent CM''), where members of NSCC would be permitted to submit SFTs to NSCC for novation on behalf of their customers. All SFTs settling at DTC would be processed by DTC without regard to whether a Participant is acting as Agent CM under the NSCC Proposed Rules or is acting on its own behalf. DTC would not establish any SFT or Agent CM Participant membership type, or any special SFT or Agent CM Participant accounts, at DTC.

[7] DTC understands that the Proposed NSCC Rules would define such credit/debit amount as a ''Price Differential,'' which would include, but would not be limited to, mark-to-market payments and payments relating to offsetting SFT obligations.

[8] The NSCC SFT Account, which would appear in the Rules as the ''Special Representative SFT Account,'' would be Account No. 881.

[9] DTC understands that the Proposed NSCC Rules would define the term ''Approved SFT Submitter'' as a provider of transaction data on an SFT that the parties to the SFT have selected and NSCC has approved.

[10] DTC understands that the NSCC Proposed Rules would provide that the obligations reflected in the transaction data on an SFT would be deemed to have been confirmed and acknowledged by each NSCC SFT Counterparty designated by the Approved SFT Submitter as a party thereto and to have been adopted by such NSCC SFT Counterparty and, for the purposes of determining the rights and obligations between NSCC and such NSCC SFT Counterparty under the NSCC Proposed Rules, would be valid and binding upon such NSCC SFT Counterparty.

[11] The NSCC Proposed Rules would provide that the submission of each SFT to NSCC constitutes an authorization to NSCC by the NSCC SFT Counterparties for NSCC to give instruction

Continued

Accordingly, these DVP and SFT PD transactions between Participants that are NSCC SFT Counterparties to an SFT would pass through the NSCC SFT Account.

A. NSCC Instructions to DTC

(1) NSCC as the Special Representative of Participants That Are Members of NSCC

Pursuant to Rule 6, NSCC is the Special Representative of each Participant that is also a Member of NSCC. Currently, as the Special Representative of the Participant, NSCC may instruct DTC, on behalf of the Participant, to make a transfer of securities from the Account of the Participant to an Account that NSCC maintains at DTC in connection with its Continuous Net Settlement (''CNS'') System [12] (the ''Special Representative CNS Account'').[13] The purpose of these transfers is to settle the CNS obligations of a member of NSCC to NSCC through the member's Participant Account at DTC.

The NSCC SFT Service would operate separately from the NSCC CNS system, and NSCC would use its new NSCC SFT Account, and not the NSCC CNS Account, in connection with the NSCC SFT Service. In order to efficiently provide Participants with settlement services for SFTs cleared through the NSCC SFT Service and settled at DTC, DTC is proposing to leverage the status of NSCC as the Special Representative of Participants that are members of NSCC. Pursuant to the proposed rule change, Rule 6 would provide NSCC, as the Special Representative of a Participant, with the additional authority to submit instructions to DTC with respect to DVP and SFT PD transactions from the Account of the Participant to the NSCC SFT Account.[14]

(2) DVP Instructions

As noted above, pursuant to the proposed rule change, NSCC would submit pairs of instructions to DTC as follows: (i) One instruction on its own behalf, with respect to the NSCC SFT Account, and (ii) one instruction on behalf of a Participant as its Special Representative, with respect to the DTC Account of the Participant. Accordingly, in order to effectuate a DVP transaction between Participants that are NSCC SFT Counterparties to an SFT, NSCC would send DTC a pair of DVP instructions: (i) One instruction, as the Special Representative of the Participant that is an NSCC SFT Counterparty, to deliver the subject securities versus payment from the Account of the delivering Participant to the NSCC SFT Account, and (ii) one instruction, on NSCC's own behalf, to deliver the subject securities versus payment from the NSCC SFT Account to the Account of the receiving Participant that is the other NSCC SFT Counterparty. As explained in more detail below, if the pair of instructions satisfy DTC risk management controls [15] and the modified look-ahead, DTC would process the deliveries. If risk management controls and the modified look-ahead are not satisfied, the instructions would recycle [16] and, if not completed, would drop at the end of the day.

There is only one situation where NSCC would only send a single DVP instruction to DTC.[17] Specifically, pursuant to the NSCC Proposed Rules, the initial transfer of the securities that are the subject of the SFT versus the payment amount would be initiated at DTC by the Participant that is the delivering NSCC SFT Counterparty. Therefore, pursuant to the proposed rule change, the Participant that is the delivering NSCC SFT Counterparty would submit the DVP instruction to DTC to deliver the subject securities versus the payment amount from the Account of the Participant to the NSCC SFT Account. Provided that the SFT had already been submitted to NSCC by an Approved SFT Submitter on that business day,[18] NSCC would submit a DVP instruction to DTC to deliver the subject securities versus the payment amount from the NSCC SFT Account to the Account of the Participant that is the receiving NSCC SFT Counterparty. If the Participant instruction and the NSCC instruction satisfy DTC risk management controls and the modified look-ahead, DTC would process the deliveries. If risk management controls and the modified look-ahead are not satisfied, the instructions would recycle and, if not completed, would drop at the end of the day.

(3) Price Differential Payment Orders

Pursuant to the proposed rule change, NSCC would also submit SFT PD payment orders to DTC on behalf of itself and on behalf of DTC Participants, as their Special Representative, in connection with SFT activity at NSCC.

DTC Rule 9(A) provides that a Participant may submit to DTC an instruction to (i) credit the Account of the Participant with an amount of funds and debit the Account of another Participant the same amount of funds, or (ii) debit the Account of the Participant with an amount of funds and credit the Account of another Participant the same amount of funds (each, a ''payment order'').[19] The Settlement Guide describes the DTC payment order service as providing Participants with a method for settling money payments for securities transactions that were processed separately.[20] Currently, Participants use payment orders to collect option contract premiums (a ''premium payment order'' or ''PPO'') and mark-to-market open contracts such as stock loans (a ''securities payment order'' or ''SPO''). Payment orders are subject to DTC risk management controls.

Pursuant to the proposed rule change, DTC would enhance the DTC payment order service by adding the SFT PD payment order. The SFT PD payment order would offer an efficient way for NSCC to instruct DTC, on behalf of a Participant or on its own behalf, to credit and debit funds between the NSCC SFT Account and the Accounts of the Participants that are NSCC SFT Counterparties. DTC understands that the amount of each SFT PD would be calculated and instructed by NSCC in accordance with the instructions of an Approved SFT Submitter.

In order to effectuate the payments between Participants that are NSCC SFT Counterparties in connection with SFT activity at NSCC, NSCC would submit a pair of SFT PD payment orders to DTC: (i) One instruction, on NSCC's own behalf, to debit the payment amount from the Account of the payor Participant and credit the payment

regarding the SFT to DTC in respect of the relevant Participant Accounts of the NSCC SFT Counterparties at DTC.

[12] *See e.g.,* Rule 11 of the NSCC Rules & Procedures, *available at http://www.dtcc.com/legal/rules-and-procedures.aspx.*

[13] The Special Representative CNS Account is Account No. 888.

[14] *See supra* notes 10 and 11.

[15] DTC uses its risk management controls, the Collateral Monitor and Net Debit Cap, to manage its credit risk. These two controls work together to protect the DTC settlement system in the event of Participant default. The Collateral Monitor requires net debit settlement obligations, as they accrue intraday, to be fully collateralized; the Net Debit Cap limits the amount of any Participant's net debit settlement obligation to an amount that can be satisfied with DTC liquidity resources (the Participants Fund and the committed line of credit from a consortium of lenders). *See* Settlement Guide, *supra* note 3, at 64–67.

[16] For a description of Recycle Processing, *see* Settlement Guide, *supra* note 3, at 56.

[17] This paragraph does not apply to a ''Bilaterally Initiated SFT,'' which is described in the NSCC Proposed Rules as an SFT that was submitted to NSCC after the initial transfer of securities versus payment had already occurred. DTC is agnostic to whether an NSCC SFT instruction relates to a Bilaterally Initiated SFT or a typical SFT.

[18] If the SFT was not submitted to NSCC on that business day, the Participant DVP instruction would be rejected.

[19] *See* Rule 9(A), *supra* note 3.

[20] *See* Settlement Guide, *supra* note 3, at 3.

amount to the NSCC SFT Account, and (ii) one instruction, as the Special Representative of the payee Participant, to debit the payment amount from the NSCC SFT Account and credit the payment amount to the Account of the payee Participant. If the pair of instructions satisfy DTC risk management controls and the modified look-ahead, DTC would process the transaction. If the pair of SFT PD payment orders do not satisfy DTC risk management controls and the modified look-ahead, the instructions would recycle and, if they are not completed, would drop at the end of the day.

B. Modified Look-Ahead Processing

The typical look-ahead process utilized by DTC reduces transaction blockage by applying the net amount of offsetting receive and deliver transactions in the same security rather than the gross amount of the receive transaction to a Participant's Net Debit Cap. The look-ahead process calculates and processes submitted transactions in the same CUSIP that, when processed simultaneously, would not violate the risk management controls of the involved Participants. Specifically, the look-ahead process identifies a receive transaction pending due to a net debit cap insufficiency and determines whether an offsetting delivery transaction pending because of a quantity deficiency in the same security would permit both transactions to be completed in compliance with DTC risk management controls.[21]

As noted above, the NSCC SFT Account is intended to be a pass-through account for DVP and SFT PD transactions between Participants that are NSCC SFT Counterparties. DTC understands that because NSCC, as the central counterparty, would substitute itself as the counterparty for each SFT, it is essential to NSCC that there not be any net settlement obligation against the NSCC SFT Account intraday or at the end of any day. It is essential to NSCC that its obligations to DTC with respect to all completed DVP and SFT PD transactions to which the NSCC SFT Account was a party should be netted to zero with respect to both securities and funds. In an effort to help ensure that there would not be any net settlement obligation against the NSCC SFT Account, and to prevent transaction blockage due to risk management controls on the NSCC SFT Account, DTC is proposing to use a modified look-ahead process for the instructions it receives from NSCC in connection with the NSCC SFT Account.

Pursuant to the proposed rule change, upon receipt of a pair of DVP instructions or SFT PD payment orders from NSCC, DTC would only complete the transaction if the modified look-ahead is satisfied. The modified look-ahead would be satisfied when (i) the pair of instructions from NSCC are consistent in terms of the number of subject shares and/or dollar amount, CUSIP, and DTCC Reference ID,[22] and (ii) the net effect of processing the instructions would not violate the respective Net Debit Caps, Collateral Monitor or other risk management system controls of the Participants that are on each side of the DVP or SFT PD transaction.[23] If the modified look-ahead is not satisfied, then the pair of instructions would recycle until the look-ahead is satisfied or until the 3:10 p.m. cutoff time, when all recycling valued transactions at DTC are dropped.[24]

In addition, because the modified look-ahead relies on the completion of offsetting transactions, transactions to and from the NSCC SFT Account would not be subject to either reclaims or Receiver Authorized Delivery (''RAD'').[25] Since both reclaims and RAD effectively permit one side of the transaction to reject or reverse the transaction, allowing such activity would interfere with the ability of the modified look-ahead to rely on the completion of the offsetting transactions. DTC believes that Participants would not be affected by the exclusion of reclaims and RAD because the NSCC SFT instructions would be based on instructions that were matched and submitted to NSCC on a locked-in basis by an Approved SFT Submitter on behalf of the NSCC SFT Counterparties. Therefore, the Participants that are NSCC SFT Counterparties to an SFT would have already agreed to the transactions to and from the NSCC SFT Account relating to their Participant Account, and, as such, the reclaim and RAD functions would not be necessary.[26]

C. SFT Price Differential Fee

DTC is proposing to amend the Fee Guide to establish a fee for SFT PD payment orders. DTC is proposing a fee of $0.005 per item delivered or received, to be charged to the payor and to the payee of an SFT PD payment order.

DTC recognizes that the fee for SFT PD payment orders would be significantly less than the $0.10 fee for SPO payment orders, which are used by Participants in connection with their noncleared stock loan transactions. DTC is proposing to establish this lower fee for SFT PD payment orders because settling payment obligations for cleared SFTs would require a higher volume of payment orders than would otherwise be required for settling payment obligation for uncleared SFTs. More specifically, pursuant to the NSCC Proposed Rules, NSCC SFT Counterparties would pay and collect Price Differentials at the individual transaction level. In the bilateral world, mark-to-market payments and collections on securities lending transactions are typically done at the CUSIP level via SPOs, inclusive of all open securities lending transactions of a given participant. Accordingly, it is likely that there would be more SFT PD payment orders processed by DTC in connection with SFTs than the amount of SPOs DTC would have otherwise processed if those SFTs were bilateral, non-cleared securities lending transactions. Therefore, as an initial matter,[27] DTC is proposing to charge the lower fee $0.005 for SFT PD payment orders in an effort to maintain cost efficiency for both the cleared SFT activity and the uncleared securities

[21] *See* Settlement Guide, *supra* note 3, at 45. *See also supra* note 15.

[22] The DTCC Reference ID is the fourteen-digit UTC Loan ID that NSCC assigns to each SFT transaction.

[23] DTC uses the same modified look-ahead (except for the DTCC Reference ID) for DVP transactions to and from the OCC Market Loan Program Account, which is maintained by The Options Clearing Corporation (''OCC'') at DTC in connection with the OCC Market Loan Program. *See* Securities Exchange Act Release No. 59298 (January 26, 2009), 74 FR 5692 (January 30, 2009) (SR–DTC–2008–15).

[24] DTC would also set the Net Debit Cap of the NSCC SFT Account to one dollar ($1), which would help ensure that no DVP or SFT PD to or from the NSCC SFT Account would be completed unless an offsetting DVP or SFT PD is also completed. The OCC Market Loan Program Account is similarly risk managed to help ensure that no receives are completed to the OCC Market Loan Program Account unless an offsetting delivery is also completed. *See* Securities Exchange Act Release No. 59298 (January 26, 2009), 74 FR 5692 (January 30, 2009) (SR–DTC–2008–15).

[25] A reclaim is the return of a deliver order, payment order, institutional delivery transaction or MMI transaction received by a Participant. RAD is a control mechanism that allows a Participant to review transactions prior to completion of processing. *See* Settlement Guide, *supra* note 3, at 6.

[26] *See supra* notes 10 and 11.

[27] DTC understands that since NSCC would be offering central clearing for overnight SFTs for the first time, NSCC is not able at this time to anticipate the size and composition of the SFT portfolios and activity. Therefore, DTC is not yet able to estimate the volume of SFT PD payment orders that it would process after the NSCC SFT Service is implemented. Once the NSCC SFT Service is implemented and historical data is available, DTC may, if circumstances warrant, review the amount of the SFT PD payment order fee.

financing transactions of market participants.''

(ii) Proposed Rule Change

A. Amendments to the Rules

(1) Rule 1

In order to clearly differentiate between the Special Representative CNS Account and the NSCC SFT Account in Rule 6, DTC is proposing to insert the following definitions into Section 1 of Rule 1:

i. *Special Representative:* The term ''Special Representative'' has the meaning provided in Rule 6.

ii. *Special Representative CNS Account:* The term ''Special Representative CNS Account'' means the Account of the Special Representative that it uses in connection with its continuous net settlement system.

iii. *Special Representative SFT Account:* The term ''Special Representative SFT Account'' means the Account of the Special Representative that it uses in connection with its securities financing transaction service.

In addition, DTC is proposing to remove ''Special Representative'' from the list of definitions in Section 2 of Rule 1, because it would be redundant once the definition is inserted into Section 1 of Rule 1 pursuant to the proposed rule change.

(2) Rule 6

Pursuant to the proposed rule change, DTC would replace references to the ''Account of the Special Representative'' with ''Special Representative CNS Account,'' to (i) clearly differentiate the Account that NSCC uses in connection with CNS from the proposed Special Representative SFT Account, and (ii) clearly delineate the transfer and delivery instructions that NSCC as the Special Representative submits to DTC in connection with the CNS system and the DVP instructions and SFT PD payment orders that NSCC as the Special Representative would submit to DTC in connection with the NSCC SFT Service.

Under current Rule 6, the scope of NSCC's authority as Special Representative to instruct DTC with respect to an Account of a Participant that is a member of NSCC is limited to transfers of securities from the Account of the Participant to the Account of the Special Representative (which would be renamed ''Special Representative CNS Account,'' as proposed above). Pursuant to the proposed rule change, DTC would amend Rule 6 to provide that NSCC, as the Special Representative, may submit to DTC, on behalf of the Participant, instructions for ''the Delivery Versus Payment of Securities from the Account of a Participant to the Special Representative SFT Account,'' and for ''an amount of money to be credited to the Account of a Participant and debited from the Special Representative SFT Account, in connection with a transaction in Securities, in accordance with Rule 9(A) and as specified in the Procedures.''

B. Amendments to the Settlement Guide

(1) In the ''Settlement Transactions'' subsection of the ''About Settlement'' section, DTC is proposing to add ''Price Differentials (as defined in the NSCC Rules)'' to the description of payment orders.

(2) In the ''Important Terms'' subsection of the ''About Settlement'' section, DTC is proposing to:

a. Amend the description of a ''payment order'' to be consistent with the amended description in the ''Settlement Transactions'' subsection. Specifically, DTC would replace the sentence ''A transaction in which a Participant charges another Participant for changes in value for outstanding stock loans or option contract premiums'' with ''The payment order service provides Participants with a mechanism for settling amounts of money related to securities transactions that are effected separately through DTC. Participants use payment orders to collect option contract premiums (premium payment order), mark-to-market open contracts such as stock loans (securities payment order), and Price Differentials (SFT PD payment order).''

b. Insert the term ''SFT Price Differential (''SFT PD'') payment order'' with the following description: ''A payment order through which the amount of a Price Differential (as defined in the NSCC Rules) is (i) debited from the account of a Participant and credited to the NSCC SFT Account, or (ii) is debited from the NSCC SFT Account and credited to the account of a Participant.''

c. Insert the term ''NSCC Securities Financing Transaction Service (SFT) Service'' with the following description: ''A securities financing transaction clearing service offered by NSCC.''

(3) After the ''NSCC ACATS Settlement Accounting Operation—Processing at DTC'' section of the Settlement Guide, DTC is proposing to insert a new section titled ''NSCC Securities Financing Transactions (SFT) Service.'' The new section would include the following subsections: ''About the Product,'' which would briefly describe the NSCC SFT Service; ''Initial Transfer of SFT Securities at DTC,'' which would describe the process for the DVP instructions for the initial transfer of securities versus payment for an SFT; ''NSCC Instructions to DTC,'' which would describe the pairs of DVP instructions and SFT PD payment orders that NSCC would submit to DTC in connection with SFT activity at NSCC; and ''NSCC SFT Account Look-Ahead Processing,'' which would describe the modified look-ahead process and inform Participants that transactions to and from the NSCC SFT Account would not be subject to RAD and that reclaims from the NSCC SFT Account would be blocked.

(4) In the subsection titled ''Settlement Processing Schedule'' of the ''End-of-Day Settlement Process'' section, DTC is proposing to:

a. In the 3:00 p.m. ''Cutoff Time ET'' row, under ''Cutoff for,'' insert a third item in the bulleted list that reads: ''SFT Transactions cannot be entered after 3:00 p.m.''

b. In the 3:10 p.m. ''Cutoff Time ET'' row, under ''Cutoff for,'' insert ''/SFT'' after ''CNS'' in the second bulleted paragraph to reflect that recycling NSCC SFT instructions would be dropped at that time.

(5) In the section ''Look-Ahead Processing,'' DTC proposes to correct the first sentence to reflect that DTC's current look-ahead process runs on two-minute intervals, not on fifteen-minute intervals.

(6) In the subsection ''Optional Memo Segregation Indicators'' of the ''Memo Segregation'' section, DTC is proposing to make a conforming change in order to reflect that securities positions from deliver orders relating to SFT activity at NSCC would be treated the same as stock loan positions. Specifically, DTC is proposing to insert the SFT reason codes 200 and 201 into (i) the row for Activate Indicator 4 as follows: ''Turnaround securities positions, regardless of Memo Segregation constraints, for positions received from DOs with reason codes 10, 30, 200, and 600, except those with reason codes 10, 20, 200, 201, 260, 270, 280, or 290,'' and (ii) the row for Activate Indicator 5 as follows: ''Turnaround securities positions, regardless of Memo Segregation constraints, for positions received from: All DOs, except those with reason codes 20–29, 40–48, 99, 201, 261–268, 270–278, 290, 291, 330–338, 340–348, 390, 610–619, 705–707 and CNS receives from the ''C'' and ''E'' accounts except if the turnaround is a reason code 10, 20, 200, 201, 260, 270, 280, or 290.''

(7) In order to provide clarification around the payment order service and to differentiate between PPOs and SPOs on the one hand and SFT PD payment orders on the other hand, DTC is proposing to amend the ''Payment Orders'' section by:

a. Amending the ''About the Product'' subsection to insert a general description of the payment order service that would state: ''A payment order authorizes DTC to credit the payee Participant's settlement account with the specified amount and to debit the payor Participant's settlement account for the same amount. All payment orders must satisfy the payor Participant's risk management controls before being processed.''

b. Amending the ''How the Product Works'' subsection by (i) inserting ''Premium Payment Order (PPO) and Securities Payment Order (SPO)'' as a new heading for the description of PPOs and SPOs, (ii) deleting the sentence ''Either type of payment order authorizes DTC to credit the payee Participant's settlement account with the specified amount and to debit the payor Participant's settlement account for the same amount,'' from the first paragraph, (iii) changing a reference to ''the Payment Order Service'' to ''PPOs and SPOs,'' (iv) inserting ''SFT Price Differential (SFT PD) Payment Order'' as a new heading, and (v) inserting the sentence ''For a description of SFT Price Differential payment orders, please see NSCC Securities Financing Transactions (SFT) Service'' under the SFT Price Differential Payment Order (SFT PD) heading.

(8) In order to reflect that a Participant would not be able to use the ''Pend Hold'' function for a DVP to the NSCC SFT Account, DTC is proposing to insert ''with the exception of DOs to and from the NSCC SFT Account'' into the description of Pend Hold function in the ''Pend Hold'' subsection.[28]

(9) In Annex A, DTC is proposing to insert the following new reason codes into the ''Memo Segregation Supplement/DO Reason Code Description Reference'' section: 200 (SFT Stock Loan) and 201 (SFT Stock Loan Return). These new settlement reason codes would be established at DTC to support on-leg and off-leg settlement of SFTs.

C. Amendments to the Fee Guide

Pursuant to the proposed rule change, DTC would amend the Fee Guide to insert an SFT Price Differential delivery or receipt fee of $0.005 per item delivered or received.

Implementation Date

DTC will implement the proposed changes when DTC and NSCC receive all necessary regulatory approvals for this proposed rule change and the NSCC Proposed Rules. DTC will announce the implementation date of the proposed rule change in an Important Notice posted on its website.

As proposed, a legend would be added to the Rules,[29] Settlement Guide, and Fee Guide stating there are changes that have been approved but have not yet been implemented. The proposed legend also would include that the implementation date would be announced in an Important Notice to be issued by DTC. In addition, the proposed legend would state that the legend would automatically be removed upon the implementation of the proposed changes.

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, DTC believes that the proposed rule change is consistent with Sections 17A(b)(3)(F)[30] and 17A(b)(3)(D) of the Act[31] for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions.[32] DTC is proposing to expand the types of instructions that NSCC, as the Special Representative of a Participant that is also a member of NSCC, can submit to DTC on behalf of a Participant with respect to an Account of the Participant. As noted above, the NSCC Proposed Rules would provide that the submission of each SFT to NSCC by the Approved SFT Submitter on behalf of the NSCC SFT Counterparties would constitute an authorization to NSCC by the NSCC SFT Counterparties for NSCC to give instructions regarding the SFT to DTC in respect of the relevant Participant Accounts of the NSCC SFT Counterparties at DTC. The proposed rule change would provide a basis for DTC to accept and rely on those NSCC instructions. Specifically, DTC would amend Rule 6 to provide for the additional authority of NSCC, as the Special Representative of a Participant, to submit DVP instructions and SFT PD payment orders to DTC, on behalf of Participant, from the Account of the Participant to the NSCC SFT Account. By providing NSCC with the authority to submit these instructions on behalf of a Participant, the proposed rule change supports the efficient settlement of cleared SFTs, thereby promoting the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

Pursuant to the proposed rule change, DTC would establish the SFT PD payment order, which would be a payment order for NSCC to instruct DTC, on behalf of Participants that are NSCC SFT Counterparties, as well as on its own behalf, to credit and debit funds between the NSCC SFT Account and the Accounts of the Participants in connection with SFT activity at NSCC. By establishing this new type of payment order that would utilize the efficiency of the DTC payment order service to settle payments relating to cleared SFTs, the proposed rule change is designed to promote the prompt and accurate clearance and settlement of payment obligations relating to securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

The proposed rule change would also apply a modified look-ahead process to the new NSCC SFT Account. As discussed above, DTC would use modified look-ahead processing in an effort to (i) ensure that there would not be any net settlement obligation against the NSCC SFT Account and (ii) prevent transaction blockage that could occur from unsatisfied risk management controls on the NSCC SFT Account. By applying a modified look-ahead to the new NSCC SFT Account, DTC believes that the proposed rule change is designed to promote efficient processing of DVP and SFT PD transactions relating to cleared SFTs. In this way, DTC believes that the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act, cited above.

DTC also believes that the proposed rule change to make conforming and technical changes to the Rules and the Settlement Guide would promote the prompt and accurate clearance and settlement of securities transactions. DTC believes that the proposed

[28] A Pend Hold allows a Participant that initiated a DO or pledge transaction to hold (*i.e.,* exclude from processing) the transaction if it is pending for insufficient position. Since a DVP to the NSCC SFT Account is instructed by NSCC as the Special Representative, a Pend Hold is not relevant.

[29] DTC is proposing to add the legend to Rules 1 and 6.

[30] 15 U.S.C. 78q–1(b)(3)(F).

[31] 15 U.S.C. 78q–1(b)(3)(D).

[32] 15 U.S.C. 78q–1(b)(3)(F).

conforming and technical changes would help ensure consistency in the Rules and the Settlement Guide and help ensure that the Rules and the Settlement Guide remain clear and accurate. Having clear and accurate Rules and Settlement Guide would help Participants to better understand their rights and obligations regarding DTC settlement services in connection with the NSCC SFT Service. DTC believes that when Participants better understand their rights and obligations regarding DTC settlement services, they can act in accordance with the Rules and Procedures. DTC believes that better enabling Participants to comply with the Rules and the Settlement Guide would promote the prompt and accurate clearance and settlement of securities transactions. As such, DTC believes the proposed rule change to make conforming and technical changes is consistent with Section 17A(b)(3)(F) of the Act.[33]

Section 17A(b)(3)(D) of the Act requires, *inter alia,* that the Rules provide for the equitable allocation of reasonable dues, fees, and other charges among Participants.[34] Pursuant to the proposed rule change, DTC would establish a fee of $0.005 per item delivered or received, which would be charged to the payor and the payee of an SFT PD payment order. For the reasons set forth below, DTC believes that the proposed fee for SFT PD payment orders would provide for the equitable allocation of reasonable dues, fees, and other charges among Participants. First, DTC believes that the proposed fee of $0.005 is reasonable. DTC recognizes that the fee for SFT PD orders would be significantly less than the $0.10 fee for SPOs, which are used by Participants in connection with bilateral stock loan transactions. DTC is proposing to establish this lower fee for SFT PD payment orders because settling payment obligations for cleared SFTs would require a higher volume of payment orders than would otherwise be required for uncleared SFTs. More specifically, pursuant to the NSCC Proposed Rules, NSCC SFT Counterparties would pay and collect Price Differentials at the individual transaction level. In the bilateral world, mark-to-market payments and collections on securities lending transactions are typically done at the CUSIP level via SPOs, inclusive of all open securities lending transactions of a given participant. Accordingly, it is likely that there would be more SFT PD payment orders processed by DTC in connection with SFTs than the amount of SPOs DTC would have otherwise processed if those SFTs were bilateral, non-cleared securities lending transactions. Therefore, as an initial matter, DTC is proposing to charge the lower fee $0.005 for SFT PD payment orders in an effort to maintain cost efficiency for both the cleared SFT activity and the uncleared securities financing transactions of market participants. As noted above,[35] due to the lack of history for cleared SFT activity, DTC cannot estimate at this time the average number of SFT PD payment orders that would be processed and cannot, therefore, quantify a precise fee. However, DTC believes that the proposed fee of $0.005 is designed to take into account the imbalance between the amount of payment orders that would be required for cleared SFTs and the amount required for uncleared SFTs and is therefore reasonable. DTC also believes that the proposed fee would be equitably allocated because the fee would be charged to payors and payees per item delivered or received in accordance with their use of SFT PD payment orders and all such payors and payees would be treated equally with respect to the fee. Accordingly, DTC believes that the proposed rule change establishing a fee for the delivery and receipt of an SFT PD payment order is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among participants, consistent with Section 17A(b)(3)(D) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change to expand the types of instructions that NSCC, as Special Representative of a Participant that is a member of NSCC, can submit to DTC on behalf of the Participant with respect to an Account of the Participant would have an impact on competition.[36] The proposed rule change is designed to support the use of the NSCC SFT Service by NSCC SFT Counterparties by providing a mechanism for NSCC to submit DVP instructions and SFT PD payment orders to DTC, on behalf of a Participant that is an NSCC SFT Counterparty, for the settlement of the NSCC SFT Counterparty's obligations relating to a cleared SFT. The proposed rule change would only affect Participants that are NSCC SFT Counterparties and would apply to all such Participants equally. Therefore, DTC believes that the proposed rule change to expand the types of instructions that NSCC, as the Special Representative of Participants that are also members of NSCC, can submit to DTC on behalf of a Participant with respect to an Account of the Participant would not have an impact on competition.[37]

DTC does not believe that the proposed rule change to provide for SFT PD payment orders and to establish a fee for SFT PD payment orders would have an impact on competition.[38] As discussed above, an SFT PD payment order would provide Participants a way to utilize the efficiency of the DTC payment order service to settle payments relating to their cleared SFT activity. The establishment of the SFT PD payment order would only affect Participants that are NSCC SFT Counterparties and would apply to all such Participants equally. In addition, the proposed fee for SFT PD payment orders would be charged to payors and payees per their use of SFT PD payment orders and all such payors and payees would be treated equally with respect to the fee. Therefore, DTC believes that the proposed rule change to provide for SFT PD payment orders and to establish a fee for SFT PD payment orders would not have an impact on competition.[39]

DTC does not believe that the proposed rule changes to use modified look-ahead processing for transactions to and from the NSCC SFT Account would have an impact on competition.[40] The proposed rule changes would apply to all DVP and SFT PD transactions to and from the NSCC SFT Account, and are designed to promote efficient processing of transactions relating to SFTs cleared by NSCC. The proposed rule change would only affect Participants that are NSCC SFT Counterparties and would apply to all such Participants equally. Therefore, DTC believes that the proposed rule change to use modified look-ahead processing for transactions to and from the NSCC SFT Account would not have an impact on competition.[41]

DTC does not believe that the proposed rule change to make conforming and technical changes to the Rules and the Settlement Guide would have an impact on competition.[42] Having clear and accurate Rules and Settlement Guide would facilitate Participants' understanding of the Rules and Settlement Guide and provide

[33] *Id.*

[34] 15 U.S.C. 78q–1(b)(3)(D).

[35] *See supra* note 27.

[36] 15 U.S.C. 78q–1(b)(3)(I).

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] 15 U.S.C. 78q–1(b)(3)(I).

[42] *Id.*

Participants with increased predictability and certainty regarding their obligations regarding DTC settlement services in connection with the NSCC SFT Service. Therefore, DTC believes that the proposed rule change to make conforming and technical changes to the Rules and the Settlement Guide would not have an impact on competition.[43]

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, available at *https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right not to respond to any comments received.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[43] *Id.*

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2022–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2022–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2022–002 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08169 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94705; File No. SR–CboeBYX–2022–011]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.18

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers, currently codified in Rule 11.18(a)–(d), (f) and (g). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*https://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[44] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Exchange Rule 11.18 to make permanent the Market-Wide Circuit Breaker (''MWCB'') pilot program. The proposal is substantively identical to New York Stock Exchange LLC (''NYSE'') Rule 7.12 and NYSE American LLC (''NYSE American'') Rule 7.12E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 11.18(a)–(d), (f) and (g), provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 11.18(a)–(d), (f) and (g)).[5] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.18 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange then filed to extend the pilot to the close of business on October 18, 2020,[11] October 18, 2021,[12] March 18, 2022,[13] and April 18, 2022.[14]

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the ''Study'') to the Commission.[15] The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BYX–2011–025) (Approval Order); and 68885 (February 8, 2013), 78 FR 10649 (February 14, 2013) (SR–BYX–2013–006) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Pilot Program Related To Trading Pauses Due to Extraordinary Market Volatility).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See* Securities Exchange Act Release No. 85665 (April 16, 2019), 84 FR 16749 (April 22, 2019) (SR–CboeBYX–2019–004).

[11] *See* Securities Exchange Act Release No. 87343 (October 18, 2019), 84 FR 57104 (October 24, 2019) (SR–CboeBYX–2019–017).

[12] *See* Securities Exchange Act Release No. 90121 (October 8, 2020), 85 FR 65103 (October 14, 2020) (SR–CboeBYX–2020–028).

[13] *See* Securities Exchange Act Release No. 93364 (October 15, 2021), 86 FR 58324 (October 21, 2021) (SR–CboeBYX–2021–026).

[14] *See* Securities Exchange Act Release No. Release No. 94456 (March 17, 2022), 87 FR 16507 (March 23, 2022) (SR–CboeBYX–2022–008).

[15] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-_Circuit_Breaker_Working_Group.pdf.*

that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.[16]

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On March 16, 2022, the Commission approved NYSE's proposal.[18]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d), (f) and (g) of Rule 11.18) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 11.18 which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d), (f) or (g) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (h), (i), and (j) to Rule 11.18, as follows:

(h) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to paragraph (b) of Rule 2.4 to participate in Mandatory Participation in Testing of Backup Systems are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that a Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (h)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to standards established in paragraph (b) of Rule 2.4 are permitted to participate in any MWCB test.

(i) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the ''MWCB Working Group''), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(j) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 11.18(a)–(d), (f) and (g) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions,

[16] *Id* at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR–NYSE–2021–40) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (h) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.[21]

The Exchange believes that proposed paragraph (i) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 11.18(a)–(d), (f) and (g) and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 11.18(a)–(d), (f) and (g) in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (j) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 11.18(a)–(d), (f)–(j) be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 11.18(a)–(d), (f)–(j), the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the

[21] *See* 17 CFR 240.17a–1.

Act [22] and Rule 19b–4(f)(6) [23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2022–011 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–CboeBYX–2022–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2022–011 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08179 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94698; File No. SR–C2–2022–010]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 5.20.01

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers, currently codified in Rule 5.20.01. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*https://markets.cboe.com/us/options/regulation/rule_filings/ctwo/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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 5.20.01 to make permanent the Market-Wide Circuit Breaker (''MWCB'') pilot program. The

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

proposal is substantively identical to New York Stock Exchange LLC (''NYSE'') Rule 7.12 and NYSE American LLC (''NYSE American'') Rule 7.12E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 5.20.01, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 5.20.01).[5] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 5.20.01 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange then filed to extend the pilot to the close of business on October 18, 2020,[11] October 18, 2021,[12] March 18, 2022,[13] and April 18, 2022.[14]

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the ''Study'') to the Commission.[15] The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.[16]

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On March 16, 2022, the Commission approved NYSE's proposal.[18]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–C2–2011–024) (Approval Order); and 68769 (January 31, 2013), 78 FR 8213 (February 5, 2013) (SR–C2–2013–006) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Operative Date of a Rule Change to Exchange Rule 6.32.03).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See* Securities Exchange Act Release No. 85624 (April 11, 2019), 84 FR 16130 (April 17, 2019) (SR–C2–2019–008) (proposal to extend the pilot for certain options pilots, including Rule 5.20.01, prior Rule 6.32.03).

[11] *See* Securities Exchange Act Release No. 87342 (October 18, 2019), 84 FR 57102 (October 24, 2019) (SR–C2–2019–022).

[12] *See* Securities Exchange Act Release No. 90158 (October 13, 2020), 85 FR 66388 (October 19, 2020) (SR–C2–2020–015).

[13] *See* Securities Exchange Act Release No. 58342 (October 18, 2021), 86 FR 58706 (October 22, 2021) (SR–C2–2021–015).

[14] *See* Securities Exchange Act Release No. 94455 (March 17, 2022), 87 FR 16504 (March 23, 2022) (SR–C2–2022–008).

[15] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[16] *Id* at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR–NYSE–2021–40) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12).

Rules (*i.e.,* paragraphs (a)–(d) of Rule 5.20.01) be made permanent. To accomplish this, the Exchange proposes to remove certain text within Rule 5.20.01, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (e), (f), and (g) to Rule 5.20.01 as follows:

(e) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Trading Permit Holders designated pursuant to paragraph (b) of Rule 5.24 to participate in Disaster Recovery are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that an Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (e)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Trading Permit Holders not designated pursuant to standards established in paragraph (b) of Rule 5.24 are permitted to participate in any MWCB test.

(f) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the ''MWCB Working Group''), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(g) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 5.20.01 are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (e) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.[21]

The Exchange believes that proposed paragraph (f) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 5.20.01 and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 5.20.01 in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (g) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 5.20.01 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 5.20.01, the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6)[23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[26]

[21] *See* 17 CFR 240.17a–1.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2022–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2022–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2022–010 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

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efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94687; File No. SR–C2–2022–009]

Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Cboe C2 Exchange, Inc. (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (''C2'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Cboe Data Services, LLC Fees section of its Fee Schedule. Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product (''Product'') listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.[3] For example, a firm that currently subscribes to C2 BBO Data would be eligible to receive a free 30-day trial of C2 Book Depth Data, whether in a display-only format or for non-display use. However, a firm that currently receives C2 Book Depth Data for non-display use would not be eligible to receive a free 30-day trial of C2 Book Depth Data in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, if a User that has elected to participate in the free trial program for C2 BBO Data is approved on April 15, 2022, that User will not be subject to any applicable fees (*i.e.,* User Fee) through May 14, 2022.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[7]

The Exchange believes that adopting a free trial program for real-time market data products listed in its Fees Schedule is equitable and reasonable. Particularly, providing Exchange real-time market data products to new Users and Distributors free-of-charge for the first 30 days is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Distributors to enlist more Users to subscribe to Exchange market data products in an effort to broaden the products' distribution. Making a new market data product available for free for a trial period is also consistent with offerings of other exchanges. For example, NYSE and Nasdaq offer similar free trial programs.[8]

The Exchange believes the proposal to provide the Exchange market data products to new Users or Distributors free-of-charge for their first 30 days subscribing or distributing the data, as applicable, is equitable and not unfairly discriminatory because it applies to any first-time User or Distributor, regardless of the use they plan to make of the feed. As proposed, any first-time User or Distributor would not be charged any applicable fee listed in the Fee Schedule for any of the Exchange's real-time market data products listed in the Fee Schedule for 30 days. The Exchange believes it is equitable to restrict the availability of this free trial to Users or Distributors that have not previously subscribed to, or distributed, respectively the particular market data product, since Users or Distributors who are current or previous subscribers or Distributors, respectively of that product are already familiar with the product and whether it would suit their needs.

The Exchange believes that the proposed rule change providing for a free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all Users subscribing to, and all Distributors distributing, an Exchange Product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between Users and Distributors that are subscribing to or distributing a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and Users and Distributors that are already receiving or distributing the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for 30 days would ease administrative burdens for data recipients to subscribe to or distribute a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time Users and Distributors on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.[9] The proposed amendments are also designed to enhance competition by providing an incentive to Distributors to enlist new subscribers and Users to subscribe to Exchange real-time market data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of

[4] *See* The Nasdaq Stock Market LLC (''Nasdaq'') Equity 7 Pricing Schedule, Section 112(b)(1) and New York Stock Exchange LLC (''NYSE'') Proprietary Market Data Fees Schedule, General.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78k–1.

[8] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

[9] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–C2–2022–009 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–C2–2022–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–C2–2022–009 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08166 Filed 4–15–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94696; File No. SR–PEARL–2022–09]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Options Fee Schedule To Remove Certain Credits and Increase Trading Permit Fees

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'') to remove certain credits and amend the monthly Trading Permit[3] fees for Members.[4]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings/pearl,* 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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to remove certain credits and amend the monthly Trading Permit fees for Members. The Exchange notes that its Trading Permit fees are comparable to membership or other access type fees charged by other exchanges.

The Exchange initially filed this proposal on July 1, 2021 with the proposed fee changes being immediately effective (''First Proposed Rule Change'').[5] The First Proposed Rule Change was published for comment in the **Federal Register** on July 15, 2021.[6] The Commission received one comment letter on the First Proposed Rule Change[7] and subsequently suspended the First Proposed Rule Change on August 27, 2021.[8] The Exchange withdrew the First Proposed Rule Change on October 12, 2021 and re-submitted the proposal on October 29, 2021, with the proposed fee changes being effective beginning November 1, 2021 (''Second Proposed Rule Change'').[9] The Second Proposed Rule Change addressed points raised in the SIG Letter and was published for comment in the **Federal Register** on November 17, 2021.[10] The Commission received no comment letters on the Second Proposed Rule Change. The

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] *See* Securities Exchange Act Release No. 92366 (July 9, 2021), 86 FR 37379 (SR–PEARL–2021–32).

[6] *See id.*

[7] *See* Letter from Richard J. McDonald, Susquehanna International Group, LLC (''SIG''), to Vanessa Countryman, Secretary, Commission, dated September 28, 2021 (''SIG Letter'').

[8] *See* Securities Exchange Act Release No. 92797 (August 27, 2021), 86 FR 49399 (September 2, 2021).

[9] *See* Securities Exchange Act Release No. 93555 (November 10, 2021), 86 FR 64254 (November 17, 2021) (SR–PEARL–2021–54).

[10] *See id.*

Exchange withdrew the Second Proposed Rule Change on December 20, 2021 and submitted a revised proposal for immediate effectiveness (''Third Proposed Rule Change'').[11] The Third Proposed Rule Change was published for comment in the **Federal Register** on January 10, 2022.[12] The Commission received no comment letters on the Third Proposed Rule Change. The Exchange withdrew the Third Proposed Rule Change on February 15, 2022 and submitted a revised proposal for immediate effectiveness, which was suspended on February 18, 2022 (''Fourth Proposed Rule Change'').[13] The Commission received one comment letter on the Fourth Proposed Rule Change.[14] The Exchange withdrew the Fourth Proposed Rule Change on March 30, 2022 and submits this revised proposal for immediate effectiveness (''Fifth Proposed Rule Change''). This Fifth Proposed Rule Change provides a revised justification for the proposed fees, which is in line with the justification provided by another exchange in a similar filing to adopt fees for Members to be active on that exchange.[15]

Removal of the ''Monthly Volume Credit''

The Exchange proposes to amend the Definitions section of the Fee Schedule to delete the definition and remove the credits applicable to the Monthly Volume Credit for Members. The Exchange established the Monthly Volume Credit in 2018 [16] to encourage Members to send increased Priority Customer [17] order flow to the Exchange, which the Exchange applied to the assessment of certain non-transaction fees for that Member. The Exchange applies a different Monthly Volume Credit depending on whether the Member connects to the Exchange via the FIX Interface [18] or MEO Interface.[19] Currently, the Exchange assesses the Monthly Volume Credit to each Member that has executed Priority Customer volume along with that of its affiliates,[20] not including Excluded Contracts,[21] of at least 0.30% of MIAX Pearl-listed Total Consolidated Volume (''TCV''),[22] as set forth in the following table:

Type of member connection	Monthly volume credit
Member that connects via the FIX Interface	$250
Member that connects via the MEO Interface	1,000

If a Member connects via both the MEO Interface and FIX Interface and qualifies for the Monthly Volume Credit based upon its Priority Customer volume, the greater Monthly Volume Credit shall apply to such Member. Prior to the First Proposed Rule Change, the Monthly Volume Credit was a single, once-per-month credit towards the aggregate monthly total of non-transaction fees assessable to a Member.

Beginning with the First Proposed Rule Change, the Exchange's proposals included an amendment to the Definitions section of the Fee Schedule to delete the definition and remove the Monthly Volume Credit. The Exchange established the Monthly Volume Credit when it first launched operations to attract order flow by lowering the initial fixed cost for Members. The Monthly Volume Credit has achieved its purpose and the Exchange believes it is appropriate to remove this credit. The Exchange believes that the Exchange's existing Priority Customer rebates and fees will continue to allow the Exchange to remain highly competitive and continue to attract order flow and maintain market share.

Removal of the Trading Permit Fee Credit

The Exchange proposes to amend Section 3)b) of the Fee Schedule to remove the Trading Permit fee credit that is denoted in footnote ''*'' below the Trading Permit fee table. Prior to the First Proposed Rule Change, the Trading Permit fee credit was applicable to Members that connect via both the MEO and FIX Interfaces. Members who connect via both the MEO and FIX Interfaces are assessed the rates for both types of Trading Permits, but these Members received a $100 monthly credit towards the Trading Permit fees applicable to the MEO Interface prior to the First Proposed Rule Change. The Exchange proposes to remove the Trading Permit fee credit and delete footnote ''*'' from Section 3)b) of the Fee Schedule.

The Exchange established the Trading Permit fee credit when it first launched operations to attract order flow and increase membership by lowering the costs for Members that connect via both the MEO Interface and FIX Interface. The Trading Permit fee credit has achieved its purpose and the Exchange

[11] Securities Exchange Act Release No. 93895 (January 4, 2022), 87 FR 1217 (January 10, 2022) (SR–PEARL–2021–59).

[12] *Id.*

[13] Securities Exchange Act Release No. 94287 (February 18, 2022), 87 FR 10837 (February 25, 2022) (SR–PEARL–2022–05).

[14] *See* Letter from Richard J. McDonald, SIG, to Vanessa Countryman, Secretary, Commission, dated March 15, 2022 (''SIG Letter 2'').

[15] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposal to adopt monthly membership fees).

[16] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[17] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[18] The term ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[19] The term ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[20] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[21] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[22] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

now believes that it is appropriate to remove this credit in light of the current operating conditions and membership population on the Exchange.

Amendment of Trading Permit Fees

The Exchange proposes to amend the Fee Schedule to amend the fees for Trading Permits. The Exchange issues Trading Permits to Members who are either Electronic Exchange Members [23] (''EEMs'') or Market Makers.[24] The Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates on the Exchange across all origin types, not including Excluded Contracts, as compared to the total TCV in all MIAX Pearl-listed options. The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' [25] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange—the FIX Interface and/or the MEO Interface.

Current Trading Permit Fees. Currently, each Member who connects to the System [26] via the FIX Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $250;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $350; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $450.

Each Member who connects to the System via the MEO Interface is assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, or volume up to 0.30%, $300;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.30% up to 0.60%, $400; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, or volume above 0.60%, $500.

Proposed Trading Permit Fees. The Exchange proposes to amend its Trading Permit fees as follows. Each Member who connects to the System via the FIX Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $1,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $1,500.

Each Member who connects to the System via the MEO Interface will be assessed the following monthly Trading Permit fees:

(i) If its volume falls within the parameters of Tier 1 of the Non-Transaction Fees Volume-Based Tiers, $2,500;

(ii) if its volume falls within the parameters of Tier 2 of the Non-Transaction Fees Volume-Based Tiers, $4,000; and

(iii) if its volume falls with the parameters of Tier 3 of the Non-Transaction Fees Volume-Based Tiers, $6,000.

Members who use the MEO Interface may also connect to the System through the FIX Interface as well, and vice versa. The Exchange notes that the Trading Permit fees for Members who connect through the MEO Interface are higher than the Trading Permit fees for Members who connect through the FIX Interface, since the FIX Interface utilizes less capacity and resources of the Exchange. The MEO Interface offers lower latency and higher throughput, which utilizes greater capacity and resources of the Exchange. The FIX Interface offers lower bandwidth requirements and an industry-wide uniform message format. Both EEMs and Market Makers may connect to the Exchange using either interface.

Trading Permits, like membership fees, grant access and allow Members to be active on the Exchange, thus providing the ability to submit orders and trade on the Exchange, in the manner defined in the relevant Trading Permit. Without a Trading Permit, or ''membership'' on other exchanges, a Member cannot directly trade on the Exchange. Therefore, a Trading Permit is a means to directly access the Exchange (which offers meaningful value), and the Exchange proposes to increase its monthly fees since it had not done so since the fees were first adopted in 2018.[27] The Exchange notes that the its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''), charge a similar, fixed trading permit fee in a similar range of trading permit fees to certain users, and a similar, varying trading permit fee in a similar range of trading permit fees to other users, based upon the number of assignments of option classes or the percentage of volume in option classes.[28]

As illustrated by the table below, the Exchange notes that the proposed fees for the Exchange's Trading Permits are in line with, or cheaper than, the similar trading permit and membership fees charged by other options exchanges. The below table also illustrates how the Exchange has historically undercharged for access via Trading Permits as compared to other options exchanges. The Exchange believes other exchanges' membership and trading permit fees are useful examples of alternative approaches to providing and charging for access and provides the below table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar access.

[23] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule.

[24] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of these Rules. *See* the Definitions Section of the Fee Schedule.

[25] *See* the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

[26] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[27] *See supra* note 16.

[28] *See* the MIAX Fee Schedule, Section 3)b) and MIAX Emerald Fee Schedule, Section 3)b), *available at https://www.miaxoptions.com/fees* (last visited March 9, 2022).

Exchange	Monthly membership/trading permit fee
MIAX Pearl Options (as proposed)	Trading Permit access via FIX Interface: Tier 1: $500. Tier 2: $1,000. Tier 3: $1,500. Trading Permit access via MEO Interface: Tier 1: $2,500. Tier 2: $4,000. Tier 3: $6,000.
New York Stock Exchange LLC (“NYSE”) [29]	Annual trading license fee for member organizations ranges from approximately $25,000 to $50,000 based on the type of member organization and number of trading licenses.
NYSE Arca, Inc. (“NYSE Arca”) [30]	Options Trading Permits: $6,000 for up to 175 option issues. Additional $5,000 for up to 350 option issues. Additional $4,000 for up to 1,000 option issues. Additional $3,000 for all option issues. Additional $1,000 for the 5th OTP and each OTP thereafter.
NYSE American, LLC (“NYSE American”) [31]	ATP Trading Permits: $8,000 for up to 60 plus the bottom 45% of option issues. Additional $6,000 for up to 150 plus the bottom 45% of option issues. Additional $5,000 for up to 500 plus the bottom 45% of option issues. Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. Additional $3,000 for all option issues. Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products).
Nasdaq PHLX LLC (“Nasdaq PHLX”) [32]	Streaming Quote Trader permit fees: Tier 1 (up to 200 option classes): $0.00. Tier 2 (up to 400 option classes): $2,200. Tier 3 (up to 600 option classes): $3,200. Tier 4 (up to 800 option classes): $4,200. Tier 5 (up to 1,000 option classes): $5,200 Tier 6 (up to 1,200 option classes): $6,200. Tier 7 (all option classes): $7,200. Remote Market Maker Organization permit fees: Tier 1 (less than 100 option classes): $5,500. Tier 2 (more than 100 and less than 999 option classes): $8,000. Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE LLC (“Nasdaq ISE”) [33]	Access Fees: Primary Market Maker: $5,000 per membership. Competitive Market Maker: $2,500 per membership.
Nasdaq Stock Market LLC (“Nasdaq”) [34]	Annual membership fee is $3,000 plus a monthly $1,250 trading rights fee (together with the annual membership fee, totaling $18,000 per year).
Cboe Exchange, Inc. (“Cboe”) [35]	Electronic Trading Permit Fees: Market Maker: $5,000. Electronic Access Permit: $3,000. Clearing TPH Permit: $2,000.
Cboe C2 Exchange, Inc. (“Cboe C2”) [36]	Access Permit Fees for Market Makers: $5,000. Electronic Access Permits: $1,000.
Cboe BZX Exchange, Inc. (“Cboe BZX”) [37]	Annual membership fee of $2,500 plus an additional fee of $350 per month for each additional MPID a member maintains other than their first (*i.e.,* an annual fee of $4,200 per additional MPID).

Implementation

The proposed fee changes are effective April 1, 2022.

[29] *See* ‘‘Trading Licenses,’’ NYSE Price List 2021 (last updated December 1, 2021), *available at: https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[30] *See* NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* (last visited March 9, 2022).

[31] *See* NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23–24, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (last visited March 9, 2022).

[32] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, *available at https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207* (last visited March 9, 2022).

[33] *See* Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (last visited March 9, 2022).

[34] *See* ‘‘NASDAQ Membership Fees,’’ Nasdaq Price List, available at: *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#membership. See also* Securities Exchange Act Release No. 34–81133 (July 12, 2017), 82 FR 32904 (July 18, 2017) (SR–NASDAQ–2017–065) (discussing the reasonableness of Nasdaq’s fees).

[35] *See* Cboe Fee Schedule, Electronic Trading Permit Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (last visited March 9, 2022).

[36] *See* Cboe C2 Fee Schedule, Access Fees, *available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/* (last visited March 9, 2022).

[37] *See* ‘‘Membership Fees’’ and ‘‘Market Participant Identifier (‘MPID’) Fees’’ sections of the Cboe BZX Fee Schedule, *available at https://www.cboe.com/us/equities/membership/fee_schedule/bzx/.*

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [38] in general, and furthers the objectives of Section 6(b)(4) of the Act [39] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable

[38] 15 U.S.C. 78f(b).

[39] 15 U.S.C. 78f(b)(4) and (5).

principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

Removal of Monthly Volume Credit and Trading Permit Fee Credit

The Exchange believes its proposal to remove the Monthly Volume Credit is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to achieve the extra credits associated with the Monthly Volume Credit for submitting Priority Customer volume to the Exchange and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Monthly Volume Credit from the Fee Schedule for business and competitive reasons because, in order to attract order flow when the Exchange first launched operations, the Exchange established the Monthly Volume Credit to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and the current type and amount of Priority Customer volume executed on the Exchange. The Exchange believes that the Exchange's Priority Customer rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share.

The Exchange believes its proposal to remove the Trading Permit fee credit for Members that connect via both the MEO Interface and FIX Interface is reasonable, equitable and not unfairly discriminatory because all market participants will no longer be offered the ability to receive the credit and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange believes it is equitable and not unfairly discriminatory to remove the Trading Permit fee credit for business and competitive reasons because, in order to attract order flow and membership after the Exchange first launched operations, the Exchange established the Trading Permit fee credit to lower the costs for Members that connect via both the MEO Interface and FIX Interface. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions and membership on the Exchange.

Trading Permit Fee Increase

The Exchange believes that there is value in being a Member of the Exchange, retaining that Membership as the Exchange's market share has grown, and that the proposed Trading Permit fees are reasonable because they are in the range of similar types of membership fees charged by other exchanges with similar market share. The proposed monthly Trading Permit fees are lower than or comparable to the membership and trading permit fees imposed by several other national securities exchanges that charge such fees.[40]

The Exchange believes that the proposed monthly Trading Permit fees are not unfairly discriminatory because they would be assessed equally across all Members or firms that seek to become Members. The Exchange believes that the proposed monthly Trading Permit fees are not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange. Instead, many market participants awaited the Exchange growing to a certain percentage of market share before they would join as a Member of the Exchange. In addition, many market participants still have not joined the Exchange despite the Exchange's growth in recent years to consistently be approximately 4–5% of the overall equity options market share. To illustrate, the Exchange currently has 41 Members.[41] However, based on publicly available information regarding a sample of the Exchange's competitors, NYSE American Options has 75 members, NYSE Arca Options has 71 members, and Cboe has 233 members.[42] Accordingly, the vigorous competition among national securities exchanges provides many alternatives for firms to voluntarily decide whether membership to the Exchange is appropriate and worthwhile, and no broker-dealer is required to become a member of the Exchange. Specifically, neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.

The Exchange acknowledges that competitive forces may require certain broker-dealers to be members of all equity options exchanges. However, the Exchange believes that the proposed fees are reasonable, equitably allocated and not unfairly discriminatory, even for a broker-dealer that deems it necessary to join the Exchange for business purposes, as those business reasons should presumably result in revenue capable of covering the proposed fees.

The Exchange further believes that the proposed fees would be an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and are not unfairly discriminatory. As the Commission noted in its Concept Release Concerning Self-Regulation, the Commission to date has not issued detailed rules specifying proper funding levels of self-regulatory organization (''SRO'') regulatory programs, or how costs should be allocated among the various SRO constituencies. Rather, the Commission has examined the SROs to determine whether they are complying with their statutory responsibilities. This approach was developed in response to the diverse characteristics and roles of the various SROs and the markets they operate. The mechanics of SRO funding, including the amount of revenue that is spent on regulation and how that amount is allocated among various regulatory operations, is related to the type of market that an SRO is operating. Thus, each SRO and its financial structure is, to a certain extent, unique. While this uniqueness can result in different levels of SRO funding across markets, it also is a reflection of one of the primary underpinnings of the National Market System. Specifically, by fostering an environment in which diverse markets with diverse business models compete within a unified National Market System, investors and market participants benefit.[43]

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act[44] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or

[40] *See supra* notes 29–37.

[41] *See* MIAX Pearl Options Exchange Member Directory, *available at https://www.miaxoptions.com/exchange-members/pearl.*

[42] *See* NYSE American Options Membership Directory, *available at https://www.nyse.com/markets/american-options/membership* (last visited March 9, 2022); NYSE Arca Options Membership Directory, *available at https://www.nyse.com/markets/arca-options/membership* (last visited March 9, 2022); Cboe Members and Sponsored Participants, Form 1 Amendment dated February 17, 2022, Exhibit M, *available at https://www.sec.gov/Archives/edgar/vprr/2200/22000797.pdf* (last visited March 9, 2022).

[43] *See* Securities Exchange Act Release No. 34–50700 (November 22, 2004), 69 FR 71255, 71267–68 (December 8, 2004) (File No. S7–40–04).

[44] 15 U.S.C. 78f(b)(4) and (5).

dealers. Effective regulation is central to the proper functioning of the securities markets. Recognizing the importance of such efforts, Congress decided to require national securities exchanges to register with the Commission as self-regulatory organizations to carry out the purposes of the Act. The Exchange therefore believes that it is critical to ensure that regulation is appropriately funded. The monthly Trading Permit fees are expected to provide a source of funding towards the Exchange's costs related to onboarding Members and providing ongoing support.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[45] the Exchange believes that the proposed rule change would not impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange believes the removal of the Monthly Volume Credit and Trading Permit fee credit will not place certain market participants at a relative disadvantage to other market participants because, in order to attract order flow when the Exchange first launched operations, the Exchange established these credits to lower the initial fixed cost for Members. The Exchange now believes that it is appropriate to remove this credit in light of the current operating conditions, including the Exchange's overall membership and the current type and amount of volume executed on the Exchange. The Exchange believes that the Exchange's rebates and fees will still allow the Exchange to remain highly competitive such that the Exchange should continue to attract order flow and maintain market share. The Exchange's proposed Trading Permit fees will be lower than or similar to the cost of membership and trading permits on other exchanges,[46] and therefore, may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership and trading permit fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result.

Inter-Market Competition

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 16% market share. Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. Over the course of 2021, the Exchange's market share has fluctuated between approximately 3–6% of the U.S. equity options industry.[47] The Exchange is not aware of any evidence that a market share of approximately 3–6% provides the Exchange with anti-competitive pricing power. The Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange.

The proposed fee change will not impact intermarket competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As described above, the Exchange received one comment letter on the First Proposed Rule Change.[48] The Exchange responded to the comment letter in the Second Proposed Rule Change. No comment letters were received in response to the Second or Third Proposed Rule Changes. The Exchange received one comment letter on the Fourth Proposed Rule Change,[49] which the Exchange responds to in this filing.

The First, Second, Third and Fourth Proposed Rule Changes all provided cost-based justifications to support the proposed fee changes. In this Fifth Proposed Rule Change, the Exchange determined to utilize a competition based approach to support the proposed fee changes. Because the SIG Letters are primarily focused on the Exchange's prior cost justifications in the First, Second, Third and Fourth Proposed Rule Changes, the Exchange believes the SIG's assertions are no longer germane to the current filing as the Exchange no longer utilizes a cost justification to support the proposed fees.

Pursuant to the Guidance, Staff may consider whether a proposed fee is constrained by significant competitive forces in assessing the reasonableness of the proposed fee.[50] This is in line with a recent filing by MEMX LLC (''MEMX''), in which MEMX argued its proposed monthly membership fee was reasonable because it was constrained by competitive forces.[51] MEMX's monthly membership fee filing received no comment letters and remains in effect today, past the Commission's 60-day suspension deadline. The Exchange's trading permit fees are the equivalent of MEMX's ''membership fee,'' BOX's ''participant fee'' and ''market maker trading permit fee,'' and other exchanges' ''access'' fees: They are all fees to solely provide access and allow activity to the specific marketplace. These are all monthly fees assessed to members for trading on each particular exchange. The Exchange now argues that its proposed fees are constrained by competition in the same way MEMX's membership fees are constrained by competition.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[52] and Rule 19b–4(f)(2)[53] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[45] 15 U.S.C. 78f(8).

[46] *See supra* note 40.

[47] *See* ''The market at a glance,'' *available at https://www.miaxoptions.com/* (last visited December 20, 2021).

[48] *See supra* note 7.

[49] *See supra* note 14.

[50] *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019), at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees* (the ''Guidance'').

[51] *See supra* note 15.

[52] 15 U.S.C. 78s(b)(3)(A)(ii).

[53] 17 CFR 240.19b–4(f)(2).

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–2022–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2022–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2022–09 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[54]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08172 Filed 4–15–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94682; File No. SR–CBOE–2022–005]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Expand the Nonstandard Expirations Pilot Program To Include P.M.-Settled S&P 500 Index Options That Expire on Tuesday or Thursday

April 12, 2022.

I. Introduction

On February 8, 2022, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 expand its Nonstandard Expirations Pilot Program to permit P.M.-settled S&P 500 Index (''SPX'') options that expire on Tuesday or Thursday. The proposed rule change was published for comment in the **Federal Register** on February 28, 2022.[3] On April 6, 2022, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comment on Amendment No. 1 and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposal, as Modified by Amendment No. 1

Cboe Options proposes to expand its existing Nonstandard Expirations Pilot (''Pilot'').[5] Under the terms of the current Pilot, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (1) Any Monday, Wednesday, or Friday (''Weekly Expirations'' or ''EOWs'') and (2) the last trading day of the month (''End of Month Expirations'' or ''EOMs'').[6] Under the proposal, the Exchange will expand the Pilot to permit P.M.-settled SPX Weekly (''SPXW'') options that expire on Tuesday or Thursday (''Tuesday and Thursday SPXW Expirations'') as permissible Weekly Expirations under the Pilot, in addition to the SPXW options with Monday, Wednesday, and Friday expirations that the Exchange may currently list pursuant to Rule 4.13(e)(1). The Exchange states that the Pilot for Weekly Expirations will apply to Tuesday and Thursday SPXW Expirations in the same manner as it currently applies to P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations.[7]

A. Tuesday and Thursday SPXW Expirations

The Exchange's proposed rule change will allow it to open for trading SPXW options with Tuesday and Thursday expirations to expire on any Tuesday or Thursday of the month, other than days that coincide with an EOM expiration.[8] The maximum number of expirations that may be listed for each type of Weekly Expiration (including the proposed Tuesday and Thursday SPXW Expirations) in a given class is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index (12 for SPX options).[9] Further, under current Cboe Options Rule 4.13(e)(1),

[54] 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. 94292 (February 22, 2022), 87 FR 11102 (''Notice''). Comments received regarding the proposal are available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2022-005/srcboe2022005.htm.*

[4] In Amendment No. 1, the Exchange also proposes to include the following market quality data for SPXW (as defined below) and standard SPX options, over sample periods determined by the Exchange and the Commission, as part of its Annual Report (as defined below) going forward: Time-weighted relative quoted spreads; relative effective spreads; and time-weighted bid and offer sizes. Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-cboe-2022-005/srcboe2022005.htm.*

[5] *See* Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (''Pilot Approval Order''). *See also* Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (permitting P.M.-settled options on broad-based indexes that expire on any Wednesday); and Securities Exchange Act Release No. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (permitting P.M.-settled options on broad-based indexes that expire on any Monday). The Pilot is currently set to expire on May 2, 2022. *See* Securities Exchange Act Release No. 93459 (October 28, 2021), 86 FR 60663 (November 3, 2021).

[6] Cboe Options Rule 4.13(e).

[7] *See* Notice, *supra* note 3, 87 FR 11102.

[8] If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. *See* Cboe Options Rule 4.13(e)(1).

[9] *See* Notice, *supra* note 3, 87 FR 11102.

other expirations in the same class will not be counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class.[10]

Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable;[11] however, the expiration date of a non-consecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[12] Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date.[13] Tuesday and Thursday SPXW Expirations will be treated the same as options on the same underlying index that expire on the third Friday of the expiration month, except that they will be P.M.-settled and new series in Weekly Expirations may be added up to and including on the expiration date for an expiring Weekly Expiration.[14]

Finally, if the Exchange is not open for business on a Tuesday or Thursday, the normally Tuesday- or Thursday-expiring SPXW will expire on the previous business day.[15] If two different SPXW options will expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such SPXW options.[16]

B. Annual Pilot Program Report

The Exchange has previously undertaken to submit a Pilot report to the Commission at least two months prior to the expiration date of the Pilot (''Annual Report'').[17] The Exchange represents that it will abide by the same reporting requirements for the trading of Tuesday and Thursday SPXW Expirations that it does for the trading of P.M.-settled options on broad-based indexes that expire on any Monday, Wednesday, or Friday pursuant to the Pilot.[18] The Exchange states that it will include data regarding Tuesday and Thursday SPXW Expirations in the Annual Report that it submits to the Commission at least two months prior to the expiration date of the Pilot.[19] Additionally, the Exchange represents that it will provide certain additional market quality data for SPX options[20] and will also provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot, including the proposed Tuesday and Thursday SPXW Expirations, is consistent with the Act.[21] As it does for current Pilot program products, the Exchange states it will make public on its website all data and analyses in connection with SPXW options with Tuesday and Thursday expirations it submits to the Commission under the Pilot.[22]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[23] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[24] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission received a comment letter in support of the Exchange's proposal.[25] The commenter states that the addition of Tuesday and Thursday SPXW Expirations would allow investors to closely tailor their hedging strategies around specific dates[26] and potentially reduce hedging costs,[27] as well as allow investors to spread risk across more trading days and account for daily changes in the markets.[28] The commenter also asserts that there is demand for the proposed Tuesday and Thursday SPXW Expirations, and that the proposal ''will enhance the total liquidity and risk management opportunities that the US options market offers, and will further enhance the overall health of the US listed options market.''[29] The commenter states that it has not observed any negative impact on the market or regulatory concerns arising from SPXW options.[30]

As the Commission noted in its orders approving the listing and trading of P.M.-settled options on the S&P 500 Index, the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.[31] The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

[10] *See* Cboe Options Rule 4.13(e)(1).

[11] *See* proposed Cboe Options Rule 4.13(e)(1).

[12] *See* Cboe Options Rule 4.13(e)(1).

[13] *Id.*

[14] *See* Notice, *supra* note 3, 87 FR 11102. The proposed rule change also clarifies that on the last trading day, Regular Trading Hours for expiring Weekly Expirations and EOMs are from 9:30 a.m. to 4:00 p.m. *See* proposed Cboe Options Rule 4.13(e)(4).

[15] *Id.*

[16] *Id.*

[17] *See* Pilot Approval Order, *supra* note 5.

[18] *See* Notice, *supra* note 3, 87 FR at 11103. *See also* Pilot Approval Order, *supra* note 5, 75 FR 57540 (stating, ''[i]n particular, the Commission notes that [the Exchange] will provide the Commission with the annual report analyzing volume and open interest of EOWs and EOMs, will also contain information and analysis of EOW and EOM trading patterns, and index price volatility and share trading activity for series that exceed minimum parameters.'').

[19] *See* Notice, *supra* note 3, 87 FR 11103.

[20] *See* Amendment No. 1, *supra* note 4. In particular, the Exchange proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for SPX options (SPXW and standard SPX options) as part of the annual reports going forward: Time-weighted relative quoted spreads; relative effective spreads; and time-weighted bid and offer sizes. *See id.*

[21] *See* Notice, *supra* note 3, 87 FR 11103.

[22] *Id.*

[23] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] *See* Letter from John Zhu, Head of Trading, Optiver US LLC, to Vanessa Countryman, Secretary, Commission, dated March 18, 2022.

[26] *See id.* at 1.

[27] *Id.*

[28] *Id.*

[29] *Id.* at 2.

[30] *Id.*

[31] *See* Securities Exchange Act Release No. 68888 (February 8, 2013), 78 FR 10668, 10669 (February 14, 2013) (order approving the listing and trading of SPXPM on Cboe Options). *See also* Securities Exchange Act Release Nos. 64599 (June 3, 2011), 76 FR 33798, 33801–02 (June 9, 2011) (order instituting proceedings to determine whether to approve or disapprove a proposed rule change to allow the listing and trading of SPXPM options on the C2 Options Exchange, Incorporated); and 65256 (September 2, 2011), 76 FR 55969, 55970–76 (September 9, 2011) (order approving proposed rule change to establish a pilot program to list and trade SPXPM options on the C2 Options Exchange, Incorporated).

The Exchange's proposal to add Tuesday and Thursday SPXW Expirations to the existing Pilot would offer additional investment options to investors and may be useful for their investment or hedging objectives while providing the Commission with data to monitor the effects of Tuesday and Thursday SPXW Expirations and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of Tuesday and Thursday SPXW options on the options markets as well as the underlying cash equities markets, the Exchange will be required to submit data to the Commission in connection with the Pilot.[32] Further, including the proposed Tuesday and Thursday SPXW Expirations in the Pilot, together with the data and analysis that the Exchange will provide to the Commission, will allow Cboe Options and the Commission to monitor for and assess any potential for adverse market effects of allowing Tuesday and Thursday SPXW Expirations, including on the underlying component stocks. In particular, the data collected from the Pilot will help inform the Commission's consideration of whether the Pilot, as amended to include Tuesday and Thursday SPXW Expirations, should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the Pilot should help it monitor any potential risks from large P.M.-settled positions and take appropriate action if warranted.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2022–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–005, and should be submitted on or before May 9, 2022.

V. Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. In Amendment No. 1, the Exchange represents that it will provide certain additional data in the Pilot Program annual reports regarding SPXW options.[33] The Exchange states that such data will assist in monitoring for any adverse market effects or regulatory concerns. Amendment No. 1 raises no novel regulatory issues and will provide additional data that will assist the Commission in evaluating the Pilot. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[34] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–CBOE–2022–005), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08162 Filed 4–15–22; 8:45 am]

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[32] *See* Notice, *supra* note 3, 87 FR 11103; Pilot Approval Order, *supra* note 5, 75 FR 57540; and Amendment No. 1, *supra* note 4. *See also supra* notes 18 and 20.

[33] *See* Amendment No. 1, *supra* note 4.

[34] 15 U.S.C. 78s(b)(2).

[35] 15 U.S.C. 78s(b)(2).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94686; File No. SR–CBOE–2022–016]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (''Cboe Options'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Cboe Data Services, LLC (''CDS'') Fee Schedule. Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product (''Product'') listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.[3] For example, a firm that currently subscribes to Cboe Options BBO Data would be eligible to receive a free 30-day trial of Cboe Options Book Depth Data, whether in a display-only format or for non-display use. However, a firm that currently receives Cboe Options Book Depth Data for non-display use would not be eligible to receive a free 30-day trial of Cboe Options Book Depth Data in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[7]

The Exchange believes that adopting a free trial program for real-time market data products listed in its Fees Schedule is equitable and reasonable. Particularly, providing Exchange real-time market data products to new Users and Distributors free-of-charge for the first 30 days is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Distributors to enlist more Users to subscribe to Exchange market data products in an effort to broaden the products' distribution. Making a new market data product available for free for a trial period is also consistent with offerings of other exchanges. For example, NYSE and Nasdaq offer similar free trial programs.[8]

The Exchange believes the proposal to provide the Exchange market data products to new Users or Distributors free-of-charge for their first 30 days subscribing or distributing the data, as applicable, is equitable and not unfairly discriminatory because it applies to any first-time User or Distributor, regardless of the use they plan to make of the feed. As proposed, any first-time User or Distributor would not be charged any applicable fee listed in the Fee Schedule for any of the Exchange's real-time market data products listed in the Fee Schedule for 30 days. The Exchange believes it is equitable to restrict the availability of this free trial to Users or Distributors that have not previously subscribed to, or distributed, respectively the particular market data product, since Users or Distributors who are current or previous subscribers or Distributors, respectively of that product are already familiar with the product and whether it would suit their needs.

The Exchange believes that the proposed rule change providing for a free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all Users subscribing to, and all Distributors distributing, an Exchange Product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between Users and Distributors that are subscribing to or distributing a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and Users and Distributors that are already receiving or distributing the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for 30 days would ease administrative burdens for data recipients to subscribe to or distribute a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

[3] For example, if a User that has elected to participate in the free trial program for Cboe Options BBO Data is approved on April 15, 2022, that User will not be subject to any applicable fees (*i.e.,* User Fee) through May 14, 2022.

[4] *See* The Nasdaq Stock Market LLC (''Nasdaq'') Equity 7 Pricing Schedule, Section 112(b)(1) and New York Stock Exchange LLC (''NYSE'') Proprietary Market Data Fees Schedule, General.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78k–1.

[8] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time Users and Distributors on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.[9] The proposed amendments are also designed to enhance competition by providing an incentive to Distributors to enlist new subscribers and Users to subscribe to Exchange real-time market data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 [11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–016 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08165 Filed 4–15–22; 8:45 am]

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[9] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94683; File No. SR–MIAX–2022–08]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Withdrawal of Proposed Rule Change To Amend the MIAX Fee Schedule To Adopt a Tiered-Pricing Structure for Additional Limited Service MIAX Express Interface Ports

April 12, 2022.

On February 1, 2022, Miami International Securities Exchange, LLC (''MIAX'' 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 amend the Exchange's Fee Schedule to adopt a tiered-pricing structure for additional limited service express interface ports.

The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] On February 22, 2022, the proposed rule change was published for comment in the **Federal Register** and, pursuant to Section 19(b)(3)(C) of the Act,[4] the Commission: (1) Temporarily suspended the proposed rule change; and (2) instituted proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] On March 30, 2022, the Exchange withdrew the proposed rule change (SR–MIAX–2022–08).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A). A proposed rule change may take effect upon filing with the Commission if it is designated by the exchange as ''establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization.'' 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 15 U.S.C. 78s(b)(3)(C).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 94259 (February 15, 2022), 87 FR 9747.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08163 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94689; File No. SR–CboeBZX–2022–025]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule for its options trading platform (''BZX Options''). Particularly, the Exchange proposes to adopt a free trial program for Exchange market data products, effective April 1, 2022.

The Exchange proposes a 30-day free trial for any User or Distributor that subscribes to or distributes, respectively, an Exchange real-time market data product (''Product'') listed on the Fee Schedule for the first time. As proposed, a first-time User would be any entity or individual that has not previously subscribed to a particular Product and a first-time Distributor would be any entity that has not previously distributed, internally or externally, a particular Product. A first-time User or Distributor of a particular Exchange market data product would not be charged any applicable fees listed in the Fee Schedule for that product for the duration of the 30 days.[3] For example, a firm that currently subscribes to BZX Options Top would be eligible to receive a free 30-day trial of BZX Options Depth, whether in a display-only format or for non-display use. However, a firm that currently receives BZX Options Depth for non-display use would not be eligible to receive a free 30-day trial of BZX Options Depth in a display-only format. The Exchange would provide the 30-day free trial for each particular product to each first-time User or Distributor once.

The Exchange believes that providing a 30-day free trial to Exchange real-time market data products listed on the Exchange's Fee Schedule would enable potential Users and Distributors to determine whether a particular Exchange market data product provides value to their business models or investment strategies, as applicable, before fully committing to expend development and implementation costs related to the receipt or distribution of that product, and is intended to encourage increased use of the Exchange's market data products by defraying some of the development and implementation costs Users or Distributors would ordinarily have to expend before using a product. The Exchange notes that other exchanges have similar free trial programs.[4]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[5] in general, and furthers the objectives of Section 6(b)(4),[6] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[7]

The Exchange believes that adopting a free trial program for real-time market data products listed in its Fees Schedule is equitable and reasonable. Particularly, providing Exchange real-time market data products to new Users and Distributors free-of-charge for the first 30 days is reasonable because it would allow vendors and subscribers to become familiar with the feeds and determine whether they suit their needs without incurring fees. It is also intended to incentivize Distributors to enlist more Users to subscribe to Exchange market data products in an effort to broaden the products' distribution. Making a new market data product available for free for a trial period is also consistent with offerings of other exchanges. For example, NYSE and Nasdaq offer similar free trial programs.[8]

The Exchange believes the proposal to provide the Exchange market data products to new Users or Distributors free-of-charge for their first 30 days subscribing or distributing the data, as applicable, is equitable and not unfairly

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For example, if a User that has elected to participate in the free trial program for BZX Options Top data is approved on April 15, 2022, that User will not be subject to any applicable fees (*i.e.,* User Fee) through May 14, 2022.

[4] *See* The Nasdaq Stock Market LLC (''Nasdaq'') Equity 7 Pricing Schedule, Section 112(b)(1) and New York Stock Exchange LLC (''NYSE'') Proprietary Market Data Fees Schedule, General.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78k–1.

[8] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

discriminatory because it applies to any first-time User or Distributor, regardless of the use they plan to make of the feed. As proposed, any first-time User or Distributor would not be charged any applicable fee listed in the Fee Schedule for any of the Exchange's real-time market data products listed in the Fee Schedule for 30 days. The Exchange believes it is equitable to restrict the availability of this free trial to Users or Distributors that have not previously subscribed to, or distributed, respectively the particular market data product, since Users or Distributors who are current or previous subscribers or Distributors, respectively of that product are already familiar with the product and whether it would suit their needs.

The Exchange believes that the proposed rule change providing for a free trial period to test is not unfairly discriminatory because the financial benefit of the fee waiver would be available to all Users subscribing to, and all Distributors distributing, an Exchange Product for the first time on a free-trial basis. The Exchange believes there is a meaningful distinction between Users and Distributors that are subscribing to or distributing a market data product for the first time, who may benefit from a period within which to set up and test use of the product before it becomes fee liable, and Users and Distributors that are already receiving or distributing the Exchange's market data products and are deriving value from such use. The Exchange believes that the limited period of the free trial would not be unfairly discriminatory to other users of the Exchange's market data products because it is designed to provide a reasonable period of time to set up and test a new market data product. The Exchange further believes that providing a free trial for 30 days would ease administrative burdens for data recipients to subscribe to or distribute a new data product and eliminate fees for a period before such users are able to derive any benefit from the data.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price these data products is constrained by competition among exchanges that offer similar data products to their customers. The Exchange believes that the proposed free trial program does not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed trial would apply to first time Users and Distributors on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed program does not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposal would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to lower their prices or provide a free trial to better compete with the Exchange's offering. Indeed, other national securities exchanges already offer similar free trial programs today.[9] The proposed amendments are also designed to enhance competition by providing an incentive to Distributors to enlist new subscribers and Users to subscribe to Exchange real-time market data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and paragraph (f) of Rule 19b–4[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–025 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change.

Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–025 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08168 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* Nasdaq Equity 7 Pricing Schedule, Section 112(b)(1) and NYSE Proprietary Market Data Fees Schedule, General.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94697; File No. SR–EMERALD–2022–12]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Emerald Fee Schedule To Adopt Fees for the High Precision Network Time Signal Service

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 2022, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'') to adopt fees for a new service known as the ''High Precision Network Time Signal Service.'' [3]

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings/emerald,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, generally,* Exchange Rule 531(d).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently established a new service known as the ''High Precision Network Time Signal Service'' (''HPNTSS'' or the ''Service''),[4] which will be available for purchase by subscribers on a voluntary basis. The Exchange now proposes to adopt fees for the Service, which is described under Exchange Rule 531(d).[5] The Service is an optional product available to any firm that chooses to subscribe.

The Exchange proposes to assess a monthly fee of $3,600 for subscribing to the Service. As such, the Exchange proposes to amend the Fee Schedule to adopt new Section 8), Services, to provide that subscribers may purchase the Service for a monthly fee of $3,600. Subscribers may cancel their subscription at any time. The Exchange proposes to specify that for mid-month subscriptions to the Service, new subscribers will be charged for the full calendar month for which they subscribe. A second time signal is available with each subscription to the Service for redundancy and disaster recovery purposes.

In sum, the Service enables subscribers to synchronize their own primary clock devices to the Exchange's primary clock device, by receiving time signals from the Exchange via a 1 gigabit (''Gb'') connection that is currently offered by the Exchange and utilized by market participants to connect to the Exchange's System.[6] The Service simply provides subscribers with the Exchange's time signal at a sub-nanosecond level and nothing else. The sub-nanosecond time signal would tell the subscriber the Exchange's time at a sub-nanosecond level at a particular point in time. The subscriber may then use that time signal to synchronize their own primary clock to the Exchange's primary clock at the more acute sub-nanosecond level.[7] Subscribers would utilize their own Enhanced PTP device [8] to synchronize the clocks within the subscriber's computer and network infrastructure, as appropriate, at a sub-nanosecond level. This would enable the subscriber to record certain times an order or message traveled through and leaves the subscriber's system at a sub-nanosecond level.

The Service is not a connectivity product and subscribers are able to utilize an existing connectivity method offered by the Exchange to utilize the Service. The Service simply provides enhanced time synchronization that may be utilized by a subscriber to adjust their own systems. The Service is not a market data product or access/connectivity service. Subscribers may continue to use their existing methods to connect to and send orders to the Exchange. The Service will not include any trading data regarding the subscriber's activity on the Exchange or include any data from other trading activity on the Exchange.

The Exchange established the Service in response to demand for tighter and more accurate clock synchronization options with the Exchange's network. The Service is offered to subscribers on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make the Service available and potential subscribers may subscribe to the Service only if they voluntarily choose to do so. It is a business decision of each subscriber whether to subscribe to the Service or not.

The Exchange intends to begin to offer the Service and charge the proposed fees on April 1, 2022.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the

[4] *See* Securities Exchange Act Release No. 94335 (March 1, 2022), 87 FR 12756 (March 7, 2022) (SR–EMERALD–2021–38) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Exchange Rule 531 To Provide for a New Service Called the High Precision Network Time Signal Service).

[5] *See* Exchange Rule 531(d).

[6] The Exchange did not provide a new connectivity option to receive time signals via the Service. The Service is not a connectivity product and subscribers would only need to utilize an existing connectivity method offered by the Exchange to utilize the Service. *See* Fee Schedule, Section 5, System Connectivity Fees, for information regarding 1 Gb connectivity.

[7] *See supra* note 4 for a detailed description of the Service. *See also* MIAX Emerald Options—Update: The Introduction of the High Precision Network Time Signal (Enhanced PTP/White Rabbit) Beginning April 1, 2022 (March 3, 2022), *available at https://www.miaxoptions.com/alerts/2022/03/03/miax-emerald-options-update-introduction-high-precision-network-time-signal.*

[8] An Enhanced PTP clock synchronization device captures time and coordinates time synchronization within a network at a sub-nanosecond level.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Service is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of dues, fees and other charges among market participants.

The Exchange operates in a highly competitive environment in which 16 U.S. registered equity options exchanges compete for market share. Based on publicly available information, no single options exchange has more than 13–14% of the equity options market share and currently the Exchange represents only approximately 3.57% of the market share.[13] The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14] Making products, like the Service, available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange's product offering as more attractive than the competition that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Service.

If the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange's Service, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable products with lower prices to better compete with the Exchange's offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar services. Moreover, if a market participant views another exchange's potential service as more attractive, then such market participant can merely choose not to subscribe to the Exchange's Service and instead subscribe to another exchange's similar product, which may offer similar data points, albeit based on that other market's trading systems.

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new product to subscribers. The Exchange believes the proposed fees are reasonable in order to support the introduction of the new Service, which may be used for numerous optional purposes. For example, the Service would allow subscribers to more precisely measure latency between their network and that of the Exchange at a sub-nanosecond level, allowing subscribers to better understand the times at which their order or message reached certain points when traveling from their network to the Exchange. The Service would also allow subscribers to analyze the efficiency of their network and connections when not only routing orders to the Exchange, but also when receiving messages back from the Exchange (including communications regarding whether their order was accepted, rejected, or executed). Subscribers utilizing the Service may also measure message traversal times by comparing their messages' (*e.g.,* order, quote, cancellation) timestamps to the Exchange's matching engine timestamps from the Exchange-generated acknowledgement messages (*e.g.,* order acknowledgment, quote acknowledgment, cancellation acknowledgment).[15] Subscribers would then be able to enhance their own systems to ensure that they are receiving such communications in a timelier manner and to verify that their systems are working as intended.

In addition, subscribers may utilize these enhanced latency measurements to better analyze latencies within their own systems and use this analysis to optimize their network, models and trading patterns to potentially improve their interactions with the Exchange. In particular, subscribers may use these metrics to better assess the health of their network and that their systems are working as intended. For example, a subscriber may use this information when analyzing the efficacy of their various connections and whether a connection is performing as expected or experiencing a delay. A subscriber may then decide to rebalance the amount of orders and/or messages over its various connections to ensure each connection is operating with maximum efficiency. Subscribers may also use the Service for other purposes, such as determining compliance with certain regulatory requirements [16] and trade surveillance. Subscribers may also utilize time synchronization to assist them in evaluating compliance with certain clock synchronization requirements. The Exchange therefore believes the proposed fees are reasonable because of the numerous benefits provided to subscribers that subscribe to the Service. Selling different products and services, such as HPNTSS, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Service, it may earn trading revenues and further enhance market participants' interactions on the Exchange, which would increase value of its products and services. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the Service. The Exchange therefore believes that the proposed fees for the Service reflect the competitive environment of U.S. exchanges and would be properly assessed to market participants that subscribe to the Service. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to subscribe to the Service. It is a business decision of each market participant that chooses to subscribe to the Service. The Exchange's proposed fees would not differentiate between subscribers that purchase the Service and are set at a modest level that would allow any interested market participant to purchase the Service based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Service is entirely optional for all potential subscribers. Indeed, no market participant is required to purchase the Service and the Exchange is not required to make the Service available to all investors. It is entirely a

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* ''The Market at a Glance,'' (last visited March 15, 2022), *available at https://www.miaxoptions.com/.*

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[15] The Exchange sends subscribers an acknowledgement message that their order or message was received by the Exchange. This acknowledgement includes the time of receipt at a nanosecond level.

[16] *See, e.g.,* Chapter III of the Exchange's Rules, which incorporates by reference Rule 301, Interpretation and Policy .02 (Just and Equitable Principles of Trade), of the Exchange's affiliate, Miami International Securities Exchange, LLC (''MIAX''); *and* Financial Industry Regulatory Authority, Inc. (''FINRA'') Rule 5320.

business decision of each market participant to subscribe to the Service. The Exchange offers the Service as a convenience to market participants to provide them with the ability to synchronize their own primary clock devices to the Exchange's primary clock device at a sub-nanosecond level. A market participant that chooses to subscribe to the Service may discontinue the use of the Service at any time if that market participant determines that the synchronization of its primary clock devices to the Exchange's primary clock device is no longer useful.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Service available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange believes the proposed fees would not cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Service is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for market share. For example, proposing fees that are excessively higher than fees for potentially similar products would simply serve to reduce demand for the Exchange's product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also believes that the proposed fees do not cause any unnecessary or inappropriate burden on intermarket competition because the synchronization of subscribers' primary clock devices with that of the Exchange would enhance competition between exchanges. Subscribers that subscribe to the Service could use the Service to adjust their own systems and recalibrate their models and trading strategies to improve their overall trading experience on the Exchange. This may improve the Exchange's overall trading environment resulting in increased liquidity and order flow on the Exchange. In response, other exchanges may similarly seek ways to provide synchronized clock timestamps in an effort to improve their own market quality.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Service. The proposed fees are set at a modest level that would allow any interested market participant to purchase the Service based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[17] and Rule 19b–4(f)(2)[18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2022–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–EMERALD–2022–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EMERALD–2022–12 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 240.19b–4(f)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94702; File No. SR–CboeBZX–2022–027]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers, Currently Codified in Rule 11.18

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposal to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers, currently codified in Rule 11.18(a)–(d), (f) and (g). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.18 to make permanent the Market-Wide Circuit Breaker (''MWCB'') pilot program. The proposal is substantively identical to New York Stock Exchange LLC (''NYSE'') Rule 7.12 and NYSE American LLC (''NYSE American'') Rule 7.12E.

The Pilot Rules

The MWCB rules, including the Exchange's Rule 11.18, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Rule 11.18(a)–(d), (f) and (g)).[5] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[6] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[7] including any extensions to the pilot period for the LULD Plan.[8] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[9] In light of the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.18 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[10] The Exchange then filed to extend the pilot to the close of business on October 18, 2020,[11] October 18, 2021,[12] March 18, 2022,[13] and April 18, 2022.[14]

The MWCB Working Group Study

Beginning in February 2020, at the outset of the COVID–19 pandemic, the markets experienced increased volatility, culminating in four MWCB Level 1 halts on March 9, 12, 16, and 18, 2020. In each instance, pursuant to the Pilot Rules, the markets halted as intended upon a 7% drop in SPX and did not start the process to resume trading until the prescribed 15-minute halt period ended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[6] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[7] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[8] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038) (Approval Order); and 68780 (January 31, 2013), 78 FR 8680 (February 6, 2013) (SR–BATS–2013–010) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Operative Date of Changes to the Rule for Halting Trading in All Stocks Due to Extraordinary Market Volatility).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[10] *See* Securities Exchange Act Release No. 85689 (April 18, 2019), 84 FR 17217 (April 24, 2019) (SR–CboeBZX–2019–028).

[11] *See* Securities Exchange Act Release No. 87336 (October 17, 2019), 84 FR 56868 (October 23, 2019) (SR–CboeBZX–2019–088).

[12] *See* Securities Exchange Act Release No. 90126 (October 8, 2020), 85 FR 65119 (October 14, 2020) (SR–CboeBZX–2020–074).

[13] *See* Securities Exchange Act Release No. 58342 (October 15, 2021), 86 FR 58342 (October 21, 2022) (SR–CboeBZX–2021–071).

[14] *See* Securities Exchange Act Release No. 94464 (March 18, 2022), 87 FR 16809 (March 24, 2022) (SR–CboeBZX–2022–008).

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in March 2020. In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study.

On March 31, 2021, the MWCB Working Group submitted its study (the ''Study'') to the Commission.[15] The Study included an evaluation of the operation of the Pilot Rules during the March 2020 events and an evaluation of the design of the current MWCB system. In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the LULD Plan did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of those conclusions, the MWCB Working Group also made several recommendations, including that (1) the Pilot Rules should be made permanent without any changes, and (2) SROs should adopt a rule requiring all designated Regulation SCI firms to participate in at least one Level 1/Level 2 MWCB test each year and to verify their participation via attestation.[16]

Proposal To Make the Pilot Rules Permanent

On July 16, 2021, NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[17] On March 16, 2022, the Commission approved NYSE's proposal.[18]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d), (f) and (g) of Rule 11.18) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 11.18, which currently provides that the rule is in effect during a pilot period that expires at the close of business on April 18, 2022. The Exchange does not propose any changes to paragraphs (a)–(d), (f) or (g) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (h), (i), and (j) to Rule 11.18 as follows:

(h) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to paragraph (b) of Rule 2.4 to participate in Exchange Back-up Systems and Mandatory Testing are required to participate in at least one industry-wide MWCB test each year and to verify their participation in that test by attesting that they are able to or have attempted to:

(A) Receive and process MWCB halt messages from the securities information processors (''SIPs'');

(B) receive and process resume messages from the SIPs following a MWCB halt;

(C) receive and process market data from the SIPs relevant to MWCB halts; and

(D) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.

(2) To the extent that a Member participating in a MWCB test is unable to receive and process any of the messages identified in paragraph (h)(1)(A)–(D) of this Rule, its attestation should notify the Exchange which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to standards established in paragraph (b) of Rule 2.4 are permitted to participate in any MWCB test.

(i) In the event that a halt is triggered under this Rule following a Level 1, Level 2, or Level 3 Market Decline, the Exchange, together with other SROs and industry representatives (the ''MWCB Working Group''), will review such event. The MWCB Working Group will prepare a report that documents its analysis and recommendations and will provide that report to the Commission within 6 months of the event.

(j) In the event that there is (1) a Market Decline of more than 5%, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, the Exchange, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to this Rule. If the MWCB Working Group recommends that a modification should be made to this Rule, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.

2. Statutory Basis

The Exchange believes that the proposal to make the Pilot Rules permanent is consistent with Section 6(b) of the Act,[19] in general, and furthers the objectives of Section 6(b)(5) of the Act,[20] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Pilot Rules set out in Rule 11.18(a)–(d), (f) and (g) are an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant market stress when securities markets experience broad-based declines. The four MWCB halts that occurred in March 2020 provided the Exchange, the other SROs, and market participants with real-world experience as to how the Pilot Rules actually function in practice. Based on the Working Group's Study and the Exchange's own analysis of those events, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

Specifically, the Exchange believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the Pilot Rules worked as intended during the March 2020 events. As detailed above, the markets were in communication before, during, and after each of the MWCB Halts that occurred in March 2020. All 9,000+ equity symbols were

[15] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[16] *See id.* at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (SR–NYSE_2021–40) (Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

successfully halted in a timely manner when SPX declined 7% from the previous day's closing value, as designed. The Exchange believes that market participants would benefit from having the Pilot Rules made permanent because such market participants are familiar with the design and operation of the MWCB mechanism set out in the Pilot Rules, and know from experience that it has functioned as intended on multiple occasions under real-life stress conditions. Accordingly, the Exchange believes that making the Pilot Rules permanent would enhance investor confidence in the ability of the markets to successfully halt as intended when under extreme stress.

The Exchange further believes that making the Pilot Rules permanent would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the halts that were triggered pursuant to the Pilot Rules in March 2020 appear to have had the intended effect of calming volatility in the market without causing harm. As detailed above, after studying a variety of metrics concerning opening and reopening auctions, quote volatility, and other factors, the Exchange concluded that there was no significant difference in the percentage of securities that opened on a trade versus on a quote for the four days in March 2020 with MWCB Halts, versus the other periods studied. In addition, while the post-MWCB Halt reopening auctions were smaller than typical opening auctions, the size of those post-MWCB Halt reopening auctions plus the earlier initial opening auctions in those symbols was on average equal to opening auctions in January 2020. The Exchange believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, the Exchange observes that while quote volatility was generally higher on the four days in March 2020 with MWCB Halts as compared to the other periods studied, quote volatility stabilized following the MWCB Halts at levels similar to the January 2020 levels, and LULD Trading Pauses worked as designed to address any additional volatility later in the day. From this evidence, the Exchange concludes that the Pilot Rules actually calmed volatility on the four MWCB Halt days in March 2020, without causing liquidity to evaporate or otherwise harming the market. As such, the Exchange believes that making the Pilot Rules permanent would remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

The Exchange believes that that making the Pilot Rules permanent without any changes would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because the current design of the MWCB mechanism as set out in the Pilot Rules remains appropriate. As detailed above, the Exchange considered whether SPX should be replaced as the reference value, whether the current trigger levels (7%/13%/20%) and halt times (15 minutes for Level 1 and 2 halts) should be modified, and whether changes should be made to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m., and concluded that the MWCB mechanism set out in the Pilot Rules remains appropriate, for the reasons cited above. The Exchange believes that public confidence in the MWCB mechanism would be enhanced by the Pilot Rules being made permanent without any changes, given investors' familiarity with the Pilot Rules and their successful functioning in March 2020.

The Exchange believes that proposed paragraph (h) regarding MWCB testing is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Working Group recommended that all cash equities exchanges adopt a rule requiring all designated Regulation SCI firms to participate in MWCB testing and to attest to their participation. The Exchange believes that these requirements would promote the stability of the markets and enhance investor confidence in the MWCB mechanism and the protections that it provides to the markets and to investors. The Exchange further believes that requiring firms participating in a MWCB test to identify any inability to process messages pertaining to such MWCB test would contribute to a fair and orderly market by flagging potential issues that should be corrected. The Exchange would preserve such attestations pursuant to its obligations to retain books and records of the Exchange.[21]

The Exchange believes that proposed paragraph (i) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review any halt triggered under Rule 11.18(a)–(d), (f) and (g) and prepare a report of its analysis and recommendations would permit the Exchange, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 11.18(a)–(d), (f) and (g) in the public interest. Preparation of such a report within 6 months of the event would permit the Exchange, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

The Exchange believes that proposed paragraph (j) would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. Having the MWCB Working Group review instances of a Market Decline of more than 5% or an SRO implementing a rule that changes its reopening process following a MWCB Halt would allow the MWCB Working Group to identify situations where it recommends that Rule 11.18(a)–(d), (f)–(j) be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 11.18(a)–(d), (f)–(j), the MWCB Working Group would prepare a report that documents its analysis and recommendations and provide that report to the Commission, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system while protecting investors and the public interest.

For the foregoing reasons, the Exchange believes that the proposed change is consistent with 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 not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. The Exchange believes that making the

[21] *See* 17 CFR 240.17a–1.

current MWCB Pilot Rules permanent would have no discernable burden on competition at all, since the Pilot Rules have already been in effect since 2012 and would be made permanent without any changes. Moreover, because the MWCB mechanism contained in the Pilot Rules requires all exchanges and all market participants to cease trading at the same time, making the Pilot Rules permanent would not provide a competitive advantage to any exchange or any class of market participants.

Further, the Exchange understands that the other SROs will submit substantively identical proposals to the Commission. Thus, the proposed rule change will help to ensure consistency across SROs without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to immediately provide the protections included in this proposal in the event of a MWCB halt, which is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m.

Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–027 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08177 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94684; File No. SR–MEMX–2022–09]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Related to Clearly Erroneous Transactions Until July 20, 2022

April 12, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

extend the current pilot program related to MEMX Rule 11.15, ''Clearly Erroneous Executions,'' to the close of business on July 20, 2022. The text of the proposed rule change is provided in Exhibit 5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the effectiveness of the Exchange's current rule applicable to Clearly Erroneous Executions to the close of business on July 20, 2022. Portions of Rule 11.15, explained in further detail below, are currently operating as a pilot program which is set to expire on April 20, 2022.[5]

On May 4, 2020, the Commission approved MEMX's Form 1 Application to register as a national securities exchange with rules including, on a pilot basis, MEMX Rule 11.15.[6] Rule 11.15, among other things (i) provides for uniform treatment of clearly erroneous execution reviews in multi-stock events involving twenty or more securities; and (ii) reduces the ability of the Exchange to deviate from objective standards set forth in the rule. The rule further provides that: (i) A series of transactions in a particular security on one or more trading days may be viewed as one event if all such transactions were effected based on the same fundamentally incorrect or grossly misinterpreted issuance information resulting in a severe valuation error for all such transactions; and (ii) in the event of any disruption or malfunction in the operation of the electronic communications and trading facilities of the Exchange, another SRO, or responsible single plan processor in connection with the transmittal or receipt of a trading halt, an Officer of the Exchange or senior level employee designee, acting on his or her own motion, shall nullify any transaction that occurs after a trading halt has been declared by the primary listing market for a security, and before such a trading halt has officially ended according to the primary listing market.[7]

Previously, the clearly erroneous pilot programs adopted by the national securities exchanges and the current Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS under the Act (the ''Limit Up-Limit Down Plan'' or the ''LULD Plan'') were a single pilot program. On April 17, 2019, the Commission approved the Eighteenth Amendment to the LULD Plan, allowing the LULD Plan to operate on a permanent, rather than pilot, basis.[8] Accordingly, national securities exchanges filed with the Commission amendments to exchange rules to untie the pilot program's effectiveness from that of the LULD Plan in order to provide such exchanges additional time to consider further amendments, if any, to the clearly erroneous execution rules in light of the proposed Eighteenth Amendment to the LULD Plan.[9]

More recently, the Exchange amended MEMX Rule 11.15 to extend the pilot's effectiveness to the close of business on October 20, 2021.[10] The Exchange subsequently amended MEMX Rule 11.15 to extend the pilot's effectiveness to the close of business on April 20, 2022.[11]

On March, 7, 2022, Cboe BZX Exchange, Inc. proposed a rule change to make the pilot program permanent with certain amendments.[12] The Exchange now proposes to amend MEMX Rule 11.15 to extend the pilot's effectiveness to the close of business on July 20, 2022, while the Commission considers whether the BZX proposal should be approved or disapproved. MEMX understands that certain other national securities exchanges and the Financial Industry Regulatory Authority (''FINRA'') also intend to file similar proposals to extend their respective clearly erroneous execution pilot programs, the substance of which are identical to MEMX Rule 11.15.

The Exchange does not propose any additional changes to MEMX Rule 11.15. By proposing to extend the pilot, the Exchange will avoid any discrepancy between its clearly erroneous pilot program and the pilot programs of other exchanges and FINRA, as the language of such rules are identical to MEMX Rule 11.15 and, as noted above, other exchanges and FINRA also intend to file proposals to extend their respective clearly erroneous execution pilot programs. The Exchange believes the benefits to market participants from the more objective clearly erroneous executions rule should continue on a limited three month pilot basis. As the LULD Plan was approved by the Commission to operate on a permanent, rather than pilot, basis the Exchange intends to assess whether additional changes should also be made to the operation of the clearly erroneous execution rules. Extending the effectiveness of MEMX Rule 11.15 for an additional three months should provide the Commission additional time to consider the recent proposal to make the pilot program permanent and any further amendments to the clearly erroneous execution rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that extending the clearly erroneous execution pilot under MEMX Rule 11.15 for an additional three months would help assure that the determination of whether a clearly erroneous trade has

[5] *See* MEMX Rule 11.15.

[6] *See* Securities Exchange Release No. 88806 (May 4, 2020), 85 FR 27451 (May 8, 2020).

[7] *See* MEMX Rule 11.15.

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631).

[9] *See, e.g.,* Securities Exchange Act Release No. 85542 (April 8, 2019), 84 FR 15009 (April 12, 2019) (SR–CboeBYX–2019–003).

[10] *See* Securities Exchange Act Release No. 91457 (April 1, 2021), 86 FR 18082 (April 7, 2021) (SR–MEMX–2021–05).

[11] *See* Securities Exchange Act Release No. 93358 (October 15, 2021), 86 FR 58319 (October 21, 2021) (SR–MEMX–2021–13).

[12] *See* Securities Exchange Act Release No. 94374 (March 7, 2022), 87 FR 14062 (March 11, 2022) (SR–CboeBZX–2022–017).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

occurred will be based on clear and objective criteria, and that the resolution of the incident will occur promptly through a transparent process. The proposed extension would also help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Based on the foregoing, the Exchange believes the clearly erroneous executions rule should continue to be in effect on a pilot basis while the Commission considers the pending proposal to make permanent the rules related to clearly erroneous executions reviews.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange understands that FINRA and certain other national securities exchanges will also file similar proposals to extend their respective clearly erroneous execution pilot programs. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would extend the protections provided by the current pilot program, without any changes, while the Exchange and other self-regulatory organizations consider whether further amendments to these rules are appropriate. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MEMX–2022–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2022–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–09 and should be submitted on or before May 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–08164 Filed 4–15–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11714]

Notice of Renewal of the Advisory Committee on International Law Charter

The Department of State has renewed the charter of the Advisory Committee on International Law. The Committee is composed of former Legal Advisers of the Department of State and up to 30 individuals appointed by the Legal Adviser or a Deputy Legal Adviser. Through the Committee, the Department of State will continue to obtain the views and advice of outstanding members drawn from a cross section of

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

the legal profession. The Committee follows procedures prescribed by the Federal Advisory Committee Act (FACA). Its meetings are open to the public unless a determination is made in accordance with the FACA and 5 U.S.C. 552b(c) that a meeting or portion of a meeting should be closed to the public. Notice of each meeting will be published in the **Federal Register** at least 15 days prior to the meeting, unless extraordinary circumstances require shorter notice.

FOR FURTHER INFORMATION CONTACT: Alison Welcher, Executive Director, Advisory Committee on International Law, Department of State, at 202–647–1646 or *welcherar@state.gov.*

Alison R. Welcher,

Attorney-Adviser, Office of the Legal Adviser, Department of State.

[FR Doc. 2022–08208 Filed 4–15–22; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice: 11715]

Determination Under Section 506(a)(1) of the Foreign Assistance Act of 1961 To Provide Military Assistance to Ukraine

Pursuant to the authority vested in me by section 506(a)(1) of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2318(a)(1)), and Presidential Delegation of Authority dated April 5, 2022, I hereby determine that an unforeseen emergency exists which requires immediate military assistance to Ukraine. I further determine that the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other provision of law.

I, therefore, pursuant to authority delegated to me by the President, direct the drawdown of up to $100 million in defense articles and services of the Department of Defense, and military education and training, under the authority of section 506(a)(1) of the Act to provide assistance to Ukraine. The Department of State will coordinate implementation of this drawdown.

This determination shall be reported to the Congress and published in the **Federal Register**.

Dated. April 5, 2022.

Antony J. Blinken,

Secretary of State.

[FR Doc. 2022–08261 Filed 4–15–22; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice: 11713]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Cubism and the Trompe l'Oeil Tradition'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Cubism and the Trompe l'Oeil Tradition'' at The Metropolitan Museum of Art, New York, New York, 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: Chi D. Tran, Program Administrator, 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), E.O. 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.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–08266 Filed 4–15–22; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Charter Renewal of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Renewal of federal advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the TVA Board of Directors has renewed the Regional Resource Stewardship Council (RRSC) charter for an additional two-year period.

FOR FURTHER INFORMATION CONTACT: Ashley Farless, *arfarless@tva.gov,* (423) 443–7169.

SUPPLEMENTARY INFORMATION: Pursuant to FACA and its implementing regulations, and following consultation with the Committee Management Secretariat, General Services Administration (GSA) in accordance with 41 CFR 102–3.60(a), notice is hereby given that the RRSC has been renewed for a two-year period. The RRSC will provide advice to TVA on its issues affecting natural resources and stewardship activities. The RRSC was originally established in 2000 to advise TVA on its natural resources and stewardship activities and the priority to be placed among competing objectives and values. It has been determined that the RRSC continues to be needed to provide an additional mechanism for public input regarding natural resources and stewardship issues. The charter can be found at *www.tva.com/rrsc.*

Dated: April 11, 2022.

The DFO of the Tennessee Valley Authority and Vice President of External Strategy & Regulatory Affairs, Melanie Farrell, having reviewed and approved this document, is delegating the authority to sign this document to Cathy Coffey, Senior Program Manager of Public and Community Engagement for purposes of publication in the **Federal Register**.

Cathy Coffey,

Senior Program Manager, Tennessee Valley Authority.

[FR Doc. 2022–08271 Filed 4–15–22; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Reallocation of Unused Fiscal Year 2022 Tariff-Rate Quota Volume for Raw Cane Sugar

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of country-by-country reallocations of the fiscal year (FY) 2022 in-quota quantity of the World Trade Organization (WTO) tariff-rate quota (TRQ) for imported raw cane sugar.

DATES: This notice is applicable on April 18, 2022.

FOR FURTHER INFORMATION CONTACT: Erin Nicholson, Office of Agricultural Affairs, at 202–395–9419 or *erin.h.nicholson@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTSUS), the United States maintains WTO TRQs for imports of raw cane and refined sugar. Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a TRQ for any agricultural product among supplying countries or customs areas. The President delegated this authority to the U.S. Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

On September 13, 2021, the Secretary of Agriculture established the FY 2022 TRQ for imported raw cane sugar at the minimum to which the United States is committed pursuant to the WTO Uruguay Round Agreements (1,117,195 metric tons raw value (MTRV) conversion factor: 1 metric ton = 1.10231125 short tons). On September 16, 2021, USTR provided notice of country-by-country allocations of the FY 2022 in-quota quantity of the WTO TRQ for imported raw cane sugar. *See* 86 FR 51712. Based on consultation with quota holders, the U.S. Trade Representative has determined to reallocate 201,551 MTRV of the original TRQ quantity from those countries that have stated they do not plan to fill their FY 2022 allocated raw cane sugar quantities. The U.S. Trade Representative is allocating the 201,551 MTRV to the following countries in the amounts specified below:

Country	FY 2022 raw sugar unused reallocation (MTRV)
Argentina	11,027
Australia	21,284
Barbados	1,795
Belize	2,821
Bolivia	2,051
Brazil	37,182
Colombia	6,154
Costa Rica	3,846
Dominican Republic	40,000
Ecuador	2,821
El Salvador	6,667
Eswatini (Swaziland)	4,103
Fiji	2,308
Guatemala	12,309
Guyana	3,077
Honduras	2,564
India	2,051
Malawi	2,564
Mauritius	3,077
Mozambique	3,334
Panama	7,437
Peru	10,514
South Africa	5,898
Thailand	3,590
Zimbabwe	3,077

The allocations of the raw cane sugar WTO TRQ to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin. Certificates for quota eligibility must accompany imports from any country for which an allocation has been provided.

Greta M. Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–08246 Filed 4–15–22; 8:45 am]

BILLING CODE 3390–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0081]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Safe Driver Apprenticeship Pilot Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the information collection request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA request approval to renew an ICR titled, ''Safe Driver Apprenticeship Pilot Program.'' This ICR was previously approved under emergency procedures on January 24, 2022, and expires on July 31, 2022. The ICR is necessary for FMCSA to conduct a pilot program to determine the safety impacts of allowing 18- to 20-year-old commercial driver's license (CDL) holders to operate commercial motor vehicles (CMVs) in interstate commerce. The ICR will cover data collected on drivers and carriers participating in the pilot program.

DATES: Comments on this notice must be received on or before June 17, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2022–0081 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier*: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: 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.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Nicole Michel, Office of Analysis Research and Technology/Research Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–4354; *nicole.michel@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: Current regulations on driver qualifications (49 CFR part 391.11(b)(1)) state that a driver must be 21 years of age or older to operate a CMV in interstate commerce. Currently, drivers under the age of 21 may operate CMVs only in intrastate commerce subject to State laws and regulations.

Section 23022 of the Infrastructure Investment and Jobs Act (IIJA), requires the Secretary of Transportation to conduct a commercial driver Apprenticeship Pilot Program. An *apprentice* is defined as a person under the age of 21 who holds a CDL. Under this program, these apprentices will complete two probationary periods, during which they may operate in interstate commerce only under the supervision of an experienced driver in the passenger seat. An *experienced driver* is defined in section 23022 as a driver who is not younger than 26 years old, who has held a CDL and been employed for at least the past 2 years, and who has at least 5 years of interstate CMV experience and meets the other safety criteria defined in the IIJA.

The first probationary period must include at least 120 hours of on duty time, of which at least 80 hours are driving time in a CMV. To complete this probationary period, the employer must determine competency in:

1. Interstate, city traffic, rural 2-lane, and evening driving;
2. Safety awareness;
3. Speed and space management;
4. Lane control;
5. Mirror scanning;
6. Right and left turns; and
7. Logging and complying with rules relating to hours of service.

The second probationary period must include at least 280 hours of on-duty time, including not less than 160 hours driving time in a CMV. To complete this probationary period, the employer must determine competency in:

1. Backing and maneuvering in close quarters;
2. Pre-trip inspections;
3. Fueling procedures;
4. Weighing loads, weight distribution, and sliding tandems;
5. Coupling and uncoupling procedures; and
6. Trip planning, truck routes, map reading, navigation, and permits.

After completion of the second probationary period the apprentice may begin operating CMVs in interstate commerce unaccompanied by an experienced driver.

In addition to data regarding successful completion of the probationary periods, the IIJA requires data collection for data relating to any incident in which a participating apprentice is involved as well as other data relating to the safety of apprentices. Additional data will include crash data (incident reports, police reports, insurance reports), inspection data, citation data, safety event data (as recorded by all safety systems installed on vehicles, to include advanced driver assistance systems, automatic emergency braking systems, onboard monitoring systems, and forward-facing and in-cab video systems) as well as exposure data (record of duty status logs, on-duty time, driving time, and time spent away from home terminal). This data will be submitted monthly through participating motor carriers.

The data collected will be used to report on the following items, as required by section 23022:

1. The findings and conclusions on the ability of technologies or training provided to apprentices as part of the pilot program to successfully improve safety;
2. An analysis of the safety record of participating apprentices as compared to other CMV drivers;
3. The number of drivers that discontinued participation in the apprenticeship program before completion;
4. A comparison of the safety records of participating drivers before, during, and after each probationary period; and
5. A comparison of each participating driver's average on-duty time, driving time, and time spent away from home terminal before, during, and after each probationary period.

FMCSA will monitor the monthly data being reported by the motor carriers and will identify drivers or carriers that may pose a risk to public safety. While removing unsafe drivers or carriers may bias the dataset, it is a necessary feature for FMCSA to comply with § 381.505, which requires development of a monitoring plan to ensure adequate safeguards to protect the health and safety of pilot program participants and the general public. Knowing that a driver or carrier was removed from the pilot program for safety reasons will help FMCSA minimize bias in the final data analysis.

FMCSA and the Department of Labor's Employment and Training Agency (DOL/ETA) will be partnering in the implementation of the Safe Driver Apprenticeship Pilot Program (SDAP). All motor carriers who are approved for the program by FMCSA will also be required to become Registered Apprenticeships (RAs) under 29 CFR part 29 before they can submit information on their experienced drivers and apprentices. The information collection burden for the DOL/ETA RA Program can be found in approved ICR 1205–0223.

The statutory mandate for this pilot program is contained in section 23022 of the IIJA. FMCSA's regulatory authority for initiation of a pilot program is § 381.400. The Apprentice Pilot Program supports the DOT strategic goal of economic strength while maintaining DOT and FMCSA's commitment to safety.

On January 7, 2022, FMCSA published a notice in the **Federal Register** seeking public comment on the emergency approval of this ICR (87 FR 1001). A total of 144 comments were received on that notice, which are summarized here.

- Of the 144 comments received, 134 comments were from individuals while 10 comments were from organizations, associations, or motor carriers.
- A total of 31 comments supported the SDAP, which consisted of 25 individuals and 6 organizations, associations, or motor carriers.
- A total of 102 comments were opposed to the SDAP, which consisted of 98 individuals and 4 organizations, associations, or motor carriers. The majority of these comments cited previous studies showing age as a factor in safe driving performance, concerns that drivers would not be compensated properly, or that the industry would ''take advantage'' of younger drivers.
- A total of 11 comments, all from individuals, were neutral towards the SDAP.

Several comments provided recommendations on how to conduct the pilot program. These are summarized below.

- *Recommendation:* Extend the probationary period to 6 months.

Response: While there is no prohibition toward individual carriers, or even individual drivers on a case-by-case basis having the probationary period extended, FMCSA has decided this would fundamentally alter the intention behind section 23022 of the IIJA and therefore has not included this recommendation as part of the pilot program design.

- *Recommendation:* Require additional performance benchmarks, such as mountainous driving.

Response: FMCSA does not consider mountainous driving to be broad enough to be required by all apprentices, as some may never require mountainous driving. These additional performance requirements should be considered at the discretion of each carrier and experienced driver to impart the knowledge required for apprentices operating in each unique circumstance.

• *Recommendation:* Require that apprentices continue utilizing required technology throughout the entire pilot program.

Response: Apprentices will be required to continue operating a vehicle equipped with onboard monitoring systems (OBMS) until they turn 21 years old and no longer require an exemption to operate in interstate commerce. Regarding other technology, such as active braking collision mitigation systems and governed speed limiters, FMCSA has determined it is best to follow the requirements as laid out in the IIJA to enable naturalistic data collection of how these drivers would operate in a real-world setting. Furthermore, by requiring these technologies only during the apprenticeship period, data may be gathered to allow additional insights into the benefits of these technologies for this age group.

• *Recommendation*: Increase the requirements for experienced drivers to have 5 consecutive years with no violations, crashes, etc.

Response: FMCSA does not find benefit or reason to increase the requirement on experienced drivers from that which is described in the IIJA.

• *Recommendation*: Ensure experienced drivers are logged as on duty, not driving when monitoring apprentices.

Response: FMCSA agrees that experienced drivers must be logged as on duty, not driving when they are in the passenger seat observing apprentice drivers. This will be made clear to program participants.

• *Recommendation:* Visibly identify drivers with high visibility markings, such as stickers.

Response: FMCSA disagrees with this recommendation as it has the potential to bias the data collection by creating a potential for behavior changes in surrounding drivers that decreases the integrity of naturalistic data collection. Furthermore, this could impact the ability to properly compare safety performance of these drivers with other drivers.

• *Recommendation:* Revoke a driver's CDL and expel carriers for any crashes resulting in death, injury, or property damage. Substantial violations of program rules should have penalties including suspension of an experienced driver's CDL, suspension of apprentices from the program, and/or fines for motor carriers.

Response: FMCSA does not have the authority to revoke CDLs, as these are issued by State driver's licensing agencies. FMCSA retains the right to remove an exemption from a participating driver, carrier, or both if they are determined to present a safety concern. FMCSA cannot impose fines on a motor carrier for failing to meet the requirements of a voluntary pilot program; however, FMCSA retains the right to revoke a motor carrier's participation in the study if they fail to meet the requirements of the program.

• *Recommendation:* Add a requirement for becoming a registered apprentice with DOL.

Response: FMCSA agrees that participating carriers must have a registered apprenticeship with the DOL.

• *Recommendation:* Increase minimum rate of liability insurance to $10 million for participating carriers.

Response: Minimum financial liability requirements are set by regulatory statute. FMCSA does not have the authority to increase this rate for participating carriers.

• *Recommendation:* Reduce monthly burden by clarifying what safety event data is required.

Response: FMCSA has clarified that the safety event data provided will be the summary of safety events (including participating driver identification, time, date, and type of safety event for each event) as opposed to all recorded video data. It is intended that this data will be the reduced data from a carrier's OBMS provider which can be used for coaching or training purposes.

• *Recommendation:* Have a hotline number to report violations of program rules.

Response: Participating drivers will be provided with information on how to report coercion or potential violations of the program through the research team.

• *Recommendation:* Conduct regular, anonymized surveys of trainers and apprentices to assess compliance.

Response: FMCSA is confident the monthly data provided as a requirement of participation in the study will illuminate any areas of non-compliance with the program.

• *Recommendation:* Carriers must submit electronic logs from electronic logging devices on a quarterly basis.

Response: Carriers are required to submit monthly exposure data that will cover the same information contained in electronic logs as well as additional information, such as days away from home duty station.

• *Recommendation:* FMCSA should produce guidance literature to orient all trainers and apprentices.

Response: FMCSA will develop materials for electronic distribution to participating carriers who can then provide this information to their participating drivers that contains information on participation requirements and contact information for the research team in case there are questions from the driver. Additionally, FMCSA will maintain the website (*fmcsa.dot.gov/safedriver*) with frequently asked questions and resources for participating carriers and drivers.

• *Recommendation:* FMCSA should establish an independent oversight board for the program composed of experienced drivers, industry stakeholders, and safety and training experts to meet quarterly and produce regular assessments of program safety.

Response: FMCSA will be reviewing safety data on a monthly basis to determine if there are any immediate safety concerns. As authorized by 49 CFR part 381, FMCSA may remove a driver, carrier, or terminate the program at any time if safety concerns are identified.

• *Recommendation*: FMCSA should require carriers, as a condition of their participation in the program, to report driver and trainer compensation during the time they are working in the program.

Response: Carriers will have to report compensation information on apprentice drivers to comply with the DOL RA requirements.

• *Recommendation:* Compensable working time should follow the definition recognized by the DOL's Wage and Hour Division.

Response: FMCSA does not have authority to regulate compensation or wages.

Additionally, some commenters felt that becoming a registered apprentice with DOL would be too burdensome and is an additional requirement that was not in the IIJA. While this requirement was not specifically part of the IIJA, FMCSA maintains that a registered apprenticeship with DOL is an important step in the safety and monitoring oversight of the SDAP to minimize the risk of apprentice drivers experiencing coercion, unfair wages, or other practices that could lead to unsafe behaviors from apprentice drivers.

Finally, there were several clarification questions received on the notice, which included the following:

• How will the control group be selected for comparison?

Response: FMCSA will not be collecting data on a specific control group for this study. FMCSA will be utilizing already existing data on current CMV operators to compare inspection and crash rates of known drivers as compared to the data collected on apprentice drivers. Additionally, FMCSA will analyze the safety performance of apprentices

before, during, and after their probationary periods.

• How will FMCSA decide whether the SDAP should be extended, expanded, or discontinued in the final data analysis?

Response: FMCSA is restricted by the limitations in the IIJA as well as the limitations in 49 CFR part 381. Therefore, the SDAP will not be extended or expanded at any point. The study may be discontinued at FMCSA's discretion at any point.

• What quantitative safety metrics, if any, will be part of the final analysis? If crashes and fatalities occur during the program, will those be made public?

Response: FMCSA will conduct analysis on all data collected, to include crashes, inspections, and safety events. All analysis will be peer reviewed and contained in a final report. Crashes and fatalities occurring during the program will be contained in the analysis but identifying information on drivers will not be made public to ensure the research is conducted in an ethical manner that protects the privacy of participating individuals.

• Will FMCSA continue gathering data from apprentices once they begin operating CMVs in interstate commerce unaccompanied by an experienced driver?

Response: FMCSA will continue gathering data from apprentices until they turn 21 years old and no longer require an exemption to operate in interstate commerce.

Title: Safe Driver Apprenticeship Pilot Program.

OMB Control Number: 2126–0075.

Type of Request: Renewal of an information collection previously approved under emergency authority.

Respondents: Motor carriers; drivers.

Estimated Number of Respondents: 14,830 total (1,600 motor carriers and 13,230 CMV drivers); 5,410 annually (1,000 carriers and 4,410 CMV drivers).

Estimated Time per Response: Application (motor carrier, apprentice driver, and experienced driver): 20 Minutes; safety benchmark certifications: 15 Minutes; monthly driving and safety data: 60 Minutes; miscellaneous data submission: 90 Minutes.

Expiration Date: July 31, 2022.

Frequency of Response: Application (motor carrier, apprentice driver, and experienced driver): Once; safety benchmark certifications: Twice for each apprentice driver; monthly driving sand safety data: Monthly; miscellaneous data submissions: Monthly.

Estimated Total Annual Burden: 169,344 hours total, or 56,448 hours annually (motor carriers: 164,934 hours total, or 54,978 hours annually, which includes a one-time application, two safety benchmark certifications for each participating apprentice, and monthly driving and safety data on all participating apprentices as well as miscellaneous data submissions; drivers: 13,797 hours total, or 4,599 hours annually which includes a one-time application for experienced and apprentice drivers).

Definitions: N/A.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–08229 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0016]

Agency Information Collection Activities; Notice and Request for Comment; Countermeasures That Work

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on a reinstatement with modification of a previously approved collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites public comments about our intention to request approval from the Office of Management and Budget (OMB) for a reinstatement with modification of a previously approved collection of information. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes an Information Collection Request (ICR) for which NHTSA intends to seek OMB approval to conduct a survey that will inform the development of the 12th edition of *Countermeasures That Work* and structured interviews to populate and update the 2nd edition of *Countermeasures At Work.*

DATES: Comments must be received on or before June 17, 2022.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2021–0016 using any of the following methods:

• *Electronic submissions:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

• *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

• *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the Docket number for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Kristie Johnson, Ph.D., Office of Behavioral Safety Research (NPD–310), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W46–498, Washington, DC 20590. Dr. Johnson's phone number is 202–366–2755, and her email address is *kristie.johnson@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) 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; (ii) 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; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In compliance with these requirements, NHTSA asks for public comment on the following proposed collection of information:

Title: Countermeasures That Work.

OMB Control Number: 2127–0727.

Form Numbers: NHTSA Form 1343, NHTSA Form 1344.

Type of Information Collection Request: Reinstatement with modification of a previously approved information collection.

Type of Review Requested: Regular.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information

NHTSA is seeking approval to (1) collect user feedback on the *Countermeasures That Work* [1] and *Countermeasures At Work* (1st edition to be published later in early 2022) guides, and (2) collect program information from program administrators to develop countermeasure case studies for *Countermeasures At Work.*

End-User Feedback Survey

NHTSA proposes to conduct a web-based feedback survey of up to 120 users of *Countermeasures That Work* and/or *Countermeasures At Work* representing State Highway Safety Offices (SHSOs) and/or local jurisdictions, the Governors Highway Safety Association (GHSA), State Coordinators from across the United States, and other important stakeholders with the intent to reach regular users of the documents to help improve the documents. Survey topics will include how the guides are used, weaknesses/drawbacks to the current guides, perceived usefulness of the ratings, and other suggestions for improvement.

While previous feedback surveys were conducted via phone, the proposed survey would be administered using an online platform to reduce participant burden, improve data capture, and reduce coding needs. Participation by respondents would be voluntary. There are no record-keeping costs to the respondents. Responses will not be publicly reported, but NHTSA will internally use the aggregated information to revise and improve the *Countermeasures That Work* and *Countermeasures At Work* guides. Specifically, feedback will be used to determine which aspects of the guides should be improved and if there are features or topics that the guides do not currently have that they would like to have included.

Structured Interviews

NHTSA also proposes to conduct up to 60 structured in-person or phone interviews with representatives from jurisdictions that currently administer effective countermeasures. The respondents for the interviews will be selected based on their job position, knowledge of domain, management of effective countermeasure implementations as noted in the literature, and recommendation from NHTSA or GHSA subject matter experts with the intent to reach program administrators of effective countermeasures with the goal of populating and enriching countermeasure descriptions. The findings of interviews conducted for *Countermeasures At Work* will be reported separately for each individual locality so that the reader can get an idea about the size and type of the featured locality and issues specific to that locality. The *Countermeasures At Work* guide will include general contact information about the locality (*i.e.,* State DOT or SHSO office) or the contact information of key individuals (if permission is granted by the interview participant), so that readers of the document can follow-up, if desired, with the locality to obtain more information about the countermeasure.

The *Countermeasures That Work* and *Countermeasures At Work* reports will be shared with SHSOs, local governments, and those who develop traffic safety programs that aim to change behaviors with the goal of reducing crashes and the resulting injuries and fatalities.

Description of the Need for the Information and Proposed Use of the Information

NHTSA was established by the Highway Safety Act of 1970 and its mission is to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. To further this mission, NHTSA is authorized to conduct research for the development of traffic safety programs. Title 23, United States Code, Section 403 authorizes the Secretary of Transportation (NHTSA by delegation) to use funds appropriated to conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information, with respect to (a) all aspects of highway and traffic safety systems and conditions relating to vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics; accident causation and investigations; and (b) human behavioral factors and their effect on highway and traffic safety.

In 2019, 36,096 people were killed in motor vehicle traffic crashes on U.S. roadways.[2] While the number of people killed has increased slightly since the U.S. hit its lowest number of fatalities

[1] Venkatraman, V., Richard, C.M., Magee, K., & Johnson, K. (2021, July). *Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, 10th edition* (Report No. DOT HS 813 097). National Highway Traffic Safety Administration. *www.nhtsa.gov/sites/nhtsa.gov/files/2021-09/15100_Countermeasures10th_080621_v5_tag.pdf.*

[2] National Center for Statistics and Analysis. (2020, December). *Overview of motor vehicle crashes in 2019* (Traffic Safety Facts Research Note. Report No. DOT HS 813 060). National Highway Traffic Safety Administration. *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813060.*

in 2014, over the past 40 years there has been a general downward trend. Effective behavioral safety countermeasures such as those described in *Countermeasures That Work* and detailed in the upcoming *Countermeasures At Work* have contributed to these reductions. This project addresses the issue of providing information to traffic safety professionals about countermeasures that have been demonstrated to be effective in addressing certain traffic safety problems.

The public health approach to traffic safety which establishes injuries and fatalities as preventable has resulted in a mix of countermeasures, and the choices among them are driven by research on their effectiveness. Generally, this approach includes some combination of countermeasures aimed at improving safety in terms of improved vehicles, education, improved roads, enhanced road user perception, and behavior and better enforcement of traffic safety laws.

In 2005, the Governors Highway Safety Association and the National Highway Traffic Safety Administration developed a guide, *Countermeasures That Work,* for the State Highway Safety Offices that provides a basic reference to assist in selecting effective, evidence-based countermeasures to address traffic safety problem areas. Given that SHSO's and other State practitioners responsible for implementing these countermeasures use *Countermeasures That Work* as an aid to make decisions, it is important to solicit their opinions about the document and its content. Specifically, it is important to know which aspects of the guide should be improved and if there are features or topics that the guide does not currently have that they would like to have included. The *Countermeasures At Work* guide expands on the most effective countermeasures contained in the *Countermeasures That Work* guide by providing real world examples and details on localities where specific countermeasures were put into place. The descriptions of the effective countermeasures include details about locality size, implementation issues, cost, stakeholders involved, challenges, evaluation, and outcomes to help officials determine which countermeasures may be effective in their own jurisdictions.

Per Section 1300.11 of the Uniform Procedures for State Highway Safety Grant Programs, each fiscal year, as part of the highway safety planning process for a State's Highway Safety Plan, a list of information and data sources consulted must be included in the plan. *Countermeasures That Work* is commonly referenced as a consulted source.

The data from this proposed information collection will provide NHTSA with information that will guide updates to the *Countermeasures That Work* and *Countermeasures At Work* documents. Data collected from the survey and structured interviews will be used primarily to (1) update the content, format, and structure of information provided in *Countermeasures That Work* and *Countermeasures At Work,* and (2) identify the localities/implementation of countermeasures that should be presented as case studies in *Countermeasures At Work.*

Frequency of Collection: This study is part a biennial update of effective countermeasures. Each of the surveys will be collected one time during the three-year period for which NHTSA is requesting approval. The last survey of stakeholders was in 2020.

Affected Public: Participants will be U.S. adults (18 years old and older) who are members of State Highway Safety Offices (SHSOs) and/or local jurisdictions, the Governors Highway Safety Association (GHSA), State Coordinators from across the United States, or other important stakeholders. Businesses are ineligible for the survey and would not be interviewed.

Estimated Number of Respondents: 180.

Participation in the end user feedback survey will be voluntary with up to 120 participants surveyed from SHSOs and/or local jurisdictions, GHSA, State Coordinators from across the United States, and other important stakeholders. In addition, up to 60 participants will be interviewed about effective countermeasure programs based on their job position, knowledge of domain, management of effective countermeasure implementations as noted in the literature, and recommendation from NHTSA regional specialists or GHSA Office subject matter experts.

Estimated Total Annual Burden Hours: 129.

End User Feedback Survey

NHTSA estimates the total burden of this information collection by estimating the burden to those who NHTSA contacts who do not respond and those who are contacted and participate. The estimated time to contact 120 potential participants for the end user feedback survey is one minute per person to read the invitation email. For recruited participants, it is estimated that the survey will take thirty minutes to complete. For recruited participants, participation is estimated to take thirty-one minutes which includes time to read the email invitation (survey introduction) and complete the survey. While up to three email invites (or waves) are included in this estimate, potential respondents would be comprised of a sample hand-selected by the research team thus potentially reducing the number of subsequent contacts as well as the number of non-responders.

Structured Interviews

NHTSA estimates the total burden of this information collection by estimating the burden to those who NHTSA contacts who do not respond and those who are contacted and participate. The estimated time to contact 60 potential traffic safety representative participants for the structured countermeasure program interviews is two minutes per person to read the invitation email. For recruited participants, participation is estimated to take ninety-two minutes per person. The ninety-two minutes estimate includes time to read the email invitation (interview introduction), schedule an interview time, and complete the interview. Again, while up to four email invites are included in this estimate, potential respondents would be comprised of a sample hand-selected by the research team thus potentially reducing the number of subsequent contacts as well as the number of non-responders.

Total Burden Hours for the End User Feedback Survey and the Structured Interviews

The total estimated burden for contacting 120 traffic safety representatives for the end user feedback survey, if 75% of solicited participants respond, is approximately 50 hours, rounded up (((assuming 90 completed surveys out of 120 contacted potential participants: 45 hours for completed surveys (90 survey participants × 30 minutes to complete the survey) + ~4.5 hours for reading invitations ((Wave 1–120 contacts × 1 minute) + (Wave 2–90 contacts × 1 minute) + (Wave 3–60 contacts × 1 minute))). The total estimated burden for contacting 60 traffic safety representatives for the program case study structured interviews, if 75% of solicited participants respond, is approximately 79 hours, rounded up each wave (((assuming 48 completed interviews out of 60 contacted potential participants: 72 hours (48 completed interviews × 90 minutes for each interview) + ~5.6 hours ((Wave 1–60

contacts × 2 minutes) + (Wave 2–48 contacts × 2 minutes) + (Wave 3–36 contacts × 2 minutes) + (Wave 4–24 contacts × 2 minutes))). Overall, the total estimated burden for the feedback surveys and program case study interviews is 129 hours. This information is presented in the tables below.

TABLE 1—ESTIMATED TOTAL BURDEN FOR END USER FEEDBACK SURVEY

Wave	Number of contacts	Participant type	Estimated time burden per participant (in minutes)	Frequency of burden	Number of participants	Burden hours *	Burden hours per wave *	Average annual total burden
Wave 1 (Initial Email Invitation—NHTSA Form 1343R).	120	Contacted potential participant (read email).	1	1	120	2	17	
		Recruited participant (completed survey).	30	1	30	15		
Wave 2 (Reminder Email #1—NHTSA Form 1343R).	90	Contacted potential participant (read email).	1	1	90	2	17	
		Recruited participant (completed survey).	30	1	30	15		
Wave 3 (Reminder Email #2—NHTSA Form 1343R).	60	Contacted potential participant (read email).	1	1	60	1	16	
		Recruited participant (completed survey).	30	1	30	15		
Total							50	16.67

* Rounded up to the nearest hour.

TABLE 2—ESTIMATED TOTAL BURDEN FOR STRUCTURED INTERVIEWS

Wave	Number of contacts	Participant type	Estimated time burden per participant (in minutes)	Frequency of burden	Number of participants	Burden hours *	Burden hours per wave *	Average annual total burden
Wave 1 (Initial Email Invitation—NHTSA Form 1344R).	60	Contacted potential participant (read email).	2	1	60	2	20	
		Recruited participant (completed interview).	90	1	12	18		
Wave 2 (Reminder Email #1—NHTSA Form 1344R).	48	Contacted potential participant (read email).	2	1	48	2	20	
		Recruited participant (completed interview).	90	1	12	18		
Wave 3 (Reminder Email #2—NHTSA Form 1344R).	36	Contacted potential participant (read email).	2	1	36	2	20	
		Recruited participant (completed interview).	90	1	12	18		
Wave 4 (Reminder Email #3—NHTSA Form 1344R).	24	Contacted potential participant (read email).	2	1	24	1	19	
		Recruited participant (completed interview).	90	1	12	18		
Total							79	26.33

* Rounded up to the nearest hour.

TABLE 3—OVERALL ESTIMATED TOTAL BURDEN

Information collection component	Frequency	Number of respondents per assessment	Burden hours per collection	Average annual total (hours)
End User Feedback Survey	1	120	50	16.67
Structured Interviews	1	60	79	26.33
Total		180	129	43

Estimated Total Annual Burden Cost: Participation in this study is voluntary, and there are no costs to respondents beyond the time spent completing the end user feedback survey or structured interviews.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (i) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (ii) the accuracy of the Department's estimate of the burden of the proposed information collection; (iii) ways to enhance the quality, utility and clarity

of the information to be collected; and (iv) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2022–08151 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0033; Notice 2]

Mack Trucks Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Mack Trucks Inc. (Mack Trucks) has determined that certain model year (MY) 2016–2020 Mack heavy duty motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 101, *Controls and Displays.* Mack Trucks filed a noncompliance report dated October 9, 2019, and later amended the report on May 29, 2020. Mack Trucks subsequently petitioned NHTSA for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety on November 2, 2019, and later amended this petition on May 29, 2020, and July 9, 2020. This notice announces the grant of Mack Trucks' petition as amended.

FOR FURTHER INFORMATION CONTACT: Neil Dold, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), (202) 366–7352, *Neil.Dold@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Mack Trucks determined that certain MY 2016–2020 Mack heavy duty motor vehicles do not fully comply with the requirements of paragraph S5.2.1 of FMVSS No. 101, *Controls and Displays* (49 CFR 571.101). Mack Trucks filed a noncompliance report dated October 9, 2019, and later amended the report on May 29, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Mack Trucks subsequently petitioned NHTSA on November 2, 2019, and later amended the petition on May 29, 2020, and July 9, 2020, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Mack Trucks' petition was published with a 30-day public comment period, on September 18, 2020 in the **Federal Register** (85 FR 58423). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2020–0033.''

II. Vehicles Involved

Approximately 47,742 MY 2019–2020 Anthem, Pinnacle, and Granite model vehicles and MY 2016–2020 LR model vehicles manufactured between July 12, 2015, and October 3, 2019, are potentially involved.

III. Noncompliance

Mack Trucks explains that the noncompliance is that the subject vehicles are equipped with certain controls that are not properly labeled with the appropriate symbols or words as required by paragraph S5.2.1, Table 1 of FMVSS No. 101. Specifically, in the Anthem, Pinnacle, Granite, and LR vehicles there is no identifier for the heating and air conditioning fan control and the incorrect identifier was used for the position side marker control. In the LR vehicles the master lighting switch control is not identified with the required symbol.

IV. Rule Requirements

Paragraph S5.2.1 of FMVSS No. 101 includes the requirements relevant to this petition. Except for the Low Tire Pressure Telltale, each control, telltale, and indicator that is listed in column 1 of Table 1 or Table 2 must be identified by the symbol specified for it in column 2 or the word or abbreviation specified for it in column 3 of Table 1 or Table 2.

V. Summary of Mack Trucks' Petition

The following views and arguments presented in this section, ''V. Summary of Mack Trucks' Petition,'' are the views and arguments provided by Mack Trucks and do not reflect the views of the Agency. Mack Trucks describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Mack Trucks offers the following reasoning:

1. For the heating and air conditioning fan control, the requirement specified that the control must be labeled with the fan symbol or the word ''fan.'' The required symbol or the word ''fan'' is not on the control. The rotary control has numbers 0 to 4 and is located on the HVAC panel; therefore, it is obvious to the driver that the control is for the fan speed. The owner's manual shows the control and informs that the control is the fan speed. Operation of the vehicles requires a Commercial Driver's License (CDL); therefore, the driver will be a licensed professional driver.

2. For the position side marker, end-outline marker, or identification or clearance lamps control, the control must be labeled with the required symbol or the words ''Marker Lamps'' or ''MK Lps.'' The control uses a different symbol to identify the marker. The rotary control has a symbol that indicates that the position is for the parking lights. The position in the sequence makes it discernible to the driver. The owner's manual shows the control and informs that the pictured symbol is for the marker lamps. Operation of the vehicle requires a CDL; therefore, the driver will be a licensed professional.

3. For the Master Lighting Control, the control must be labeled with the identified symbol or the word ''lights.'' The control is not identified with the symbol or the word. The control is a three-position toggle switch and includes the low beam headlight symbol and the parking light symbol and, therefore, is discernible to the driver. The owner's manual includes information on the control and its purpose. Operation of the vehicles requires a CDL; therefore, the driver will be a licensed professional driver.

4. Mack Trucks views these noncompliances as inconsequential to the safe operation of the vehicle. Mack Trucks states that there are no customer complaints, field reports, warranty claims, or accidents associated with these noncompliances.

5. Class 7 & 8 vehicles require that the driver have CDL to operate the vehicle.

Mack Trucks concludes by again contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

Mack Trucks' complete petition and all supporting documents are available by logging onto the Federal Docket Management System (FDMS) website at: *https://www.regulations.gov* and by following the online search instructions to locate the docket number as listed in the title of this notice.

VI. Comment

NHTSA received one comment from the public. While the Agency takes great interest in the public's concerns and appreciates the commenter's feedback, the comment does not address the purpose of this particular petition.

VII. NHTSA's Analysis

NHTSA has evaluated the merits of the inconsequential noncompliance petition and supplemental materials submitted by Mack Trucks and has determined that this particular noncompliance is inconsequential to motor vehicle safety. Specifically, the Agency considered the following when making its decision:

1. Each of the noncompliances described in Mack Truck's petition involve deviations from the identification requirements in FMVSS No.101, specifically mislabeled controls. Mislabeling may affect a driver's recognition of a specific control, but it does not affect the function of a control. For each of the mislabeled controls described herein, the absence of a required label or use of an incorrect label does not otherwise affect FMVSS No. 101's identification and illumination requirements because other identifying labels are present for each subject control, which assist the driver in selecting the appropriate control.

2. Mack Trucks explained that the subject vehicles have a heating and air conditioning fan control that is missing the required label using the fan symbol or words specified in Table 1 of FMVSS No. 101. While the subject rotary control is missing the required label, it includes labeling of numbers 0 through 4 corresponding to increasing fan speed, and the rotary control is adjacent to and grouped with other labeled controls associated with heating and air conditioning functions on the same control panel; consequently, in this instance, it would be evident to a driver that the numbered rotary control is associated with fan speed for heating and air conditioning, and the noncompliance would not be consequential to safety.

3. Mack Trucks explained that the subject vehicles have marker lamp controls that are labeled with a symbol [1] that does not match the symbol specified in Table 1 of FMVSS No. 101, and that the symbol is still a lighting symbol rather than an arbitrary symbol. Each subject vehicle's marker lamp control is part of a master lighting control that includes multiple individually labeled positions as either a rotary control or three-position switch lever. For all subject vehicles except for the LR vehicles, the master lighting control is labeled with the master lighting switch label specified in Table 2 of FMVSS No. 101. The LR model vehicles are equipped with a master lighting toggle switch that is not labeled with the required symbol or word for identifying the master light control as specified in Table 2 of FMVSS No. 101.

For the Anthem, Pinnacle, and Granite model vehicles, the incorrect marker lamp control label (which is an internationally recognized parking light symbol, similar in nature to the marker light symbol) would not be enough for a driver to confuse the function of the control because it is part of the master lighting switch; the master lighting switch otherwise includes the master lighting switch label specified by the standard and other commonly used lighting symbols. Notably, FMVSS No. 101 permits omission of the marker lamp label when it is part of the master lighting switch.[2]

For the LR model vehicle, the master lighting switch is not labeled with master lighting switch label, and the position for the marker lamps is labeled with the same incorrect symbol for the marker lamps. Still, all symbols that appear on the master lighting switch (marker lamps and head lamps) are commonly recognizable as lighting control symbols. Consequently, the specific control implementations described in Mack Truck's petition and supplemental materials are unlikely to alter a driver's understanding of the lighting controls in a manner that would be consequential to safety.

4. As explained by Mack Trucks, the subject vehicles are trucks that may only be driven by a professional driver holding a commercial driver's license (CDL). NHTSA believes that the qualifications required to drive these subject vehicles further mitigates any remaining safety risk from the noncompliance.

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Mack Trucks has met its burden of persuasion that the subject FMVSS No. 101 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Mack Trucks' petition is hereby granted and Mack Trucks is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision on this petition only applies to the subject vehicles that Mack Trucks no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Mack Trucks notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–08228 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–59–P

[1] The symbol used by Mack Trucks described in the petition is a parking light symbol that is not recognized in FMVSS No. 101.

[2] The standard permits omission of a separate marker lamp identifier when the marker lamp control is included as part of the master lighting switch (see 49 CFR 571.101 Table 1, Note 8); however, the standard does not permit use of a marker lamp identifier (symbol or word) other than those specified in the standard.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0110; Notice 2]

Great Dane, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Great Dane, LLC (Great Dane) has determined that certain model year (MY) 2019 Great Dane Freedom Platform trailers do not comply with Federal Motor Vehicle Safety Standards (FMVSS) No. 223, *Rear Impact Guards,* and FMVSS No. 224, *Rear Impact Protection.* Great Dane filed a noncompliance report dated January 2, 2019, and subsequently petitioned NHTSA on January 2, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Great Dane's petition.

FOR FURTHER INFORMATION CONTACT: Natasha Iwegbu, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–2334.

SUPPLEMENTARY INFORMATION:

I. Overview

Great Dane has determined that certain MY 2019 Great Dane Freedom Platform trailers do not fully comply with paragraph S5.3 of FMVSS No. 223, *Rear Impact Guards* (49 CFR 571.223), and paragraph S5.1 of FMVSS No 224, *Rear Impact Protection* (49 CFR 571.224). Great Dane filed a noncompliance report dated January 2, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and

subsequently petitioned NHTSA on January 2, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Great Dane's petition was published with a 30-day public comment period, on November 7, 2019 in the **Federal Register** (84 FR 60145). One comment was received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2018–0110.''

II. Trailers Involved

Approximately 72 MY 2019 Great Dane Freedom Platform trailers, manufactured between July 10, 2018, and November 8, 2018, are potentially involved.

III. Noncompliance

Great Dane explained that the noncompliance is that the subject trailers were manufactured with a rear impact guard (RIG) that does not contain the certification plate as required by paragraphs S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224.

IV. Rule Requirements

Paragraphs S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224 include the requirements relevant to this petition. 49 CFR 571.223, S5.3 provides that each guard shall be permanently labeled with the information specified in paragraphs S5.3(a) through (c) of FMVSS No. 223. The information shall be in English and in letters that are at least 2.5 mm high. The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection and includes the following: (a) The guard manufacturer's name and address, (b) the statement: ''Manufactured in ___'' (inserting the month and year of guard manufacture), and (c) the letters ''DOT,'' constituting a certification by the guard manufacturer that the guard conforms to all requirements of this standard. 49 CFR 571.224, S5.1 requires that each vehicle shall be equipped with a rear impact guard certified as meeting FMVSS No. 223.

V. Summary of Great Dane's Petition

The following views and arguments presented in this section, ''V. Summary of Great Dane's Petition,'' are the views and arguments provided by Great Dane. They do not reflect the views of the Agency.

1. Great Dane believes that the lack of the impact guard certification plate is an inconsequential type of noncompliance as it relates to vehicle safety. The fact that the certification plate was not installed on the rear impact guard on this particular group of trailers does not make these trailers any less safe.

2. Great Dane stated that these rear impact guards as manufactured and installed by Great Dane, are compliant as required by the Federal Standard.

3. Great Dane stated that the subject trailers have affixed to them certification plates, certifying that the entire trailer, including the rear impact guard, meet and/or exceed all the Federal Motor Vehicle Safety Standards in effect, on the date of manufacture as indicated.

4. Great Dane stated that to meet the standards of FMVSS Nos. 223 and 224, it has never installed a third party produced rear impact guard on any of its trailers.

5. Great Dane stated that the incident that led to these trailers being produced without the plate attached was an isolated incident. It has since been investigated, resolved, and should not occur again in the future.

6. Great Dane believes that the extra certification plate required on the rear impact guard is redundant.

Great Dane concluded by contending that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. Public Comments

The Agency received one comment from the public. This comment was received from the Commercial Vehicle Safety Alliance (CVSA).[1] CVSA supports the granting of Great Dane's petition that the subject noncompliance is inconsequential as it relates to motor vehicle safety and ''agrees with Great Dane's assessment that a rear impact guard with a certification label, that otherwise meets the requirements outlined in FMVSS No. 223, is not any less safe than a rear impact guard with a label.'' In its comment, CVSA contends that because these certification labels ''frequently wear, fade or are removed during repair'' and ''motor carriers are unable to obtain new certification labels from the original trailer manufacturers because they can no longer guarantee that the rear impact guards meet the FMVSS manufacturing standard,'' the rear impact guard certification label requirements should be removed. CVSA goes on to give its views about the effects of the rear impact guard certification label requirements.

VII. NHTSA's Analysis

Rear impact guards for trailers reduce the risk to passenger vehicle occupants in crashes in which a passenger vehicle impacts the rear end of a trailer or semitrailer. RIGs need to be certified as meeting all applicable standards.

The principle of self-certification is the foundation of the method the National Traffic and Motor Vehicle Safety Act of 1966 establishes for regulated motor vehicles and motor vehicle equipment in the United States. Under 49 U.S.C. 30112(a), there is a general prohibition against manufacturing for sale, selling, offering for sale, introducing or delivering for introduction in interstate commerce, or importing into the United States any motor vehicle or item of motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard is in effect unless the vehicle or equipment both complies with the standard and is covered by a certification issued under section 30115.

Offering for sale products that fail to contain the manufacturer's certification violates this system, and therefore the consequences to safety are potentially significant. Furthermore, omitting all of the labeling from an item of regulated motor vehicle equipment may have other safety consequences. NHTSA has a long-standing position that removing required labeling reduces the safety effectiveness of items of motor vehicle equipment. The labeling is an indication to consumers, including secondhand purchasers, that the item of equipment provides a minimum level of safety protection.[2]

NHTSA received a comment from CVSA in support of Great Dane's position, and in support of removing the RIG certification label requirements altogether. NHTSA finds the argument that these labels ''frequently wear, fade, or are removed during repair'' to be a

[1] *See* Docket Number ''NHTSA–2018–0110–0003.''

[2] *https://isearch.nhtsa.gov/files/08-002439as.htm.*

complaint of inconvenience, not a complaint of substance. Furthermore, to the extent that CVSA states that certification labels are removed during repair and not replaced, such practice may violate 49 U.S.C. 30122(b), which prohibits manufacturers, distributors, dealers, or motor vehicle repair businesses from knowingly making inoperative any part of a device or element of design installed on motor vehicle equipment in compliance with an applicable motor vehicle safety standard. NHTSA has stated that removal of markings and information required by an applicable FMVSS would take such item out of compliance, and therefore would be a violation of 49 U.S.C. 30122(b).

The removal of these labels may further endanger the motoring public in a rear end collision with a trailer that has had a substandard repair, or cannot be properly inspected for safety and compliance. For example, once a trailer is in-service, the owner of the trailer may choose to replace or repair the RIG at any time and may source a replacement RIG from any number of places, over which the original certifying entity has no control. If a RIG were to be involved in a crash or if it were to fail an inspection, it may be difficult to know who the certifying entity for a RIG was if there were no permanent labeling on it. This would inhibit the ability of the investigators to determine if there was a potential safety trend involved with the subject equipment item. This example demonstrates the need for critical safety equipment, such as the rear impact guard, to be labeled permanently with the required information.

NHTSA does not agree with Great Dane's argument that the RIG certification plate is redundant to the trailer certification plate, nor does it agree that the lack of date of manufacture is inconsequential. Further, Great Dane argues that all the trailers in question were fitted with Great Dane RIGs and no third-party RIGs were used, therefore the trailer certification plate is sufficient to symbolize certification for the RIG. However, in the event of a rear-end crash, the RIG would likely be replaced, while the trailer may remain unaffected. In this instance, a replacement RIG would no longer share the certification or date of manufacture stated on the trailer certification plate.

Furthermore, while NHTSA regulates new motor vehicles and equipment, the importance of the requirements does not end when the vehicles or equipment are sold. A purchaser of such vehicles would likely need to know if the manufacturer certified the RIG when the vehicle was new. This is one reason why the requirement is for the label to be permanent. Therefore, lack of a certification plate could have a safety implication throughout the life of the product.

A RIG certification plate is required by FMVSS No. 223 as the Rear Impact Guard is a part of trailer, much in the same way an independent DOT certification, as indicated by the symbol DOT, is required on regulated vehicle lamps, wheels, tires, and various other regulated parts of a vehicle. In the same way, the presence of a passenger vehicle certification label does not obviate the marking requirements of the aforementioned vehicle equipment. Similarly, a trailer certification plate does not obviate the requirement for a RIG certification plate.

After reviewing the petition of inconsequentiality from Great Dane, NHTSA has determined that this particular noncompliance is not inconsequential to motor vehicle safety, therefore this petition is denied.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Great Dane has not met its burden of persuasion that the subject FMVSS No. 223 and FMVSS No. 224 noncompliance is inconsequential to motor vehicle safety. Accordingly, Great Dane's petition is hereby denied and Great Dane is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022–08226 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0117; Notice 2]

Sumitomo Rubber Industries, Ltd., and Sumitomo Rubber North America, Inc., Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Sumitomo Rubber Industries, Ltd. and Sumitomo Rubber North America, Inc. (collectively, ''Sumitomo'') have determined that certain Sumitomo and Falken truck tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles.* Sumitomo filed a noncompliance report dated November 12, 2020. Sumitomo subsequently petitioned NHTSA on December 4, 2020, and later amended its petition on April 8, 2021, and July 9, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the denial of Sumitomo's petition.

FOR FURTHER INFORMATION CONTACT: Jayton Lindley, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (325) 655–0547.

SUPPLEMENTARY INFORMATION:

I. Overview

Sumitomo has determined that certain Sumitomo and Falken truck tires do not fully comply with the requirements of paragraph S6.1.2(a) of FMVSS No. 119, *New Pneumatic Tires for Motor Vehicles with a GVWR of More Than 4,536 Kilograms (10,000 Pounds) and Motorcycles* (49 CFR 571.119). Sumitomo filed a noncompliance report dated November 12, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Sumitomo subsequently petitioned NHTSA on December 4, 2020, and later amended its petition on April 8, 2021, and July 9, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Sumitomo's petition was published with a 30-day public comment period, on October 12, 2021, in the **Federal Register** (86 FR 56750). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2020–0117.''

II. Tires Involved

Approximately 8,275 of the following Sumitomo and Falken truck and bus radial tires, manufactured between January 26, 2020, and June 2, 2020, are potentially involved:

- Sumitomo ST900 11R24.5 16PR
- Sumitomo ST528 11R24.5 16PR
- Sumitomo ST528 11R22.5 16PR
- Sumitomo ST710SE 11R22.5 144/142L
- Sumitomo ST710SE 285/75R24.5 144/141L
- Sumitomo ST710SE 11R24.5 146/143L
- Sumitomo ST788+SE 285/75R24.5 144/141L
- Sumitomo ST709SE 285/75R24.5 144/141L
- Sumitomo ST709SE 11R24.5 149/146L
- Sumitomo ST778+SE 11R24.5 149/146L
- Sumitomo ST788SE 285/75R24.5 147/144L
- Sumitomo ST948SE 11R24.5 149/146L
- Sumitomo ST908N 11R22.5 146/144L
- Sumitomo ST788SE 11R22.5 146/143L
- Sumitomo ST788SE 11R24.5 149/146L
- Sumitomo ST719SE 11R22.5 146/142L
- Sumitomo ST719SE 11R24.5 149/146L
- Sumitomo ST719SE 285/75R24.5 147/144L
- Sumitomo ST948SE 285/75R24.5 144/141L
- Sumitomo ST938 11R24.5 149/146L
- Falken RI130EC 11R22.5 146/143L
- Falken RI130EC 11R24.5 149/146L
- Falken GI388 11R24.5 149/146K
- Falken RI150EC 11R22.5 146/143L
- Falken RI130EC 285/75R24.5 147/144L
- Falken RI151S 315/80R22.5 156/150L

III. Noncompliance

Sumitomo explains that the noncompliance is that the subject tires may show visual evidence of bead separation near the edge of the rim flange when tested in accordance with paragraph S7.2 of FMVSS No. 119, and therefore, do not fully meet the requirements specified in paragraph S6.1.2(a) of FMVSS No. 119. Specifically, the bead separation is due to the heat-induced expansion caused by the misplacement of the joint tape and a change in the tape's composition.

IV. Rule Requirements

Paragraph S6.1.2(a) of FMVSS No. 119 includes the requirements relevant to this petition. When tested in accordance with the procedures of S7.2, a tire shall exhibit no visual evidence of tread, sidewall, ply, cord, innerliner, or bead separation, chunking, broken cords, cracking, or open splices.

V. Summary of Sumitomo's Petition

The following views and arguments presented in this section, ''V. Summary of Sumitomo's Petition,'' are the views and arguments provided by Sumitomo and do not reflect the views of the Agency. Sumitomo describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Sumitomo begins by citing several decisions NHTSA has published regarding its considerations in evaluating inconsequential noncompliance petitions. Sumitomo quotes NHTSA as saying that ''the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance'' [1] and that NHTSA also considers the ''specific facts before it in a particular petition'' [2] and ''whether an occupant who is affected by the noncompliance is *likely to be exposed to a significantly greater risk than an occupant in a compliant vehicle* [emphasis added by Sumitomo].'' [3]

Sumitomo continues by explaining the definition of ''bead separation'' [4] and describing the history of FMVSS No. 119 S6.1.2 and the visual inspection criteria. Sumitomo states that the criteria NHTSA uses were based on Society of Automotive Engineers (SAE) recommended practices [5] and in an amendment [6] to FMVSS No. 109, NHTSA clarified that it considers visual evidence of tread, sidewall, ply, cord, innerliner, or bead separation, chunking, broken cords, cracking or open splices ''to be evidence of structural weakness which may cause tire failure.'' [7] According to Sumitomo, NHTSA ''did not present any further explanation or evidence to support the notion that these characteristics, standing alone, are evidence of structural weakness that could lead to a tire failure'' and that the evidence does not alone prove that the tire has ''a structural weakness that will cause it to fail'' or be consequential to motor vehicle safety.

Sumitomo then asserts that the structural integrity of the subject tires is unaffected by the deformation. Sumitomo specifies that the misplaced joint tape and ''a change in the tape's composition'' altered the adhesiveness of the rubber which results in the subject noncompliance. Therefore, Sumitomo claims that since ''joint tape is not a structural component of the tire'' the subject noncompliance does not indicate ''structural weakness'' nor does it impact ''the integrity of the adjacent components.

Sumitomo then outlines the manufacturing of the subject tires, explaining that the joint tape is an adhesive that joins the inner liner ends and then the other components are added and the tire ''undergoes vulcanization (applying heat and pressure for a set period) to fully adhere the components and complete the tire forming process.'' Sumitomo explains that the ''lack of adhesion between the joint tape and components'' can cause the ''percentage of butyl rubber content'' to be increased in the bead area which can result in the material becoming more vulnerable to heat expansion. This condition, combined with the lack of adhesion in the joint tape, could lead to the small area becoming more ''susceptible to separations.'' According to Sumitomo, although this condition exists ''[t]he steel filler cords next to this area contain the deformation and prevents it from propagating.'' Sumitomo provides photographs and illustrations in its petition to show that ''the deformation occurs outside the structural components of the tire.''

To further support its claims, Sumitomo submits data from several endurance tests, the details of which can be found in Sumitomo's petition and the supplements to its petition.[8] Sumitomo states that these tests resulted in the tires developing the subject noncompliance ''as expected'' and that when tested under the most ''extreme'' circumstances the subject tires ''developed a surface crack'' in the same area. Sumitomo claims that ''even in these unrealistically severe conditions, the tire did not develop air leaks or otherwise structurally fail,'' leading Sumitomo to conclude that the ''testing demonstrates that the deformations that may form due to the misplaced joint tape are not indicative of a structural weakness and will not cause air loss.''

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[1] *See* General Motors, LLC, Denial of Petition for Decision of Inconsequential Noncompliance, 85 FR 71713 (Nov. 10, 2020); *see also* General Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance, 69 FR 19897 (Apr. 14, 2004).

[2] *See* BMW of North America, LLC; Jaguar Land Rover North America, LLC; and Autoliv, Inc.; Decisions of Petitions for Inconsequential Noncompliance, 84 FR 19994 (May 7, 2019) (citing General Motors, LLC., Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (Dec. 20, 2016)).

[3] *See* Cosco Inc.; Denial of Application of Inconsequential Noncompliance, 64 FR 29408 (Jun. 1, 1999).

[4] *See* Initial Final Rule for FMVSS No. 109, 32 FR 15792 (Nov. 16, 1967).

[5] *See* SAE Recommended Practice J918b, ''Passenger Car Tire Performance Requirements and Test Procedures,'' December 1966. 32 FR 10812 (Jul. 22, 1967) (the 1967 Amended NPRM for FMVSS No. 109).

[6] *See* 37 FR 19381 (Sep. 20, 1972) (1972 NPRM Amending FMVSS No. 109).

[7] *Id.*

[8] *See https://www.regulations.gov/document/NHTSA-2020-0117-0001.*

Sumitomo adds that it is not aware of any tire failures, air loss, crashes, or injuries related to this issue.

Sumitomo concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

A. General Principles

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in an FMVSS—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[9]

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[10] In general, NHTSA does not consider the absence of complaints or injuries when determining if a noncompliance is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [11] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [12]

NHTSA has evaluated the merits of the inconsequential noncompliance petition submitted by Sumitomo; however, the Agency does not agree that the subject noncompliance is inconsequential to motor vehicle safety.

B. NHTSA's Response to Sumitomo's Petition

The visual inspection requirements of the tire safety standards exist to identify defects or structural weaknesses that can result in immediate or premature tire failure. NHTSA considered several factors specific to this petition and disagrees that the visible separation described is inconsequential to motor vehicle safety.

Structural Integrity of the Tire

Sumitomo states that the visible separation is caused by both ''a misplacement of joint tape'' and ''a change in the tape's composition'' that ''altered the rubber's adhesiveness.'' The visible separation near the bead area appears after endurance testing, or when the tire is put into service. The visible separation appears as a small bulge near the bead area on the tire, and the separation is apparent once the tire is cut for inspection.

NHTSA reviewed the tests performed by the petitioner to assess the effects of the noncompliance on the structural integrity of the tire, and on which they based their belief that the noncompliance is inconsequential to safety. These tests placed the tires under various loading and inflation conditions for long durations, and the tires maintained both inflation and structural integrity in each of the scenarios tested. While meaningful, these results have limitations in assessing the safety related consequences of the noncompliant tires. The limitations identified by the Agency are:

(a) *Sample Size and Selection:* Of the 10 tires tested by Sumitomo, only one tire was from the affected population. The remaining nine tires were produced for the testing with replicated noncompliances based on the manufacturer's determination of the root cause of the noncompliance. Further, a total of 11 different tire size, speed rating, and load capacity/ply rating combinations are represented in the affected population. The tires that were tested represented only 6 different combinations of tire size, speed rating, and load capacity/ply rating. Overall, the tested population did not sufficiently represent the affected population in either the quantity of tires tested or the tire size, speed, and load ratings.

(b) *Tire Aging:* As tires age, they can become more brittle. As the rubber becomes more brittle the subject defect may grow and cause tire failure or air loss. None of the testing performed by Sumitomo addressed this failure mode.

(c) *Environmental Conditions & External Damage:* During real world use, the tires will experience harsh environmental conditions beyond what was simulated during testing. Additionally, these tires will be subjected to damage in routine service such as curb impacts or scrubbing. Damage of this type may tear the bulge and create additional structural problems that would not occur in a tire without this defect.

(d) *Sufficiency of Test Conditions:* The Agency appreciates the attempts made by Sumitomo to determine if the subject defect in the tires and resulting noncompliance is inconsequential to motor vehicle safety, however it is not possible for the petitioner or the Agency to know with certainty if the testing performed is sufficient without conducting a much more thorough research project. The Agency believes that the results of these limited testing scenarios are not sufficient to determine that the noncompliance does not increase risk to either the vehicle operators or the public at large.

The FMVSS sets the minimum performance standards that are intended to ensure a minimum level of safety and the Agency does not agree the testing completed by Sumitomo is sufficient to ensure that the noncompliance is inconsequential to safety.

Other Safety Concerns

NHTSA has also identified other potential safety concerns. If the noncompliant tires containing this separation were to be put into service, there is an increased risk for the separation to expand beyond what has been demonstrated by the petitioner, potentially resulting in tire failure. Tire failures not only impact the vehicle operator but may also impact other vehicles who share the road. Additionally, commercial tire debris is a common cause of both accidents and damage that will affect other vehicles and highway safety overall.

Furthermore, downstream entities involved in tire repair and retreading operations may be unable to safely use these tires. Commercial vehicle tires are commonly re-treaded, and the long-term effects of this noncompliance are unknown. This defect may potentially result in a weakened tire carcass that will prematurely fail. Sumitomo did not perform any testing that might address this concern, nor did they make any statements about potential effects on the re-tread process.

NHTSA's Decision: In consideration of the foregoing, NHTSA has decided that Sumitomo has not met its burden of proof that the subject FMVSS No. 119 noncompliance is inconsequential to motor vehicle safety. Accordingly, Sumitomo's petition is hereby denied and Sumitomo is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

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[9] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[10] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[11] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[12] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Anne L. Collins

Associate Administrator for Enforcement.

[FR Doc. 2022–08227 Filed 4–15–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. Additionally, OFAC is publishing updates to the identifying information of one person currently included on the SDN List. All property and interests in property subject to U.S. jurisdiction of this person remain blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On April 6, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked and also identified the following property as blocked under the relevant sanctions authority listed below.

BILLING CODE 4810–AL–P

Individuals

1. VAINO, Anton Eduardovich (Cyrillic: ВАЙНО, Антон Эдуардович), Russia; DOB 17 Feb 1972; POB Tallinn, Estonia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of Executive Order 14024 of April 15, 2021, "Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation," 86 FR 20249 (Apr. 15, 2021) (E.O. 14024) for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

2. CHAYKA, Yuriy Yakovlevich (Cyrillic: ЧАЙКА, Юрий Яковлевич) (a.k.a. CHAIKA, Yuri; a.k.a. CHAIKA, Yury), Russia; DOB 21 May 1951; POB Nikolayevsk-on-Amur, Khabarovsk Territory, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

3. CHUYCHENKO, Konstantin Anatolyevich (Cyrillic: ЧУЙЧЕНКО, Константин Анатольевич) (a.k.a. CHUICHENKO, Konstantin Anatolyevich), Russia; DOB 12 Jul 1965; POB Lipetsk, Lipetsk Region, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

4. GUTSAN, Aleksandr Vladimirovich (Cyrillic: ГУЦАН, Александр Владимирович) (a.k.a. GUTSAN, Alexander), Russia; DOB 06 Jul 1960; POB St. Petersburg, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

5. KOMAROV, Igor Anatolyevich (Cyrillic: КОМАРОВ, Игорь Анатольевич) (a.k.a. KOMAROV, Igor Anatolievich), Russia; DOB 25 May 1964; POB Engels, Saratov Region, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

6. KOLOKOLTSEV, Vladimir Alexandrovich (Cyrillic: КОЛОКОЛТСЕВ, Владимир Александрович), Moscow, Russia; DOB 11 May 1961; POB Nizhny Lomov, Penza Region, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

7. MATVIYENKO, Valentina Ivanovna (Cyrillic: МАТВИЕНКО, Валентина Ивановна) (a.k.a. MATVIENKO, Valentina), Moscow, Russia; DOB 07 Apr 1949; POB Shepetovka, Khmelnitsky, Ukraine; nationality Russia; Gender Female (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

8. MEDVEDEV, Dmitry Anatolievich (Cyrillic: МЕДВЕДЕВ, Дмитрий Анатольевич) (a.k.a. MEDVEDEV, Dmitry), Moscow, Russia; DOB 14 Sep 1965; POB St. Petersburg, Russia, nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

9. MISHUSTIN, Mikhail Vladimirovich (Cyrillic: МИШУСТИН, Михаил Владимирович) (a.k.a. MISHUSTIN, Mikhail), Moscow, Russia; DOB 03 Mar 1966; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

10. NARYSHKIN, Sergey Yevgenyevich (Cyrillic: НАРЫШКИН, Сергей Евгениевич) (a.k.a. NARYSHKIN, Sergei), Moscow, Russia; DOB 27 Oct 1954;

POB Saint Petersburg, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

11. BULAVIN, Vladimir Ivanovich, Russia; DOB 11 Feb 1953; POB Lipetsk Oblast, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

12. TRUTNEV, Yuriy Petrovich (Cyrillic: ТРУТНЕВ, Юрий Петрович) (a.k.a. TRUTNEV, Yury), Russia; DOB 01 Mar 1956; POB Perm, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

13. YAKUSHEV, Vladimir Vladimirovich (Cyrillic: ЯКУШЕВ, Владимир Владимирович), Russia; DOB 14 Jun 1968; POB Neftekamsk, Bashkortostan, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

14. KRASNOV, Igor Victorovich (Cyrillic: КРАСНОВ, Игорь Викторович) (a.k.a. KRASNOV, Igor (Cyrillic: КРАСНОВ, Игорь); a.k.a. KRASNOV, Igor Viktorovich), 6-3 Michurinsky Prospekt, Moscow, Russia; DOB 24 Dec 1975; POB Arkhangelsk, Russia; nationality Russia; Gender Male (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

15. NURGALIEV, Rashid Gumarovich (Cyrillic: НУРГАЛИЕВ, Рашид Гумарович) (a.k.a. NURGALIYEV, Rashid), Russia; DOB 08 Oct 1956; POB Zhetiqara, Kazakhstan; alt. POB Zhetikara, Kazakhstan; alt. POB Dzhetigara, Kazakhstan; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

16. SERYSHEV, Anatoliy Anatolievich (Cyrillic: СЕРЫШЕВ, Анатолий Анатольевич) (a.k.a. SERYSHEV, Anatoly), Russia; DOB 19 Jul 1965; POB

Koblyakovo, Bratsk District, Irkutsk Oblast, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

17. SOBYANIN, Sergey Semyonovich (Cyrillic: СОБЯНИН, Сергей Семенович) (a.k.a. SOBYANIN, Sergei), Moscow, Russia; DOB 21 Jun 1958; POB Nyaksimvol, Beryozovo District, Tyumen Oblast, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

18. BEGLOV, Aleksandr Dmitrievich (Cyrillic: БЕГЛОВ, Александр Дмитриевич) (a.k.a. BEGLOV, Alexander), St. Petersburg, Russia; Moscow, Russia; DOB 19 May 1956; POB Baku, Azerbaijan; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

19. SHCHEGOLEV, Igor Olegovich (a.k.a. SHCHYOGOLEV, Igor Olegovich), Russia; DOB 10 Nov 1965; POB Vinnytsia, Ukraine; nationality Russia; Gender Male; Aide to the President of the Russian Federation (individual) [UKRAINE-EO13661] [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

20. SILUANOV, Anton Germanovich (Cyrillic: СИЛУАНОВ, Антон Германович), Russia; DOB 12 Apr 1963; POB Moscow, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

21. USTINOV, Vladimir Vasilyevich (Cyrillic: УСТИНОВ, Владимир Васильевич), Russia; DOB 25 Feb 1953; POB Nikolayevsk-on-Amur, Russia; nationality Russia; Gender Male (individual) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(iii)(A) of E.O. 14024 for being or having been a leader, official, senior executive officer, or member of the board of directors of the Government of the Russian Federation.

22. LAVROVA, Maria Aleksandrovna (Cyrillic: ЛАВРОВА, Мария Александровна), Russia; DOB 04 Apr 1950; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Sergei Lavrov, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

23. VINOKUROVA, Yekaterina Sergeyevna (Cyrillic: ВИНОКУРОВА, Екатерина Сергеевна) (a.k.a. LAVROVA, Yekaterina Sergeyevna (Cyrillic: ЛАВРОВА, Екатерина Сергеевна)), Russia; DOB 03 Apr 1983; POB New York, United States; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Sergei Lavrov, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

24. TIKHONOVA, Katerina Vladimirovna (Cyrillic: ТИХОНОВА, Катерина Владимировна) (a.k.a. PUTINA, Yekaterina (Cyrillic: ПУТИНА, Екатерина); f.k.a. SHAMALOVA, Ekaterina Vladimirovna; a.k.a. TIKHONOVA, Katerina (Cyrillic: ТИХОНОВА, Катерина)), Moscow, Russia; DOB 31 Aug 1986; POB Dresden, Germany; nationality Russia; Gender Female; Tax ID No. 503227394158 (Russia) (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Vladimir Vladimirovich Putin, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

25. VORONTSOVA, Maria Vladimirovna (Cyrillic: ВОРОНЦОВА, Мария Владимировна) (a.k.a. FAASSEN, Maria Vladimirovna; a.k.a. PUTINA, Maria (Cyrillic: ПУТИНА, Мария); a.k.a. VORONTSOVA, Mariya Vladimirovna), Russia; DOB 28 Apr 1985; POB Leningrad, Russia; nationality Russia; Gender Female (individual) [RUSSIA-EO14024].

    Designated pursuant to section 1(a)(v) of E.O. 14024 for being a spouse or adult child of Vladimir Vladimirovich Putin, a person whose property and interests in property are blocked pursuant to section 1(a)(ii) or (iii) of E.O. 14024.

Entities

1. JOINT STOCK COMPANY ALFA-BANK (Cyrillic: АКЦИОНЕРНОЕ ОБЩЕСТВО АЛЬФА-БАНК) (a.k.a. ALFA-BANK; a.k.a. AO ALFA-BANK (Cyrillic: АО АЛЬФА-БАНК); a.k.a. JSC ALFA-BANK; f.k.a. OPEN JOINT STOCK COMPANY ALFA-BANK), Kalanchevskaya Street 27, Moscow 107078, Russia (Cyrillic: Ул. Каланчевская, Д.27, Город москва 107078, Russia); 27, Kalanchyovskaya Ul., Moscow 107078, Russia; SWIFT/BIC ALFARUMM; Website alfabank.ru; alt. Website alfabank.com; BIK (RU) 044525593; Organization Established Date 1990; Target Type Financial Institution; Executive Order 14024 Directive Information - For more information

on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7728168971 (Russia); Registration Number 1027700067328 (Russia) [RUSSIA-EO14024].

Designated pursuant to section 1(a)(i) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy.

2. ALFA CAPITAL MARKETS LTD, Elenion Building, Themistokli Dervi 5, Nicosia 1066, Cyprus; Organization Established Date 06 Dec 2019; Registration Number C404988 (Cyprus) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY ALFA-BANK).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Alfa-Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

3. ALFA-DIRECT (a.k.a. ALFA-DIRECT SERVICE LLC; a.k.a. THE SOCIETY WITH LIMITED AUTHORITY ALFA DIRECT SERVICE), ul. Kalanchevskaya d. 27, Moscow 107078, Russia; Organization Established Date 13 Jan 2000; Tax ID No. 7728308080 (Russia); Registration Number 1037728063515 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY ALFA-BANK).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Alfa-Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

4. ALFA-FOREX LLC (a.k.a. "ALFA-FOREKS"), Ul. Mashi Poryvaevoi D. 7, Str. 1, Floor 1, Moscow 107078, Russia; Organization Established Date 30 Jun 2016; Tax ID No. 7708294216 (Russia); Registration Number 1167746614947 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY ALFA-BANK).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Alfa-Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

5. ALFA-LIZING OOO (a.k.a. ALFA-LEASING LLC; a.k.a. ALFA-LIZING), ul. Bolshaya Pereyaslavskaya d. 46, k.2, of 1, Moscow 129110, Russia; Organization Established Date 16 Mar 1998; Tax ID No. 7728169439 (Russia); Registration Number 1027739540400 (Russia) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY ALFA-BANK).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Alfa-Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

6. AMSTERDAM TRADE BANK NV, Strawinskylaan 1939, Amsterdam 1077 XX, Netherlands; SWIFT/BIC ATBANL2A; Website www.amsterdamtradebank.com; Organization Established Date 1994; Registration Number 33260432 (Netherlands) [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY ALFA-BANK).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Alfa-Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

7. SUBSIDIARY BANK ALFA-BANK JSC (a.k.a. JSC SB ALFA BANK), Masanchy Street 57a, Almaty 050012, Kazakhstan; SWIFT/BIC ALFAKZKA; Website www.alfabank.kz; Organization Established Date 1994 [RUSSIA-EO14024] (Linked To: JOINT STOCK COMPANY ALFA-BANK).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Joint Stock Company Alfa-Bank, a person whose property and interests in property are blocked pursuant to E.O. 14024.

8. PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA (Cyrillic: ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО СБЕРБАНК РОССИИ) (f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN FEDERATION; f.k.a. JOINT STOCK COMMERCIAL SAVINGS BANK OF THE RUSSIAN SOVIET FEDERATIVE SOCIALIST REPUBLIC; f.k.a. OJSC SBERBANK OF RUSSIA; f.k.a. OPEN JOINT STOCK COMPANY SBERBANK OF RUSSIA; f.k.a. OTKRYTOE AKTSIONERNOE OBSHCHESTVO SBERBANK ROSSII; a.k.a. PJSC SBERBANK (Cyrillic: ПАО СБЕРБАНК); f.k.a. SBERBANK OF RSFSR; a.k.a. SBERBANK OF RUSSIA; a.k.a. SBERBANK ROSSII; f.k.a. SBERBANK ROSSII OAO), 19 ul. Vavilova, Moscow 117312, Russia (Cyrillic: ул. Вавилова, д. 19, Москва 117312, Russia); SWIFT/BIC SABRRUMM; Website www.sberbank.ru; alt. Website www.sberbank.com; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 7707083893 (Russia); Registration Number 1027700132195 (Russia);

For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024].

Designated pursuant to sections 1(a)(i) and 1(a)(vii) of E.O. 14024 for operating or having operated in the financial services sector of the Russian Federation economy and for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

9. ARIMERO HOLDING LIMITED, Agiou Andreou, 332, Partician Chambers, Limassol 3035, Cyprus; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration Number C146742 (Cyprus) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

10. AUCTION LIMITED LIABILITY COMPANY (a.k.a. AUKCION LIMITED LIABILITY COMPANY; a.k.a. AUKTSION OOO; a.k.a. LLC AUKCION; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU AUKTSION), d.14 shosse Entuziastov, Moscow 111024, Russia; Room 12, room IB, ground floor, 32 Leninsky Ave, Moscow, Russia; Website www.aukcion-sbrf.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Registration ID 1027700256297 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

11. BANKRUPTCY TECHNOLOGY CENTER LIMITED LIABILITY COMPANY (a.k.a. TSENTR TEKHNOLOGII BANKROTSTVA; a.k.a. "BTC LLC"), 19 Vavilova St., Moscow 117997, Russia; Tax ID No. 7736303529 (Russia); Registration Number 1177746502944 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

12. BARUS LIMITED LIABILITY COMPANY (a.k.a. BARUS; a.k.a. OOO BARUS), 32 Leninsky Prospekt, Floor 1, Office IB, Room 1, Moscow 119334, Russia; Tax ID No. 7736324991 (Russia); Registration Number 1197746639860 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

13. IKS JOINT STOCK COMPANY (a.k.a. AKTSIONERNOE OBSHCHESTVO SPETSIALIZIROVANNYI ZASTROISHCHIK IKS; a.k.a. "AO SZ IKS"; a.k.a. "IKS JSC"), 33 Oktyabrskaya St., Nizhny Novgorod 603005, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 5263023906 (Russia); Registration Number 1025203020424 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

14. INSURANCE COMPANY SBERBANK INSURANCE LIMITED LIABILITY COMPANY (a.k.a. LLC INSURANCE COMPANY SBERBANK INSURANCE; f.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRAKHOVAYA KOMPANIYA SBERBANK OBSHCHEE STRAKHOVANIE; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRAKHOVAYA KOMPANIYA SBERBANK STRAKHOVANIE; a.k.a. SBERBANK INSURANCE COMPANY LTD; a.k.a. SBERBANK INSURANCE IC LLC; a.k.a. SBERBANK STRAHOVANIE OOO SK; a.k.a. SK SBERBANK STRAHOVANIE LLC; a.k.a. STRAKHOVAYA KOMPANIYA SBERBANK STRAKHOVANIE), 42 Bolshaya Yakimanka St., b. 1-2, office 209, Moscow 119049, Russia; 7 ul. Pavlovskaya, Moscow, Russia; 3 Poklonnaya Street, building 1, floor 1, office 3, Moscow 121170, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1147746683479 (Russia); Tax ID No. 7706810747 (Russia); For more information on directives, please visit the following link:

http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

15. INSURANCE COMPANY SBERBANK LIFE INSURANCE LIMITED LIABILITY COMPANY (a.k.a. LIMITED LIABILITY COMPANY INSURANCE COMPANY SBERBANK INSURANCE; a.k.a. SBERBANK LIFE INSURANCE IC LLC), 3 Poklonnaya St., Building 1, Moscow 121170, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7744002123 (Russia); Registration Number 1037700051146 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

16. JOINT STOCK COMPANY BUSINESS ENVIRONMENT (a.k.a. DELOVAYA SREDA JSC), 19 Vavilova St., Moscow 117997, Russia; Tax ID No. 7736641983 (Russia); Registration Number 1127746271355 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

17. JOINT STOCK COMPANY LOYALTY PROGRAMS CENTER (a.k.a. CENTRE OF LOYALTY PROGRAMMES; a.k.a. LPC JSC), 3 Poklonnaya St., floor 3, office 120, Moscow 121170, Russia; Tax ID No. 7702770003 (Russia); Registration Number 1117746689840 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

18. JOINT STOCK COMPANY RASCHETNIYE RESHENIYA (a.k.a. JSC RASCHETNIYE RESHENIYA; a.k.a. LIMITED LIABILITY COMPANY

NON-BANK CREDIT ORGANIZATION SETTLEMENT SOLUTIONS; a.k.a. "JSC SETTLEMENT SOLUTIONS"), Room XLIV, 11th floor, 118/1 Varshavskoye Shosse, Moscow 117587, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7727718421 (Russia); Registration Number 1107746390949 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

19. JOINT STOCK COMPANY SBERBANK (a.k.a. AKTSIONERNE TOVARYSTVO SBERBANK; a.k.a. JSC SBERBANK; a.k.a. JSC SBERBANK OF RUSSIA; a.k.a. PUBLICHNE AKTSIONERNE TOVARYSTVO DOCHIRNII BANK SBERBANKU ROSII; f.k.a. SBERBANK OF RUSSIA SUBSIDIARY BANK PRIVATE JOINT STOCK COMPANY; a.k.a. SBERBANK OF RUSSIA SUBSIDIARY BANK PUBLIC JOINT STOCK COMPANY; a.k.a. SUBSIDIARY BANK SBERBANK OF RUSSIA PUBLIC JOINT STOCK COMPANY), 46 Volodymyrska street, Kyiv 01601, Ukraine; 46 Vladimirskaya St, Kyiv 01601, Ukraine; SWIFT/BIC SABRUAUK; Website www.sberbank.ua; alt. Website sbrf.com.ua; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 25959784 (Ukraine); Tax ID No. 259597826652 (Ukraine); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

20. JOINT STOCK COMPANY SBERBANK AUTOMATED TRADE SYSTEM (a.k.a. JOINT STOCK COMPANY SBERBANK-AUTOMATED SYSTEM FOR TRADING; a.k.a. JSC SBERBANK-AUTOMATED SYSTEM FOR TRADING; a.k.a. SBERBANK-AST JSC; a.k.a. SBERBANK-AST ZAO; a.k.a. SBERBANK-AUTOMATED TRADING SYSTEM CLOSED JOINT STOCK COMPANY; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO SBERBANK AVTOMATIZIROVANNAYA SISTEMA TORGOV), d. 24 str. 2 ul. Novoslobodskaya, Moscow 127055, Russia; 12 B. Savvinsky Lane, building 9,

floor 1, office 1, room 1, Moscow 119435, Russia; Website www.sberbank-ast.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1027707000441 (Russia); Tax ID No. 7707308480 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

21. JOINT STOCK COMPANY SBERBANK LEASING (a.k.a. CJSC SBERBANK LEASING; f.k.a. RUSSKO-GERMANSKAYA LIZINGOVAYA KOMPANIYA ZAO; a.k.a. SBERBANK LEASING JSC; a.k.a. SBERBANK LEASING ZAO; a.k.a. SBERBANK LIZING ZAKRYTOE AKTSIONERNOE OBSHCHESTVO), Novoivanovskoe workers settlement, Odintsovo, Moscow Region 143026, Russia; 6 Vorobievskoe shosse, Moscow 119285, Russia; Website www.sberleasing.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1027739000728 (Russia); Tax ID No. 7707009586 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

22. JOINT STOCK COMPANY SBERBANK PRIVATE PENSION FUND (a.k.a. CJSC NON-STATE PENSION FUND OF SBERBANK; f.k.a. NEGOSUDARSTVENNY PENSIONNY FOND SBERBANKA; a.k.a. NPF SBERBANKA ZAO; a.k.a. SBERBANK PPF JSC; a.k.a. SBERBANK PRIVATE PENSION FUND CLOSED JOINT STOCK COMPANY; a.k.a. ZAKRYTOE AKTSIONERNOE OBSHCHESTVO NEGOSUDARSTVENNY PENSIONNY FOND SBERBANKA), d. 31 G ul. Shabolovka, Moscow 115162, Russia; Website www.npfsberbanka.ru; Executive Order 13662 Directive

Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1147799009160 (Russia); Tax ID No. 7725352740 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

23. JOINT STOCK COMPANY SBERBANK TECHNOLOGIES (a.k.a. JOINT STOCK COMPANY SBERBANK TECHNOLOGY; a.k.a. SBERTECH JSC), 10 Novodanilovskaya Emb., Moscow 117105, Russia; Tax ID No. 7736632467 (Russia); Registration Number 1117746533926 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

24. JOINT STOCK COMPANY STRATEGY PARTNERS GROUP (a.k.a. STRATEGY PARTNERS GROUP JSC; a.k.a. "SPG JSC"), 52 Kosmodamianskaya Nab. St, Building 2, Moscow 115054, Russia; Tax ID No. 7736612855 (Russia); Registration Number 1107746025980 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

25. JOINT STOCK COMPANY UNITED CREDIT BUREAU (a.k.a. "UCB JSC"), 9 B. Tatarskaya Street, floor 4, office 51, Moscow 115184, Russia; Tax ID No. 7710561081 (Russia); Registration Number 1047796788819 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

26. LIMITED LIABILITY COMPANY ACTIVE BUSINESS CONSULT (a.k.a. LIMITED LIABILITY COMPANY ACTIVEBUSINESSCOLLECTION; a.k.a. "ABC LLC"), 19 Vavilova St., Moscow 117997, Russia; Tax ID No. 7736659589 (Russia); Registration Number 1137746390572 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

27. LIMITED LIABILITY COMPANY DIGITAL TECHNOLOGIES (a.k.a. TSIFROVYE TEKHNOLOGII; a.k.a. "DIGITAL TECHNOLOGIES LLC"), 19 Vavilova Street, Moscow 117312, Russia; Tax ID No. 7736252313 (Russia); Registration Number 1157746819966 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

28. LIMITED LIABILITY COMPANY KORUS CONSULTING CIS (a.k.a. KORUS CONSULTING CIS LLC; a.k.a. KORUS CONSULTING SNG), Room 1N, 68 letter N Bolshoy Sampsonievskiy Ave, St. Petersburg 194100, Russia; Tax ID No. 7801392271 (Russia); Registration Number 1057812752502 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

29. LIMITED LIABILITY COMPANY MARKET FUND ADMINISTRATION (a.k.a. SBERBANK FUND ADMINISTRATION LIMITED LIABILITY COMPANY; a.k.a. "MARKET FA LLC"), 79 V. Lenina St, room 8, Derbent, Dagestan 368602, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7736618039 (Russia); Registration Number 1107746400827 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

30. LIMITED LIABILITY COMPANY PROMISING INVESTMENTS (a.k.a. "PERSPECTIVE INVESTMENTS LIMITED LIABILITY COMPANY"; a.k.a. "PROMISING INVESTMENTS LLC"), 46 Molodezhnaya St., Office 335, Odintsovo, Moscow Region 143007, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 5032218680 (Russia); Registration Number 1105032001458 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

31. LIMITED LIABILITY COMPANY RUTARGET (a.k.a. RUTARGET LIMITED; a.k.a. RUTARGET LLC), Room 1-N, 29 Letter A, Line 18, of Vasilyevsky Island, St. Petersburg 199178, Russia; Tax ID No. 7801579142 (Russia); Registration Number 1127847377118 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

32. LIMITED LIABILITY COMPANY SBERBANK CAPITAL (a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU SBERBANK KAPITAL; a.k.a. SBERBANK CAPITAL LIMITED LIABILITY COMPANY; a.k.a. SBERBANK CAPITAL LLC; a.k.a. SBERBANK KAPITAL OOO), d.19 ul. Vavilova, Moscow 117997, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1087746887678 (Russia); Tax ID No. 7736581290 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

33. LIMITED LIABILITY COMPANY SBERBANK CIB HOLDING (a.k.a. SB KIB KHOLDING; a.k.a. SBERBANK CIB HOLDING LLC), 19 Vavilova St., Moscow 117312, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7709297379 (Russia); Registration Number 1027700057428 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

34. LIMITED LIABILITY COMPANY SBERBANK FACTORING (a.k.a. KORUS DISTRIBUTION LIMITED; a.k.a. SBERBANK FACTORING LLC; a.k.a. SBERBANK FAKTORING), Room I, 31a/bld. 1 Leningradsky Ave, Moscow 125284, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7802754982 (Russia); Registration Number 1117847260794 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

35. LIMITED LIABILITY COMPANY SBERBANK FINANCIAL COMPANY (a.k.a. LLC SBERBANK FINANCIAL COMPANY; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU FINANSOVAYA KOMPANIYA SBERBANKA; a.k.a. SBERBANK FINANCE COMPANY LIMITED LIABILITY COMPANY; a.k.a. SBERBANK FINANCE LLC; a.k.a. SBERBANK-FINANCE; a.k.a. SBERBANK-FINANS OOO), d. 29/16 per. Sivtsev Vrazhek, Moscow 119002, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1107746399903 (Russia); Tax ID No.

7736617998 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

36. LIMITED LIABILITY COMPANY SBERBANK INSURANCE BROKER (a.k.a. LLC INSURANCE BROKER OF SBERBANK; a.k.a. OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU STRAKHOVOI BROKER SBERBANKA; a.k.a. OOO STRAKHOVOI BROKER SBERBANKA; a.k.a. SBERBANK INSURANCE BROKER LLC), 42 Bolshaya Yakimanka St., b. 1-2, office 206, Moscow 119049, Russia; 1 Vasilisy Kozhinoy Street, building 1, floor 11, room 30, Moscow 121096, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1147746683468 (Russia); Tax ID No. 7706810730 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

37. LIMITED LIABILITY COMPANY SBERBANK INVESTMENTS (a.k.a. SBERBANK INVESTMENTS LLC; a.k.a. SBERBANK INVESTMENTS OOO), 46 Molodezhnaya St., Odintsovo, Moscow Region 143002, Russia; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 5039441 (Russia); Registration Number 1105032007761 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

38. LIMITED LIABILITY COMPANY SBERBANK REAL ESTATE CENTER (a.k.a. TSENTR NEDVIZHIMOSTI OT SBERBANKA; a.k.a. "SREC LLC"), 32/1 Kutuzovsky Ave, Moscow 121170, Russia; Tax ID No. 7736249247 (Russia); Registration Number 1157746652150 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

39. LIMITED LIABILITY COMPANY SBERBANK SERVICE (a.k.a. SBERBANK SERVICE LLC; a.k.a. SBERBANK-SERVICE), 18 Suschevsky Val Street, floor 7, Moscow 127018, Russia; Tax ID No. 7736663049 (Russia); Registration Number 1137746703709 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

40. LIMITED LIABILITY COMPANY YOOMONEY (a.k.a. YOOMONEY LIMITED LIABILITY COMPANY; a.k.a. YOOMONEY LLC), 82 bld. 2 Sadovnicheskaya St., Moscow 115035, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7736554890 (Russia); Registration Number 1077746365113 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

41. OPEN JOINT STOCK COMPANY BPS-SBERBANK (Cyrillic: ОТКРЫТОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО СБЕР БАНК) (a.k.a. BPS SBERBANK OJSC; a.k.a. BPS-SBERBANK OAO (Cyrillic: ОАО СБЕР БАНК); a.k.a. SBER BANK), 6 Mulyavina Boulevard, Minsk 220005, Belarus; SWIFT/BIC BPSBBY2X; Website www.sber-bank.by; alt. Website www.bps-sberbank.by; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-

issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 100219673 (Belarus); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

42. SB SECURITIES SA, Boulevard Konrad Adenauer 2, Luxembourg 1115, Luxembourg; 14, rue Edward Steichen, L-2540, Luxembourg; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID B171037 (Luxembourg); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

43. SBER LEGAL LIMITED LIABILITY COMPANY (a.k.a. SBER LEGAL LLC; a.k.a. SBER LIGAL), 3 Poklonnaya St., office 209, floor 2, Moscow 121170, Russia; Tax ID No. 9705124940 (Russia); Registration Number 1187746905004 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

44. SBER VOSTOK LIMITED LIABILITY PARTNERSHIP (a.k.a. SBER EAST LLP; a.k.a. SBER VOSTOK; a.k.a. SBER VOSTOK LLP), 13/1 Al-Farabi Avenue, block 3V, 7th floor, Almaty 050059, Kazakhstan; Registration Number 110140012405 (Kazakhstan) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

45. SBERBANK EUROPE AG, Schwarzenbergplatz 3, Vienna 1010, Austria; SWIFT/BIC SABRATWW; Website www.sberbank.at; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. ATU55795009 (Austria); Registration Number FN 161285 i (Austria); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives. [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

46. SETELEM BANK LIMITED LIABILITY COMPANY (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ СЕТЕЛЕМ БАНК) (a.k.a. CETELEM BANK LIMITED LIABILITY COMPANY; a.k.a. CETELEM BANK LLC (Cyrillic: СЕТЕЛЕМ БАНК ООО); f.k.a. KOMMERCHESKI BANK UKRSIBBANK OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU; a.k.a. SETELEM BANK OBSHCHESTVO S OGRANICHENNOI OTVETSTVENNOSTYU; a.k.a. SETELEM BANK OOO), 26 ul. Pravdy, Moscow 125124, Russia (Cyrillic: ул. Правды, д. 26, г. Москва 125124, Russia); SWIFT/BIC CETBRUMM; Website www.cetelem.ru; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Registration ID 1027739664260 (Russia); Tax ID No. 6452010742 (Russia); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

47. SOVREMENNYE TEKHNOLOGII LIMITED LIABILITY COMPANY (a.k.a. SOVREMENNYE TEKHNOLOGII; a.k.a. SOVREMENNYE TEKHNOLOGII LLC), 12a Vtoroy Yuzhnoportovy Drive, b. 1/6, Moscow 115432, Russia; Tax ID No. 7708229993 (Russia); Registration Number 1037708040468 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

48. SUBSIDIARY BANK SBERBANK OF RUSSIA JOINT STOCK COMPANY (a.k.a. DOCHERNI BANK AKTSIONERNOE OBSHCHESTVO SBERBANK ROSSII; a.k.a. SB SBERBANK JSC; f.k.a. "TEXAKABANK JSC"), 30/26, Gogol/Kaldayakov Street, Almaty 050010, Kazakhstan; 13/1 Al-Farabi Avenue, Bostandyk District, Almaty 050059, Kazakhstan; Zenkov St, 24, Almaty 480100, Kazakhstan; SWIFT/BIC SABRKZKA; Website www.sberbank.kz; Executive Order 13662 Directive Determination - Subject to Directive 1; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 600900050984 (Kazakhstan); Registration Number 930740000137 (Kazakhstan); For more information on directives, please visit the following link: http://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx#directives [UKRAINE-EO13662] [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

49. TEKHNOLOGII KREDITOVANIYA LIMITED LIABILITY COMPANY (a.k.a. OOO LENDING TECHNOLOGIES; a.k.a. OOO TEHNOLOGII KREDITOVANYA), Room 1.104, 23/1 Vavilova St., Moscow 117312, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7736317458 (Russia); Registration Number 1187746782519 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

    Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or

indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

50. VYDAYUSHCHIESYA KREDITY MICROCREDIT COMPANY LIMITED LIABILITY COMPANY (a.k.a. MCC VYDAYUSHIESYA KREDITY LLC; a.k.a. MIKROKREDITNAYA KOMPANIYA VYDAYUSHCHIESYA KREDITY), 32 Kutuzovsky Avenue, building 1, floor 6, room 6.C.01, Moscow 121170, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Listing Date (EO 14024 Directive 2): 24 Feb 2022; Effective Date (EO 14024 Directive 2): 26 Mar 2022; Tax ID No. 7725374454 (Russia); Registration Number 1177746493473 (Russia) [RUSSIA-EO14024] (Linked To: PUBLIC JOINT STOCK COMPANY SBERBANK OF RUSSIA).

Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, Public Joint Stock Company Sberbank of Russia, a person whose property and interests in property are blocked pursuant to E.O. 14024.

Vessels

1. LADY LEILA (UCGL) Products Tanker 5,075GRT Russia flag; Vessel Registration Identification IMO 9683740; MMSI 273340060 (vessel) [RUSSIA-EO14024] (Linked To: ALFA-LIZING OOO).

   Identified as property in which Alfa-Lizing OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

2. LADY RANIA (UBBO9) Chemical/Oil Tanker 5,077GRT Russia flag; Vessel Registration Identification IMO 9784893; MMSI 273382620 (vessel) [RUSSIA-EO14024] (Linked To: ALFA-LIZING OOO).

   Identified as property in which Alfa-Lizing OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

3. LADY SEVDA (UBWL7) Products Tanker 5,075GRT Russia flag; Vessel Registration Identification IMO 9683738; MMSI 273342180 (vessel) [RUSSIA-EO14024] (Linked To: ALFA-LIZING OOO).

   Identified as property in which Alfa-Lizing OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

4. SV KONSTANTIN (UBUS4) General Cargo 4,860GRT Russia flag; Vessel Registration Identification IMO 9203710; MMSI 273450880 (vessel) [RUSSIA-EO14024] (Linked To: ALFA-LIZING OOO).

Identified as property in which Alfa-Lizing OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

5. SV NIKOLAY (UBTU6) General Cargo 5,897GRT Russia flag; Vessel Registration Identification IMO 9482926; MMSI 273215770 (vessel) [RUSSIA-EO14024] (Linked To: ALFA-LIZING OOO).

   Identified as property in which Alfa-Lizing OOO, a person whose property and interests in property are blocked pursuant to E.O. 14024, has an interest.

B. On April 7, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Entity

1. PUBLIC JOINT STOCK COMPANY ALROSA (Cyrillic: АКЦИОНЕРНАЯ КОМПАНИЯ АЛРОСА ПУБЛИЧНОЕ АКЦИОНЕРНОЕ ОБЩЕСТВО) (a.k.a. АК ALROSA PAO (Cyrillic: АК АЛРОСА ПАО); a.k.a. ALROSA GROUP; a.k.a. PJSC ALROSA), 24 Ozerkovskaya Naberezhnaya, Moscow 115184, Russia; 6 ulitsa Lenina, Mirny, Republic of Sakha (Yakutia) 678174, Russia; Executive Order 14024 Directive Information - For more information on directives, please visit the following link: https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information/russian-harmful-foreign-activities-sanctions#directives; Executive Order 14024 Directive Information Subject to Directive 3 - All transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after the 'Effective Date (EO 14024 Directive)' associated with this name are prohibited.; Listing Date (EO 14024 Directive 3): 24 Feb 2022; Effective Date (EO 14024 Directive 3): 26 Mar 2022; Tax ID No. 1433000147 (Russia); Legal Entity Number 894500DKUWVBYZLLE651 (Russia); Registration Number 1021400967092 (Russia) [RUSSIA-EO14024].

   Designated pursuant to section 1(a)(vii) of E.O. 14024 for being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation.

C. On April 6, 2022, OFAC updated the entry on the SDN List for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked under Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism''66 FR 49079 (September 25, 2001), as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions to Combat Terrorism'' 84 FR 48041 (September 12, 2019).

1. JASHARI, Abdul (a.k.a. AL-ALBANI, Abu Qatada; a.k.a. AL-ALBANI, Abu-Qatadah; a.k.a. JASHARI, Abdulj; a.k.a. JASHARI, Abdyl; a.k.a. "IRAKI, Commander"), Syria; DOB 25 Sep 1976; POB Skopje, Macedonia; Macedonia, The Former Yugoslav Republic of (individual) [SDGT] (Linked To: AL-NUSRAH FRONT).

-to-

JASHARI, Abdul (a.k.a. AL-ALBANI, Abu Qatada; a.k.a. AL-ALBANI, Abu-Qatadah; a.k.a. JASHARI, Abdulj; a.k.a. JASHARI, Abdyl; a.k.a. "IRAKI, Commander"), Syria; DOB 25 Sep 1976; POB Skopje, Macedonia; nationality North Macedonia, The Republic of (individual) [SDGT] (Linked To: AL-NUSRAH FRONT).

Dated: April 12, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–08183 Filed 4–15–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Special Projects Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Wednesday, May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Antoinette Ross at 1–888–912–1227 or 202–317–4110.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Special Projects Committee will be held Wednesday, May 11, 2022, at 11:00 a.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Antoinette Ross. For more information please contact Antoinette Ross at 1–888–912–1227 or 202–317–4110, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: April 11, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–08197 Filed 4–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will still be held via teleconference.

DATES: The meeting will be held Thursday, May 12, 2022.

FOR FURTHER INFORMATION CONTACT: Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Taxpayer Assistance Center Improvements Project Committee will be held Thursday, May 12, 2022, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Matthew O'Sullivan. For more information please contact Matthew O'Sullivan at 1–888–912–1227 or (510) 907–5274, or write TAP Office, 1301 Clay Street, Oakland, CA 94612–5217 or contact us at the website: *https://www.improveirs.org.* The agenda will include various IRS issues.

Dated: April 11, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–08194 Filed 4–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, May 10, 2022.

FOR FURTHER INFORMATION CONTACT: Robert Rosalia at 1–888–912–1227 or (718) 834–2203.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section

10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel's Notices and Correspondence Project Committee will be held Tuesday, May 10, 2022, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Robert Rosalia. For more information, please contact Robert Rosalia at 1–888–912–1227 or (718) 834–2203, or write TAP Office, 2 Metrotech Center, 100 Myrtle Avenue, Brooklyn, NY 11201 or contact us at the website: *https://www.improveirs.org.* The agenda will include various IRS issues.

Dated: April 11, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–08207 Filed 4–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Wednesday, May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Conchata Holloway at 1–888–912–1227 or 214–413–6550.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Wednesday, May 11, 2022, at 12:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Conchata Holloway. For more information, please contact Conchata Holloway at 1–888–912–1227 or 214–413–6550, or write TAP Office, 1114 Commerce St., MC 1005, Dallas, TX 75242 or contact us at the website: *http://www.improveirs.org.* The agenda will include various IRS issues.

Dated: April 11, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–08198 Filed 4–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, May 10, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Smith at 1–888–912–1227 or (202) 317–3087.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988) that a meeting of the Taxpayer Advocacy Panel's Tax Forms and Publications Project Committee will be held Tuesday, May 10, 2022, at 1:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Fred Smith. For more information, please contact Fred Smith at 1–888–912–1227 or (202) 317–3087, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *http://www.improveirs.org.*

Dated: April 11, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–08195 Filed 4–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Reducing Tax Burden on America's Taxpayers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning reducing tax burden on America's taxpayers.

DATES: Written comments should be received on or before June 17, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Include OMB control number 1545–2009 or Reducing Tax Burden on America's Taxpayers, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reducing Tax Burden on America's Taxpayers.

OMB Number: 1545–2009.

Form Number: 1325–A.

Abstract: The IRS Office of Taxpayer Burden Reduction (TBR) needs the taxpaying public's help to identify meaningful taxpayer burden reduction opportunities that impact a large number of taxpayers. This form should be used to refer ideas for reducing taxpayer burden to the TBR for consideration and implementation.

Current Actions: There is no change to the form or burden at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit organizations, non-profit institutions, farms, Federal Government, State, local or tribal governments.

Estimated Number of Respondents: 250.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 62 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 13, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–08245 Filed 4–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel's Toll-Free Phone Lines Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. This meeting will be held via teleconference.

DATES: The meeting will be held Tuesday, May 10, 2022.

FOR FURTHER INFORMATION CONTACT: Rosalind Matherne at 1–888–912–1227 or 202–317–4115.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Lines Project Committee will be held Tuesday, May 10, 2022, at 3:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Rosalind Matherne. For more information, please contact Rosalind Matherne at 1–888–912–1227 or 202–317–4115, or write TAP Office, 1111 Constitution Ave. NW, Room 1509, Washington, DC 20224 or contact us at the website: *https://www.improveirs.org.* The agenda will include various IRS issues.

Dated: April 11, 2022.

Kevin Brown,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2022–08191 Filed 4–15–22; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: April 21, 2022, 1:30 p.m. to 5:30 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll) or (ii) 1–877–853–5247 (US Toll Free) or 1–888–788–0099 (US Toll Free), Meeting ID: 961 4161 9493, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJIsciurzIuE9dYe3jn3S-CAQUGq2EZRaFj.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the ''Board'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Agenda

I. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email, followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair

For Discussion and Possible Board Action

The proposed Agenda will be reviewed, and the Board will consider adoption.

Ground Rules

➢ Board actions taken only in designated areas on agenda

IV. Approval of Minutes of the March 3, 2022 UCR Board Meeting—UCR Board Chair

For Discussion and Possible Board Action

Draft Minutes from the March 3, 2022 UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

The Federal Motor Carrier Safety Administration (FMCSA) will provide a report on relevant activity.

VI. Development, Hosting and Maintenance of an IRP Centralized Fee Calculator—UCR Executive Director

For Discussion and Possible Board Action

The UCR Executive Director will discuss the option of development, hosting and maintenance of a centralized IRP fee calculator for the purpose of continuing the Board's progress towards increasing UCR compliance and enhanced data sharing. The Board may take action to authorize proceeding with this option.

VII. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. Proposal To Revise the UCR Handbook Regarding Calculating Fees and New Market Entrants—UCR Audit Subcommittee Chair

For Discussion and Possible Board Action

The Audit Subcommittee Chair will discuss potential revisions to the UCR Handbook regarding terminology used for calculating the UCR fees based on the 6-tier system and new entrants into the market. The Board may consider action to approve revisions to the UCR Handbook calculating UCR fees and when new market entrants are subject to payment of UCR fees.

B. Proposal To Revise the Relevant Time-Period Described in the UCR Handbook—UCR Audit Subcommittee Chair

For Discussion and Possible Board Action

The Audit Subcommittee Chair will discuss potential revisions to the UCR Handbook regarding the relevant time-period to use for determination of the size of a carrier fleet for purposes of determining the appropriate UCR registration tier. The Board may consider action to approve revisions to the UCR Handbook regarding the relevant time-period to use for determination of the size of a carrier fleet for purposes of determine the appropriate UCR registration tier.

C. Proposal To Revise the UCR Handbook Regarding Lightweight or Other Non-Commercial Motor Vehicles—UCR Audit Subcommittee Chair

For Discussion and Possible Board Action

The Audit Subcommittee Chair will discuss potential revisions to the UCR Handbook regarding the definition of lightweight or other non-commercial motor vehicles. The Board may approve revisions to the UCR Handbook regarding the definition of lightweight or other non-commercial motor vehicles.

D. Review of States' Audit Compliance Rates for Registration Years 2021 and 2022—UCR Audit Subcommittee Chair

The Audit Subcommittee Chair will review audit compliance rates for the states for registration years 2021 and 2022 and related compliance percentages for Focused Anomaly Reviews (''FARs''), retreat audits and registration compliance percentages.

E. Review States' Enforcement Efficiency Report for 2022—UCR Audit Subcommittee Chair,

UCR Audit Subcommittee Vice-Chair and DSL Transportation Services, Inc. (DSL)

The Audit Subcommittee Chair, Audit Subcommittee Vice-Chair and DSL will review the Should Have Been (SHB) Report and discuss ideas to help states improve their UCR violation citation rates.

F. Update on the Compliance Video for the National Training Center—UCR Audit

Subcommittee Chair, UCR Education and Training Subcommittee Chair and UCR Executive Director

The Audit Subcommittee Chair, Education and Training Subcommittee Chair and the Executive Director will provide an update to the Board regarding the current status of the Compliance Video for the National Training Center.

Finance Subcommittee—UCR Finance Subcommittee Chair

A. Review of 2021 Administrative Expenses—UCR Finance Subcommittee Chair and UCR Depository Manager

For Discussion and Possible Board Action

The Finance Subcommittee Chair and Depository Manager will review the administrative expenditures of the UCR Plan for the 12 months ended December 31, 2021. The Board may take action to allocate the remaining balance. The Finance Subcommittee recommends the Board allocate the remaining administrative balance as presented.

B. 2020 Registration Year Closure—UCR Finance Subcommittee Chair and UCR Depository Manager

For Discussion and Possible Board Action

The Finance Subcommittee Chair and Depository Manager will present the final results of the closure of the Depository for the 2020 registration year. The Board may take action to authorize the closure of the 2020 registration year. The Finance Subcommittee recommends that the Board authorize the closure of the 2020 registration year as presented.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

Update on Current and Future Training Initiatives—UCR Education and Training Subcommittee Chair and UCR Operations Manager

The Education and Training Subcommittee Chair and the UCR Operations Manager will provide an update on the current and planned future training initiatives for the UCR Plan.

VIII. Contractor Reports—UCR Executive Director

- *UCR Executive Director's Report*

The UCR Executive Director will provide a report covering recent activity for the UCR Plan.

- *DSL Transportation Services, Inc.*

DSL Transportation Services, Inc. will report on the latest data from the FARs program, discuss motor carrier inspection results, pilot projects and other matters.

- *Seikosoft*

Seikosoft will provide an update on recent/new activity related to the NRS.

- *UCR Administrator Report (Kellen)*

The UCR Staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

IX. Other Business—UCR Board Chair

The UCR Board Chair will provide an update on the recent CVSA Workshop, discuss their current initiatives and local jurisdiction introductions. The UCR Board Chair will then call for any other business, old or new, from the floor.

X. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, April 14, 2022 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2022–08318 Filed 4–14–22; 11:15 am]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. app. 2, that the Advisory Committee on Women Veterans will conduct a virtual meeting on May 9–11, 2022. The meetings will begin and ends as follows:

Date	Time	Location
May 9, 2022	10:00 a.m.–1:00 p.m. Eastern Standard Time (EST)	See WebEx link and call-in information below.
May 10, 2022	10:00 a.m.–1:00 p.m. (EST)	See WebEx link and call-in information below.
May 11, 2022	10:00 a.m.–12:00 p.m. (EST)	See WebEx link and call-in information below.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include updates from VA's Administrations and Staff Offices, as well as briefings on other issues impacting women Veterans.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Ms. Shannon L. Middleton at *00W@mail.va.gov* no later than May 2, 2022. Any member of the public who wishes to observe the virtual meeting may use the following WebEx link: *https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m51ab4e28ba8610ac7926152b23d57b4b.* To join by phone: 1–404–397–1596 (toll free); meeting number: 2760 037 3217; password: bmBDMUP$555.

Dated: April 13, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–08248 Filed 4–15–22; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Part 240
Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–94524; File No. S7–12–22]

RIN 3235–AN10

Further Definition of ''As a Part of a Regular Business'' in the Definition of Dealer and Government Securities Dealer

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing new rules to further define the phrase ''as a part of a regular business'' as used in the statutory definitions of ''dealer'' and ''government securities dealer'' under Sections 3(a)(5) and 3(a)(44), respectively, of the Securities Exchange Act of 1934 (''Exchange Act'').

DATES: Comments should be received on or before May 27, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–12–22 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–12–22. 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/proposed.shtml*). Comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Operating conditions may limit access to the Commission's public reference room. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Emily Westerberg Russell, Chief Counsel; John Fahey, Deputy Chief Counsel; Joanne Rutkowski, Assistant Chief Counsel; Shauna Sappington Vlosich, Senior Special Counsel; James Blakemore, Special Counsel; or Katherine Lesker, Special Counsel at 202–551–5550 in the Office of Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: The Commission is proposing the following new rules under the Exchange Act: (1) 17 CFR 3a5–4 (Rule 3a5–4) and (2) 17 CFR 3a44–2 (Rule 3a44–2) (collectively, the ''Proposed Rules'').

I. Introduction

Advancements in electronic trading across securities markets have led to the emergence of certain market participants that play an increasingly significant liquidity providing role in overall trading and market activity—a role that has traditionally been performed by entities regulated as dealers.[1] However, these market participants—despite engaging in liquidity providing activities similar to those traditionally performed by either ''dealers'' or ''government securities dealers'' as defined under Sections 3(a)(5) and 3(a)(44) of the Exchange Act, respectively, and despite their significant share of market volume [2]—may not be registered with the Commission as either dealers or government securities dealers under Sections 15 and 15C of the Exchange Act, respectively.[3] Because of this, investors and the markets lack the important protections that result from an entity's registration and regulation under the Exchange Act. In addition, obligations and regulatory oversight that promote market stability and investor protection are not being consistently applied to entities engaged in similar activities.

The Commission believes that the identification and registration of these market participants as dealers, including those that are not currently regulated as dealers, would provide regulators with a more comprehensive view of the markets through regulatory oversight and would enhance market stability and investor protection.[4] Accordingly, the Commission is proposing to further define what it means to be buying and selling securities ''as a part of a regular business'' within the definitions of ''dealer'' and ''government securities dealer'' under Sections 3(a)(5) and 3(a)(44), respectively.

Evolution of the Market

Advancements in technology have affected securities trading across markets and asset classes; however, regulation has not always kept pace. This is especially true in the U.S. Treasury market in view of the increasingly significant role played by market intermediaries that are not registered as dealers. The U.S. Treasury market has evolved significantly over

[1] *See* Department of the Treasury, Notice Seeking Comment on the Evolution of the U.S. Treasury Market Structure, 81 FR 3928 (Jan. 22, 2016) (''Treasury Request for Comment''). *See also* Joint Staff Report: The U.S. Treasury Market on October 15, 2014 (July 13, 2015) (''2015 Joint Staff Report''), prepared by staff of the U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, and U.S. Commodity Futures Trading Commission, *available at https://www.sec.gov/reportspubs/special-studies/treasury-market-volatility-10-14-2014-joint-report.pdf.* The 2015 Joint Staff Report is a report of the Inter-Agency Working Group for Treasury Market Surveillance (''IAWG''). Staff reports, Investor Bulletins, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these staff documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person. *See also* Concept Release Concerning Equity Market Structure, Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (''2010 Equity Market Structure Concept Release'') at 3594–96 (discussing the evolution from ''a market structure with primarily manual trading to a market structure with primarily automated trading'').

[2] FEDS Notes, ''Principal Trading Firm Activity in Treasury Cash Markets,'' James Collin Harkrader and Michael Puglia (Aug. 4, 2020) (''[Principal trading firms] dominate activity on the electronic [interdealer broker] platforms (61 [percent].''). For purposes of this release, the terms ''principal trading firms'' and ''proprietary trading firms'' (collectively, ''PTFs'') will be used interchangeably.

[3] As used in this release, the term ''dealer'' refers to both dealers and government securities dealers unless explicitly noted or the context indicates otherwise.

[4] As discussed in Section V below, the Commission believes that the Proposed Rules would support orderly markets and protect investors by addressing negative externalities that may arise in relation to market participants' financial and operational risks.

recent decades in at least two important ways. First, the amount of U.S. Treasury securities outstanding has increased substantially.[5] At the end of 2007, Treasury debt held by the public totaled $5.1 trillion, or 35 percent of that year's gross domestic product (''GDP'').[6] That number rose to $23.1 trillion, or 96.5 percent of GDP, by the end of 2021.[7]

Second, a significant rise in electronic trading in the interdealer market [8] for U.S. Treasury securities has contributed to a dramatic change in the overall structure of the market. In particular, technological advances have increasingly enabled certain market participants that are not registered as dealers to perform critical market functions, including liquidity provision, that once were primarily performed by regulated dealers.[9] Since the mid-2000s, electronic trading has come to dominate the interdealer market for U.S. Treasury securities, gradually supplanting manual transactions made via the telephone.[10] The proliferation of fully electronic trading venues has been accompanied by the rise of certain market participants who are not registered as dealers and who today account for a majority of trading in the Treasury interdealer market.[11] In particular, PTFs—businesses that often employ automated, algorithmic trading strategies (including passive market making, arbitrage, and structural and directional trading) [12] that rely on speed, which allows them to quickly execute trades, or cancel or modify quotes in response to perceived market events [13]—account for about half of the daily volume in the interdealer market.[14]

These new market participants have established themselves as significant market intermediaries—and critical sources of liquidity—in the U.S. Treasury market. For example, by 2014, unregistered market participants trading U.S. Treasury securities, including PTFs, accounted for a majority of trading activity in the electronic interdealer market.[15] The 2015 Joint Staff Report on the U.S. Treasury market found that more than 50 percent of trading volume in benchmark U.S. Treasury securities on the major trading platforms is attributable to PTFs.[16] In 2020, staff at the Board of Governors of the Federal Reserve published a paper estimating that PTFs account for 61 percent of the trading activity on interdealer broker platforms.[17] The significant presence of market participants that are not registered as dealers or government securities dealers in the U.S. Treasury market, the volume of their trading, the magnitude of their impact on the market, the regularity of their participation, and in many cases the nature of their electronic trading strategies have all contributed to the increasingly central role of these market participants as liquidity providers.[18]

The rise of electronic trading has similarly impacted the market structure of the securities markets generally. In the equity markets, for example, trading in exchange-listed equities, once concentrated on exchange floors, now largely occurs in an electronic, highly decentralized but interconnected market that is accessed by brokers, dealers, and other market participants using a large number and great variety of trading venues.[19] In the equity markets, too, technological advances have enabled significant market participants to take on an increasingly central role as liquidity providers, largely replacing more traditional types of traditional liquidity providers, such as exchange specialists on manual trading floors and over-the-counter (''OTC'') market makers.[20] Technological advancements

[5] *See* IAWG Joint Staff Report, Recent Disruptions and Potential Reforms in the U.S. Treasury Market: A Staff Progress Report prepared by U.S. Department of the Treasury, Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Securities and Exchange Commission, U.S. Commodity Futures Trading Commission (Nov. 8, 2021) (''2021 IAWG Joint Staff Report'').

[6] *See id.*

[7] *See* Monthly Statement of the Public Debt of the United States (Dec. 31, 2021), *available at https://www.treasurydirect.gov/govt/reports/pd/mspd/2021/opds122021.pdf; see also* U.S. Bureau of Economic Analysis, Gross Domestic Product (GDP), FRED, Fed. Res. Bank of St. Louis, *available at https://fred.stlouisfed.org/series/GDP.*

[8] The U.S. Treasury market is comprised of the cash market (purchases and sales of securities), the repo market, and the futures market. The U.S. Treasury cash market has been traditionally bifurcated between the interdealer market (whereby dealers trade with other dealers or with proprietary trading firms) and the dealer-to-customer market (whereby dealers trade with clients). Trading in electronic interdealer markets occurs anonymously on electronic trading platforms known as interdealer broker platforms (''IDBs''). Trading on the IDB platforms is similar to trading on other highly liquid markets and where certain market participants account for a significant trading volume. *See* Treasury Request for Comment at 3928. For purposes of this release, when discussing the U.S. Treasury market, we will be primarily focused on trading activities occurring in the interdealer market.

[9] 2021 IAWG Joint Staff Report at 5. A bank engaged in these activities would not register with the Commission as a dealer. *See* Exchange Act Section 3(a)(5)(C)(i)(II) (providing an exception from dealer status when a bank buys or sells exempted securities, which are defined in Exchange Act Section 3(a)(12)(A) to include government securities); *see also* Exchange Act Section 3(a)(6) (definition of ''bank''). As discussed *infra* note 41, a bank may nonetheless be a government securities dealer required to register under Section 15C. As such, it would not register with the Commission but instead would provide written notice of its government securities dealer status with the appropriate Federal banking regulator, and comply with rules adopted by the Treasury and the applicable Federal banking regulator.

[10] *See* Treasury Request for Comment. *See also* Group of Thirty Working Group on Treasury Market Liquidity, U.S. Treasury Markets: Steps toward Increased Resilience, Group of Thirty (2021) (''G30 Report'') at *https://group30.org/publications/detail/4950;* 2021 IAWG Joint Staff Report at 5.

[11] *See* Michael J. Fleming, Bruce Mizrach, and Giang Nguyen, Federal Reserve Bank of New York Staff Reports, The Microstructure of a U.S. Treasury ECN: The BrokerTec Platform, Staff Report No. 381 (July 2009, rev. May 2014); *see also* Treasury Request for Comment (''Trading on these platforms [in the Treasury cash market] has become increasingly automated, with transactions conducted using algorithmic and other trading strategies involving little or no human intervention . . . bear[ing] some resemblance to other highly liquid markets, including equities and foreign exchange markets, where PTFs and dealers transact in automated fashion, sometimes in large volumes and at high speed.''); FEDS Notes, ''Principal Trading Firm Activity in Treasury Cash Markets,'' James Collin Harkrader and Michael Puglia (Aug. 4, 2020); G30 Report at 1. The Commission separately has proposed, among other things, amendments to Exchange Act Rule 3b–16 to include within the definition of ''exchange'' systems that offer the use of non-firm trading interest and communication protocols to bring together buyers and sellers of securities. *See* Amendments regarding the Definition of ''Exchange'' and Alternative Trading Systems (ATSs) that Trade U.S. Treasury and Agency Securities, National Market System (NMS) Stocks, and Other Securities, Securities Exchange Act Release No. 94062 (Jan. 26, 2022), 87 FR 15496 (Mar. 18, 2022) (''2022 ATS Proposing Release'').

[12] *See* Staff Report on Algorithmic Trading in U.S. Capital Markets As Required by Section 502 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (Aug. 5, 2020) (''Algorithmic Trading Staff Report''), at pp. 39–41 (''Passive market-making involves submitting non-marketable orders on both sides (buy or 'bid,' and sell or 'offer') of the marketplace''; ''structural strategies attempt to exploit structural vulnerabilities in the market or in certain market participants''; and ''directional strategies generally involve establishing a short-term long or short position in anticipation of a price move up or down''); *see also* 2010 Equity Market Structure Concept Release.

[13] *See* 2022 ATS Proposing Release at 15597. *See also* 2015 Joint Staff Report at 39; 2021 IAWG Joint Staff Report at 5 (''PTFs tend to make trading decisions primarily based on immediate profitability and the level of market risk'').

[14] Nellie Liang and Pat Parkinson, Hutchins Center Working Paper #72, Enhancing Liquidity of the U.S. Treasury Market Under Stress (Dec. 16, 2020) (''Enhancing Liquidity''), at 6.

[15] *See* 2021 IAWG Joint Staff Report at 5.

[16] *See* 2015 Joint Staff Report at 21.

[17] FEDS Notes, ''Principal Trading Firm Activity in Treasury Cash Markets,'' James Collin Harkrader and Michael Puglia (Aug. 4, 2020) (citing data presented at the 2019 U.S. Treasury Market Conference showing that PTFs averaged approximately 61 percent of total trading volume on electronic interdealer broker platforms).

[18] 2015 Joint Staff Report; Enhancing Liquidity at 6.

[19] *See* 2010 Equity Market Structure Concept Release at 3594.

[20] *See* 2010 Equity Market Structure Concept Release at 3607 (stating that liquidity providers historically have been viewed as dealers, and that ''[a]lthough [PTFs] that employ passive market making strategies are a new type of market participant, the liquidity providing function they perform is not new.'').

have prompted changes to trading practices, particularly with regard to the way in which orders are generated, routed, and executed. Developments in securities regulation also have contributed to the evolution of market structure and the rise of electronic trading.[21] These technological and regulatory changes have resulted in the development of highly automated exchange systems and trading tools that have facilitated a business model for certain market participants, including PTFs, that perform functions similar to registered dealers.[22]

As discussed below, the Commission has long identified liquidity provision, including acting as a ''market maker'' or ''a *de facto* market maker whereby market professionals or the public look to the firm for liquidity,'' as a factor that indicates ''dealer'' status.[23] Analysis indicates a number of market participants that, despite their significant share of market volume and their central role as liquidity providing intermediaries in the U.S. Treasury market, are not registered with the Commission either as ''government securities dealers'' under Section 15C of the Exchange Act or ''dealers'' under Section 15 of the Exchange Act.[24] This has resulted in an uneven playing field in which some participants are subject to regulation (and its attendant costs and benefits), and some are not. This uneven application of regulatory oversight of significant liquidity providers makes it difficult for regulators and market observers to detect, investigate, understand, or address market events, such as the ''flash rally'' in October 2014.

As discussed below, the regulatory regime applicable to dealers is a cornerstone of the U.S. Federal securities laws, and helps to promote the Commission's long-standing mission to protect investors, maintain fair, orderly, and efficient markets, and promote capital formation. As discussed in Sections II.D, and V.C, the registration of market participants who engage in significant dealer-like activities—but who are not currently registered as dealers—would provide regulators with a more comprehensive view of the markets through regulatory oversight, as well as enhance market stability through compliance with dealer regulations that are designed to support orderly markets, and protect investors by minimizing the impact of market participants' potential financial and operational risks.[25] Accordingly, the Commission is taking steps to ensure that these market participants are registered and regulated,[26] and is proposing for comment rules to further define the regulatory status of certain participants as ''dealers'' and ''government securities dealers,'' within the meaning of Sections 3(a)(5) and 3(a)(44) of the Exchange Act, respectively.[27]

Specifically, the Commission is proposing standards to identify those market participants that are providing an important liquidity provision function in today's securities markets. Any person [28] that meets the activity-based standards identified in the Proposed Rules would be a dealer or government securities dealer required to register, absent an otherwise available and applicable statutory or regulatory exemption or exception (*e.g.,* foreign broker-dealers exempted pursuant to 17 CFR 240.15a–6 (Exchange Act Rule 15a–6)).[29]

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[21] In 2005, the Commission adopted 17 CFR 242.600 through 242.614 (Regulation NMS), a series of initiatives designed to modernize and strengthen the national market system for equity securities through improved fairness in price execution, displaying of quotes, and access to market data. Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495 (''Regulation NMS Release''). As these initiatives were implemented, regulations that had protected the manual quotes of floor exchanges from trade-throughs were rescinded. *Id.* In 2006, after decades of trading predominantly on the exchange floor, the New York Stock Exchange (''NYSE'') introduced a hybrid market structure that incorporated an ability to transact electronically. *See* 2010 Equity Market Structure Concept Release. Today, electronic trading dominates transactions in equity securities.

[22] A significant portion of trading activity in the equity markets—once estimated at 40–50 percent of the daily trading volume in exchange-listed equities—is conducted by PTFs. *See* High Frequency Trading and Networked Markets, Federico Musciotto, Jyrki Piilo, Rosario N. Mantegna (Mar. 5, 2021); SEC Staff of the Division of Trading and Markets, Equities Market Structure Literature Review Part II: High Frequency Trading (Mar. 18, 2014); Do High-Frequency Traders Anticipate Buying and Selling Pressure?, Nicholas H. Hirschey (Nov. 2013); High-Frequency Trading and Price Discovery, Jonathan Brogaard, Terrance Hendershott, Ryan Riordan (May 14, 2014); High Frequency Trading: An Important Conversation, *available at https://tabbforum.com/opinions/high-frequency-trading-an-important-conversation* (Mar. 24, 2014) (illustrating the percentage of high frequency trading of U.S. equity shares traded from 2006 to 2014 in Exhibit 1). *See also* Section V.B.2.

[23] Definition of Terms in and Specific Exemption for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934, Exchange Act Release No. 46745 (Oct. 30, 2002), 67 FR 67496, 67498–67500 (Nov. 5, 2002) (''2002 Release'') (stating that a person generally may satisfy the definition, and therefore, be acting as a dealer in the securities markets by conducting various activities, including ''acting as a market maker or specialist on an organized exchange or trading system'').

[24] *See* Section V.B.2.a, Table 1. Section 3(a)(5) of the Exchange Act defines the term ''dealer'' to mean ''any person engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise,'' but excludes ''a person that buys or sells securities . . . for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'' Similarly, Section 3(a)(44) of the Exchange Act, provides, in relevant part, that the term ''government securities dealer'' means ''any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise,'' but ''does not include any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.'' *See* Section II.A.

[25] Section V.C.2 describes the estimated costs associated with registering as a dealer or government securities dealer for those persons who meet the proposed standards.

[26] In addition, earlier this year, the Commission proposed to amend 17 CFR 242.300 through 242.304 (Regulation ATS) for alternative trading systems (''ATSs'') that trade government securities (as defined under Section 3(a)(42) of the Exchange Act) or repurchase and reverse repurchase agreements on government securities (''repos'') (such ATSs, together, ''Government Securities ATSs'') to: (1) Eliminate the current exemption from compliance with Regulation ATS for an ATS that limits its securities activities to government securities or repos, and registers as a broker-dealer or is a bank; (2) require the filing of public Form ATS–N for Government Securities ATSs, which would be subject to Commission review and ineffectiveness procedures, and would require a Government Securities ATS to disclose information about its manner of operations and the ATS-related activities of the registered broker-dealer or government securities broker or government securities dealer that operates the ATS and its affiliates; and (3) apply the fair access rule under 17 CFR 242.301(b)(5) (Rule 301(b)(5) of Regulation ATS) to Government Securities ATSs that meet certain volume thresholds in U.S. Treasury Securities or in a debt security issued or guaranteed by a U.S. executive agency, or government-sponsored enterprise (''Agency Securities''). *See* 2022 ATS Proposing Release. The 2022 ATS Proposing Release is also re-proposing amendments to 12 CFR 242.1000 through 242.1007 (Regulation Systems Compliance and Integrity (''Regulation SCI'')) to apply it to Government Securities ATSs that meet certain volume thresholds in U.S. Treasury Securities or Agency Securities.

[27] We have consulted with the staff of the U.S. Department of the Treasury on this proposal.

[28] As discussed more fully below, the standards in the Proposed Rules do not apply to a person that has or controls total assets of less than $50 million, or an investment company registered under the Investment Company Act of 1940 (''Investment Company Act'') (such company a ''registered investment company''). *See* proposed Rule 3a5–4(a)(2) and proposed Rule 3a44–2(a)(3). Investment advisers are not required to aggregate accounts held in the name of clients of the adviser under certain circumstances as described in proposed Rule 3a5–4(b)(2)(ii) and proposed Rule 3a44–2(b)(2)(ii). *See* Section III.D.

[29] There is an analogous exemption under the Treasury rules for certain foreign government securities dealers. *See* 17 CFR 401.7 (Treas. Reg. § 401.7) (1987) (''Exemption for certain foreign government securities brokers or dealers.''). The Commission is not expressing any views concerning multilateral development banks, like the International Bank for Reconstruction and Development (or the World Bank) and the International Finance Corporation, or foreign sovereigns or foreign central banks, or any other sovereign or international bodies as to the immunities such entities may possess under U.S. or international law. *See, e.g.,* Security-Based Swap Transactions Connected With a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed by Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent;

As the Proposed Rules focus on activity rather than label or status, they would potentially scope in other market participants as discussed below in Section V, thereby triggering a registration requirement and subjecting those entities to dealer regulation and oversight. As discussed further in Section V.B.2, the Commission's analysis indicates that the Proposed Rules would primarily require registration by PTFs, and potentially some private funds.[30] In addition, it is possible that the activities of some investment advisers [31] could meet the Proposed Rules [32] and trigger a dealer registration requirement. The Commission believes the scope of the Proposed Rules is appropriate in light of the important liquidity that these participants provide to the securities markets, which is similar to that historically provided by regulated dealers.

The Commission is proposing to exclude certain smaller participants, as well as registered investment companies, from the ambit of the Proposed Rules. As discussed in Section III.A and V.B, these smaller participants—persons that have or control less than $50 million in total assets—are unlikely to be able to engage in the significant liquidity provision that is the focus of the Proposed Rules. As discussed below in Section III.A, in light of the regulatory structure that governs registered investment companies, which addresses, among other things, the types of concerns that we seek to address in the Proposed Rules, the Commission is proposing to exclude registered investment companies from the Proposed Rules.[33]

Conversely, the Proposed Rules would not exclude private funds because we are proposing to take a similar approach to regulating dealer activity across market participants and, unlike registered investment companies, private funds are not subject to the regulatory framework of the Investment Company Act. The Commission currently receives information about the operations, exposures, liabilities, liquidity, and strategies of private funds through filings of Form PF by registered private fund advisers and has recently proposed amendments to Form PF to enhance the reporting about private funds.[34] If excluded from the Proposed Rules, however, private funds engaged in dealer activity would not be subject to the dealer regulatory regime, which includes not only registration obligations, but also comprehensive regulatory requirements and oversight that broadly focus on market functionality—that is, the impact of dealing activity on the market as a whole.

The Proposed Rules also would not exclude investment advisers registered under the Advisers Act (''registered investment advisers''). A registered investment adviser trading for its own proprietary account, for example, could trigger the dealer registration requirements under the Proposed Rules. And, under certain circumstances, a registered investment adviser could trigger application of the Proposed Rules because of aggregating trading in its own account with client accounts it controls. However, as described below in Section III.D, in determining whether its activity would be captured by the Proposed Rules, a registered investment adviser would not be required to aggregate its own trading activities with the trading activities of its clients' solely based on an adviser-client discretionary investment management relationship.[35] This exclusion is designed to attribute the dealer activity to the appropriate market actor.

II. Background

The Federal securities laws provide a comprehensive system of regulation of securities activities, and the definition of dealer is one of the Exchange Act's most important definitions. As discussed below, the statutory definition of ''dealer'' in Section 3(a)(4) and the accompanying registration requirements of the Exchange Act were drawn broadly by Congress in 1934 to encompass a wide range of activities involving the securities markets and their participants.[36] Registered dealers and government securities dealers are subject to a panoply of regulatory obligations and supervisory oversight intended to protect investors and the securities markets. Therefore, it is important that market participants whose securities activities fall within the broad definitions of ''dealer'' and ''government securities dealer'' are registered and regulated under the Exchange Act.

A. Definitions of ''Dealer'' and ''Government Securities Dealer''

Section 3(a)(5) of the Exchange Act defines the term ''dealer'' to mean ''any person [37] engaged in the business of buying and selling securities . . . for such person's own account through a broker or otherwise,'' but excludes ''a person that buys or sells securities . . . for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'' [38] This statutory exclusion from the definition of ''dealer'' is often referred to as the ''trader'' exception.[39]

Security-Based Swap Dealer De Minimis Exception, Exchange Act Release No. 77104 (Feb. 10, 2016), 81 FR 8598, *available at https://www.govinfo.gov/content/pkg/FR-2016-02-19/pdf/2016-03178.pdf.*

[30] A private fund, including a hedge fund, is an issuer that would be an investment company as defined in Section 3 of the Investment Company Act if not for Section 3(c)(1) or 3(c)(7) of the Investment Company Act. *See* 15 U.S.C. 80a–3.

[31] ''Investment adviser'' is defined under the Investment Advisers Act of 1940 (''Advisers Act'') as ''any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of a regular business, issues or promulgates analyses or reports concerning securities.'' *See* 15 U.S.C. 80b–2(a)(11).

[32] *See* Section III.D.

[33] As discussed in Section III.D, for purposes of the definition of ''own account,'' an account held in the name of a person that is a registered investment company would not be attributed to a controlling person or another person under common control.

[34] *See* Amendments to Form PF to Require Current Reporting and Amend Reporting Requirements for Large Private Equity Advisers and Large Liquidity Fund Advisers, Investment Advisers Act Release No. 5950 (Jan. 26. 2022), 87 FR 9106 (Feb. 17, 2022) (''Form PF Proposing Release'').

[35] Paragraph (b)(2)(ii)(B) of the Proposed Rules would not attribute to a registered investment adviser an account held in the name of a client of the registered investment adviser, unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client.

[36] Proposed Rule 3a5–4 would apply to securities as defined by Section 3(a)(10) of the Exchange Act, and proposed Rule 3a44–2 would apply to government securities as defined by Section 3(a)(42) of the Exchange Act, including any digital asset that is a security or a government security within the meaning of the Exchange Act.

[37] Paragraph (b)(1) of the Proposed Rules provides that the term ''person'' has the same meaning as prescribed in Section 3(a)(9) of the Exchange Act. Section 3(a)(9) of the Exchange Act defines a ''person'' as ''a natural person, company, government, or political subdivision, agency, or instrumentality of a government.'' *See* 15 U.S.C. 78c(a)(9).

[38] *See* Sections 3(a)(5)(A) and (B) of the Exchange Act, 15 U.S.C. 78c(a)(5)(A) and (B). The definition of ''dealer'' in the Exchange Act is largely unchanged from its enactment in 1934. Until the Gramm-Leach-Bliley Act (''GLBA'') was enacted in 1999, banks were excluded from the definition of ''dealer.'' The GLBA added Section 3(a)(5)(C) of the Exchange Act to create a series of functional exemptions from the statutory definition of dealer. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') further amended Section 3(a)(5)(A) of the Exchange Act to exclude from the dealer definition persons engaged in the business of buying and selling security-based swaps, other than security-based swaps with or for persons that are not eligible contract participants.

[39] *See, e.g.,* 2002 Release (explaining that ''a person that is buying securities for its own account may still not be a 'dealer' because it is not 'engaged in the business' of buying and selling securities for its own account as part of a regular business,'' and

Continued

As one commentator has described it, at the core of the ''dealer/trader'' distinction is an attempt to draw a line between a dealer and ''an ordinary investor who buys and sells for his own account with some frequency.'' [40] Read together, these provisions identify as a ''dealer'' a person engaged in the business of buying and selling securities for its own account as part of a regular business. Absent an exception or an exemption, Section 15(a)(1) of the Exchange Act makes it unlawful for a ''dealer'' to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless registered with the Commission in accordance with Section 15(b) of the Exchange Act.

Similarly, Section 3(a)(44) of the Exchange Act provides, in relevant part, that the term ''government securities dealer'' means ''any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise,'' but ''does not include any person insofar as he buys or sells such securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.'' [41] Read together, these provisions identify as a ''government securities dealer'' a person engaged in the business of buying and selling government securities for its own account as part of a regular business.[42] Section 15C of the Exchange Act makes it unlawful for a ''government securities dealer'' (other than a registered broker-dealer or financial institution) to induce or attempt to induce the purchase or sale of any government security unless such government securities dealer is registered in accordance with Section 15C(a)(2).[43]

Under both the dealer and government securities dealer definitions, a person acts as a dealer or a government securities dealer when it is engaged in the business of buying and selling securities or government securities, respectively, for its own account as part of a ''regular business.'' [44]

Factors Considered in Evaluating ''Regular Business''

Because the Exchange Act does not define what it means to be engaged in a ''regular business,'' courts and the Commission have looked to an array of factors in determining whether someone is a ''dealer'' within the meaning of the statute.[45] In determining whether a person is engaged in the business of buying and selling securities for its own account as part of a ''regular business,'' courts and the Commission assess the frequency with which the person buys and sells securities for its own account.[46] The ''regularity'' of participation in securities transactions necessary to find that a person is a ''dealer'' has not been quantified, but involves engaging in ''more than a few isolated'' securities transactions.[47]

In addition to frequency of activity, the nature of the trading activity is a factor in determining whether a person is a dealer.[48] Over time, the Commission has identified activities that, in context and when engaged in with regularity, may be indicative of being a dealer.[49] For example, the Commission has identified certain factors that would be indicators of dealer activity, including,

that ''[t]his exclusion is often referred to as the dealer/trader distinction'').

[40] *See* Loss, *Securities Regulation* 722 (1st ed. 1951) (''One aspect of the 'business' concept is the matter of drawing the line between a 'dealer' and a trader—an ordinary investor who buys and sells for his own account with some frequency.''), *cited in* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 n.250 (May 23, 2012) (''Entities Adopting Release'').

[41] 15 U.S.C. 78c(a)(44). Congress added the definition of ''government securities dealer'' to the Exchange Act in the Government Securities Act of 1986. Public Law 99–571, 100 Stat. 3208 (Oct. 28, 1986). To the extent a financial institution is a government securities dealer required to register under Section 15C, it would not register with the Commission but instead would provide written notice of its government securities dealer status with the appropriate Federal banking regulator, and comply with rules adopted by the Treasury and the applicable Federal banking regulator. *See* Regulations under Section 15C of the Securities Exchange Act of 1934, 17 CFR 400.1(b), *available at* CFR-2018-title17-vol4-chapIV.pdf (*treasurydirect.gov*) (the ''Treasury Rules''). The Treasury Rules address financial responsibility, protecting customer securities and funds, recordkeeping, large position reporting, and financial reporting and audits. Also included are rules concerning custodial holdings of government securities by depository institutions. The Commission retains broad antifraud authority over banks that are government securities dealers. Soon after enactment of the Government Securities Act of 1986, the staff issued a series of no-action letters to persons seeking assurances that the staff would not recommend enforcement action if they did not register as government securities dealers. *See, e.g., Bankers Guarantee Title & Trust Co.,* SEC No-Action Letter (Jan. 22, 1991); *Bank of America, Canada,* SEC No-Action Letter (May 1, 1988); *Citicorp Homeowners, Inc.,* SEC No-Action Letter (Oct. 7, 1987); *Fairfield Trading Corp.,* SEC No-Action Letter (Dec. 10, 1987); *Continental Grain Co.,* SEC No-Action Letter (Nov. 28, 1987); *Louis Dreyfus Corp.,* SEC No-Action Letter (July 23, 1987); *United Savings Association of Texas,* SEC No-Action Letter (Apr. 2, 1987). Staff no-action letters, like all staff statements, have no legal force or effect: They do not alter or amend applicable law, and they create no new or additional obligations for any person. Upon the adoption of any final rule, some letters and other staff statements, or portions thereof, may be moot, superseded, or otherwise inconsistent with the final rules and, therefore, would be withdrawn or modified.

[42] The legislative history relating to the enactment of the Government Securities Act of 1986 provides that the term government securities dealer ''would utilize key concepts from the current definitions of . . . 'dealer' and 'municipal securities dealer.' '' H.R. Rep. No. 258, 99th Cong., 1st Sess. 24 (1985). S. Rep. No. 426, 99th Cong., 2d Sess. 19 (1986).

[43] A government securities dealer that is a registered dealer or a financial institution must file notice with the appropriate regulatory agency that it is a government securities dealer. *See* 15 U.S.C. 78o–5(a). Exchange Act Section 3(a)(46) defines the term ''financial institution'' to include: (i) A bank (as that term is defined in Exchange Act Section 3(a)(6) (15 U.S.C. 38c(a)(6)); (ii) a foreign bank (as that term is used in the International Banking Act of 1978); and (iii) a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation). *See* 15 U.S.C. 78c(a)(46)(A) through(C).

[44] Unless otherwise indicated, references to ''dealer'' activity apply both with respect to ''dealers'' and ''government securities dealers'' under Sections 3(a)(5) and 3(a)(44) of the Exchange Act, respectively.

[45] *See, e.g.,* Registration Requirements for Foreign Broker-Dealers, Exchange Act Release No. 27017 (July 11, 1989), 54 FR 30013, 30015 (July 18, 1989) (stating that the definition of ''dealer'' and the registration requirements under the Exchange Act ''were broadly drawn by Congress to encompass a wide range of activities involving investors and the securities markets''). Recognizing that the word ''business'' is central to the dealer definition, courts have cited to Black's Law Dictionary definition of business: ''a commercial enterprise carried on *for profit,* a particular occupation or employment habitually engaged in for *livelihood or gain*.'' *SEC* v. *Justin W. Keener d/b/a JMJ Financial,* No. 20–cv–21254, pp. 14–15 (S.D. Fla. Jan. 21, 2022) (citing *SEC* v. *Big Apple Consulting USA, Inc.,* 783 F.3d 786, 809 (11th Cir. 2015) which was quoting Black's Law Dictionary 239 (10th ed. 2009)) (emphasis in original). The Eleventh Circuit elaborated that ''[c]entral to this definition is *profit* or gain.'' *Id.* (emphasis in original). *See also SEC* v. *Ibrahim Almagarby,* 479 F. Supp. 3d 1266, 1272 (S.D. Fla. 2020).

[46] *See Massachusetts Financial Services, Inc.* v. *Securities Investor Protection Corp.,* 411 F. Supp. 411, 415 (D. Mass.), *aff'd,* 545 F.2d 754 (1st Cir. 1976), *cert. denied,* 431 U.S. 904 (1977) (noting that the dealer definition: ''connote[s] a certain regularity of participation in securities transactions at key points in the chain of distribution.''); *see also Eastside Church of Christ* v. *National Plan, Inc.,* 391 F.2d at 361–362 (an entity that purchased many securities for its own account as part of its regular business and sold some of them was deemed a dealer); *SEC* v. *Century Inv. Transfer Corp.,* 1971 U.S. Dist. LEXIS 11364, at *14 (S.D.N.Y. Oct. 5, 1971) (a limited partnership that bought and sold securities for its own account on numerous occasions was deemed a dealer); *SEC* v. *Corporate Rels. Group, Inc.,* 2003 U.S. Dist. LEXIS 24925, at *60–61 (M.D. Fla. Mar. 28, 2003) (an unregistered stock promotion company that was operating as a broker was also operating as a dealer because it bought securities on more than a dozen occasions and sold those securities in hundreds of transactions through accounts it maintained or in which it had an interest).

[47] *See SEC* v. *Am. Inst. Counselors, Inc.,* Fed. Sec. L. Rep. (CCH) ¶ 95388 (D.D.C. 1975) (citing Loss, Securities Regulation (2d ed. 1961)).

[48] *See* 2002 Release at 67498.

[49] *See* Entities Adopting Release, 77 FR 30617 (discussing application of the dealer/trader distinction in the context of security-based swap dealers); *see also* 2002 Release at 67499.

among other things: (1) Acting as a market maker or specialist on an organized exchange or trading system; (2) acting as a de facto market maker or liquidity provider; [50] and (3) holding oneself out as buying or selling securities at a regular place of business.[51]

Trader Exclusion

The Exchange Act excludes from the definition of dealer any ''person that buys or sells securities . . . for such person's own account, either individually or in a fiduciary capacity, but not as a part of a regular business.'' [52] While traders and dealers engage in the same core activity—buying and selling securities for their own account—their level of activity varies in absolute terms and in regularity.[53] The Commission has stated that dealers include those who are willing to buy and sell contemporaneously and often quickly enter into offsetting transactions to minimize the risk associated with a position.[54] In contrast, traders are ''market participants who provide capital investment and are willing to accept the risk of ownership in listed companies for an extended period of time,'' and the Commission has stated that ''it makes little sense to refer to someone as 'investing' in a company for a few seconds, minutes, or hours.'' [55] The purpose of the ''trader'' exception is to ''exclude from the definition of 'dealer' members of the public who buy and sell securities for their own account as ordinary traders.'' [56]

B. 2010 Equity Market Structure Concept Release

The Commission raised the issue of broker-dealer registration for PTFs in its 2010 Equity Market Structure Concept Release.[57] Specifically, as part of its discussion relating to the potential risks to the markets posed by PTFs, the Commission requested comment on whether all PTFs should be required to register as broker-dealers.[58] Comments were mixed.[59] A number of commenters explicitly supported registration as an effective means for providing oversight of trading activity.[60] Others commenters opposed registration, citing costs, burdens, and barriers to competition.[61]

C. Department of the Treasury Request for Comment

In 2016, Treasury published notice seeking public comment on the evolution of the U.S. Treasury market structure and the implications for market functions, trading and risk management practices across the U.S. Treasury market, considerations with respect to more comprehensive official sector access to U.S. Treasury market data, and the benefits and risks of increased public disclosure of U.S. Treasury market activity.[62] In that Request for Comment, Treasury raised the issue of registration for certain market participants, including those persons engaging in automated trading or conducting a certain volume of trading.[63] Specifically, concerning its continued monitoring of trading and risk management practices across the U.S. Treasury market and reviewing regulatory requirements applicable to the government securities market and its participants, Treasury requested comment on: (1) Aligning standards between U.S. securities, commodities, and derivatives markets and the U.S. Treasury cash market; (2) the implications of a registration requirement for certain market participants, including those persons engaging in automated trading or conducting a certain volume of trading; and (3) whether such firms should be subject to capital requirements, examinations and supervision, conduct rules, and/or other standards.[64] A number of comment letters were submitted directly or indirectly responding to these questions.[65] Most

[50] For example, a person may be acting as a dealer if they ''turned a profit not from selling only after market prices increased (like a trader), but rather from quickly reselling at a marked-up price.'' *River North,* 415 F. Supp. 3d at 859; *see also SEC* v. *Big Apple Consulting USA, Inc.,* 783 F.3d 786, 809–10 (11th Cir. 2015); *In re Sodorff,* 50 SEC. 1249, 1992 WL 224082, at *5 (Sep. 2, 1992).

[51] *See* 2002 Release. These factors were confirmed by the Commission in 2012 when it defined certain terms, including ''security-based swap dealer,'' in accordance with Title VII of the Dodd-Frank Act. *See* Entities Adopting Release at 30607 (distinguishing traders from dealers by noting that a trader, among other things, does not make a market). These indicia have been developed in a range of contexts over time as the markets and dealer activity have evolved, and do not represent an exclusive or exhaustive list of activities relevant for determining whether registration as a dealer is required. Further, a person not meeting the standards in the Proposed Rules may still be a dealer under otherwise applicable dealer precedent. Whether or not a person is a ''dealer'' is based on the facts and circumstances, where various factors are ''neither exclusive, nor function as a checklist,'' and meeting any one factor may be sufficient to establish dealer status. *SEC* v. *River North Equity LLC,* 415 F. Supp. 3d 853, 858 (N.D. Ill. 2019); *accord SEC* v. *Fierro,* No. 20–cv–2104, 2020 WL 7481773, at *3 (D.N.J. Dec. 18, 2020); *SEC* v. *Keener,* No. 20–cv–21254, 2020 WL 4736205, at *3–*4 (S.D. Fla. Aug. 14, 2020); *SEC* v. *Almagarby,* 479 F. Supp. 3d 1266, 1272–73 (S.D. Fla. 2020); *SEC* v. *Benger,* 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010).

[52] Sections 3(a)(5)(B) and 3(a)(44)(A) of the Exchange Act.

[53] *See* Loss, *supra* note 40, at 720 (noting that the distinction between a trader and a dealer seeks to separate the ''ordinary investor who buys and sells for his own account with some frequency'' by establishing that dealers engage in the business of buying and selling securities as part of a regular business).

[54] 2002 Release.

[55] 2010 Equity Market Structure Concept Release at 3603, n. 52 (citing Regulation NMS Release, 70 FR 37500).

[56] *See SEC* v. *Am. Inst. Counselors, Inc.,* Fed. Sec. L. Rep. (CCH) ¶ 95,388 (D.D.C. 1975) (citing Loss, Securities Regulation (2d ed. 1961)). *See also* 2002 Release (''[A] person that is buying securities for its own account may still not be a 'dealer' because it is not 'engaged in the business' of buying and selling securities for its own account as part of a regular business''); *River North,* 415 F. Supp. at 859 (traders purchase securities already in the marketplace and turn a profit from selling them after they appreciate in value); *Sodorff,* 1992 WL 224082, at *5 (same).

[57] *See* 2010 Equity Market Structure Concept Release at 3612.

[58] *Id.*

[59] *See* Letter from Donald R. Wilson, Jr., DRW Trading, LLC (Apr. 21, 2010); Letter from Peter Kovac, Chief Operating Officer and Financial and Operations Principal, EWT (Feb. 22, 2010); Letter from Senator Edward Kaufman (Aug. 5, 2010); Article from Stephen M. Barnes, J.D., *Regulating High-Frequency Trading: An Examination of U.S. Equity Market Structure in Light of the May 6, 2010 Flash Crash* (Dec. 2010); Letter from R.T. Leuchtkafer (Apr. 16, 2010); Letter from R.T. Leuchtkafer (July 15, 2010); Letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America (Sept. 9, 2014); Letter from Berkowitz, Trager & Trager, LLC (Apr. 21, 2010); Letter from Alston Trading, LLC, RGM Advisors, LLC, Hudson River Trading, LLC, and Quantlab Financial, LLC (Apr. 23, 2010); Letter from Marcia E. Asquith, Senior Vice President and Corporate Secretary, Financial Industry Regulatory Authority (Apr. 23, 2010); Letter from James J. Angel, Associate Professor, McDonough School of Business, Georgetown University, Lawrence E. Harris, Fred V. Keenan Chair in Finance, Professor of Finance and Business Economics, Marshall School of Business, University of Southern California, and Chester S. Spatt, Pamela R. and Kenneth B. Dunn Professor of Finance, Director, Center for Financial Markets, Tepper School of Business, Carnegie Mellon University, Equity Trading in the 21st Century (Feb. 23, 2010); and Letter from Kurt N. Schacht, Managing Director and Linda L. Rittenhouse, Director, Capital Markets Policy, CFA Institute (June 22, 2010).

[60] *See* Letter from Peter Kovac, Chief Operating Officer and Financial and Operations Principal, EWT (Feb. 22, 2010); Letter from Senator Edward Kaufman (Aug. 5, 2010); Article from Stephen M. Barnes, J.D., *Regulating High-Frequency Trading: An Examination of U.S. Equity Market Structure in Light of the May 6, 2010 Flash Crash* (Dec. 2010); Letter from R.T. Leuchtkafer (Apr. 16, 2010); Letter from R.T. Leuchtkafer (July 15, 2010); Letter from Micah Hauptman, Financial Services Counsel, Consumer Federation of America (Sept. 9, 2014). *See also* Letter from Donald R. Wilson, Jr., DRW Trading, LLC (Apr. 21, 2010), pp 3–4 (supporting registration only for those firms that engage in high-volume and high-speed trading).

[61] *See* Letter from Berkowitz, Trager & Trager, LLC (Apr. 21, 2010); Letter from Alston Trading, LLC, RGM Advisors, LLC, Hudson River Trading, LLC, and Quantlab Financial, LLC (Apr. 23, 2010).

[62] *See* Treasury Request for Comment.

[63] *See* Treasury Request for Comment at 3930.

[64] *See* Treasury Request for Comment at 3931 (Questions 2.6, 2.6(a) and 2.6(b)).

[65] *See* Letter from Deirdre K. Dunn, Managing Director—Head of NA G10 Rates, Citi Global

Continued

commenters explicitly supported consistent regulatory standards to be applied to certain market participants, including those persons engaging in automated trading or conducting a certain volume of trading,[66] with some commenters explicitly supporting the registration of market participants that are not currently registered as dealers.[67] One commenter was opposed to the registration of certain market participants citing disapproval of the ''application of arbitrary thresholds when determining the applicability of regulation.'' [68] Another commenter stated that ''principal trading firms have played an increasingly larger role in offering liquidity in these markets, and have become de facto market makers.'' [69]

D. Need for Commission Action

While the participation of these PTFs and other significant market participants that are not registered as dealers may have positive effects, such as through increased competition, there are risks that accompany such market participants' trading activities and the accompanying lack of regulatory obligations or oversight relating to such activity.[70] Among other things, scrutiny of the U.S. Treasury market, in light of recent market disruptions,[71] has identified a regulatory gap in terms of the registration status and regulation of significant market participants in the U.S. Treasury market. Not only does such a regulatory gap mean inconsistent oversight of market participants performing similar functions either in the same market or across asset classes but, as described below, the activity of significant market participants that are not registered may pose certain risks to the markets.

In particular, certain market participants, such as PTFs that are not registered as dealers, play an increasingly significant role as major liquidity providers across asset classes in the U.S. securities markets, including the U.S. Treasury market. These market participants engage in a significant volume of trading across many trading platforms for their own accounts, generally ending the day with a relatively small position. In the U.S. Treasury market, in particular, market commenters and financial regulators have stated that the rise of electronic trading and emergence of unregulated significant market participants over the years could be a contributing factor to the more frequent market disruptions, specifically stating that these changes are directly affecting liquidity provision.[72]

The Commission believes that, although the Proposed Rules will not by themselves necessarily prevent future market disruptions, the operation of the rules will support transparency; market integrity and resiliency; and investor protection; across the U.S. Treasury and other securities markets by closing the regulatory gap that currently exists and ensuring consistent regulatory oversight of persons engaging in the type of activities described in the Proposed Rules.[73] The requirement that dealers register has been repeatedly recognized as being ''of the utmost importance in effecting the purposes of the [Exchange] Act. It is through the registration requirement that some discipline may be exercised over those who may engage in the securities business and by which necessary standards may be established with respect to training, experience, and records.'' [74] For example, as described below in Section V.C, dealers and government securities dealers must register with the Commission and become members of a self-regulatory organization (''SRO''); [75] comply with Commission and SRO rules, including certain financial responsibility and risk management rules,[76] transaction and

Markets (Apr. 22, 2016) (''Citi Global''); Letter from Shane O'Cuinn, Managing Director, Credit Suisse/Global Markets (Apr. 22, 2016) (''Credit Suisse''); Letter from Joanna Mallers, Secretary, FIA Principal Traders Group (Apr. 22, 2016) (''FIA PTG''); Comment from Kermit Kubitz (Apr. 22, 2016); Letter from William Harts, Modern Market Initiative (Apr. 22, 2016) (''MMI''); Letter from Prudential Fixed Income (Apr. 21, 2016) (''Prudential''); Letter from Alan Mittleman, Managing Director, Head of USD Rates Trading, RBS Securities Inc. (Apr. 22, 2016) (''RBS Securities''); Letter from Reserve Bank of India (Apr. 22, 2016); Letter from Mike Zolik, Nate Kalich, and Larry Magargal, Ronin Capital, LLC (Mar. 19, 2016) (''Ronin Capital''); Letter from Timothy W. Cameron, Esq., Asset Management Group—Head and Lindsey Weber Keljo, Vice President and Assistant General Counsel, Asset Management Group, Securities Industry and Financial Markets Association (Apr. 22, 2016) (''SIFMA–AMG''); Letter from Greg Moore, Managing Director and Head of FICM New York, TD Securities (USA) LLC (Apr. 22, 2016) (''TD Securities''); and Letter from C. Thomas Richardson, Managing Director, Head of Market Structure, Head of Electronic Trading Services, and Cronin McTigue, Managing Director, Head of Liquid Products, Wells Fargo Securities (Apr. 21, 2016) (''Wells Fargo'').

[66] *See* Letter from Citi Global; Letter from Credit Suisse; Comment from Kermit Kubitz; Letter from MMI; Letter from Prudential; Letter from RBS Securities; Letter from Reserve Bank of India; Letter from Ronin Capital; Letter from SIFMA–AMG; Letter from TD Securities; and Letter from Wells Fargo.

[67] *See* Letter from Prudential; Letter from MMI; Letter from TD Securities; Letter from Reserve Bank of India; Letter Citi Global; and Letter from Ronin Capital.

[68] *See* Letter from FIA PTG.

[69] *See* Letter from Stuart Kaswell, Executive Vice President and Managing Director, General Counsel, and Jiří Król, Deputy CEO, Global Head of Government Affairs, Alternative Investment Management Association (Apr. 22, 2016) at 2 (describing the evolution of market structure generally).

[70] *See* Section V for discussion of competition; *see also* Algorithmic Trading Staff Report.

[71] *See* 2021 IAWG Report.

[72] *See* 2021 IAWG Joint Staff Report (stating that the October 15, 2014 market disruption made clear that, among other things, ''electronic trading permitted rapid increases in orders that removed liquidity'') at 18, and G30 Report.

[73] *See* Section V.

[74] *River North,* 415 F. Supp. 3d 853, 858 (citing *Benger,* 697 F. Supp. 2d at 944 (quoting *Celsion Corp.* v. *Stearns Mgmt. Corp.,* 157 F. Supp. 2d 942, 947 (N.D. Ill. 2001)); *see also Roth* v. *SEC,* 22 F.3d 1108, 1109 (D.C. Cir. 1994) (''The broker-dealer registration requirement serves as the keystone of the entire system of broker-dealer regulation.''); *see* Section 15(b)(7) of the Exchange Act, 15 U.S.C. 78o(b)(7), and 17 CFR 240.15b7–1 (Rule 15b7–1 thereunder) (requiring natural persons associated with a broker-dealer to be registered or approved ''in accordance with the standards of training, experience, competence, and other qualification standards''); *see also* Financial Industry Regulatory Authority (''FINRA'') Rule 1210 (Registration Requirements) and FINRA Rule 1220 (Registration Categories), which require, for example, an associated person of a member broker-dealer of FINRA who is primarily responsible for the design, development, or significant modification of an algorithmic trading strategy, or who is responsible for supervising or directing such activities, to pass the Series 57 exam, register as a Securities Trader, and comply with continuing education requirements.

[75] *See* Sections 15(b)(8), 15C(e)(1), and 17(b) of the Exchange Act, 15 U.S.C. 78o(b)(8), 15 U.S.C. 78o–5(e)(1), and 15 U.S.C. 78q(b), respectively. Section 15(b)(8) of the Exchange Act makes it unlawful for any registered broker or dealer to effect any transaction in securities (with certain exceptions) unless the broker or dealer is a member of a registered securities association or effects transactions in securities solely on a national securities exchange of which it is a member. Section 15C(e)(1) of the Exchange Act requires that a registered government securities broker-dealer, other than certain financial institutions, become a member of a registered national securities exchange or registered national securities association. Because government securities are not traded on registered national securities exchanges, a person that registers as a government securities dealer under Section 15C to trade only government securities would need to become a member of a registered national securities association (FINRA is the only registered national securities association). Currently, however, a person that is engaged in a regular business of buying and selling both government securities and other securities for its own account, and therefore registers as a dealer under Section 15, could potentially be exempt from Section 15(b)(8)'s national securities association membership requirement if it is or becomes a member of a national securities exchange and satisfies other requirements. *See* 17 CFR 240.15b9–1. Section 17(b) of the Exchange Act provides, among other things, that all records of a broker-dealer are subject at any time, or from time to time, to such reasonable, periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency of the broker-dealer as the Commission or the appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.

[76] *See, e.g.,* 17 CFR 240.15c3–1 (Exchange Act Rule 15c3–1) (the ''Net Capital Rule''; Financial Responsibility Rules for Broker-Dealers, Exchange Act Release No. 70072 (July 30, 2013), 78 FR 51823 at 51849 (Aug. 21, 2013) (''The capital standard in

other reporting requirements,[77] operational integrity rules,[78] and books and records requirements,[79] all of which help to enhance market stability by giving regulators increased insight into firm-level and aggregate trading activity and so help regulators to evaluate, assess, and address, as appropriate, market risks. In addition, registered dealers and government securities dealers are required to comply with specific anti-manipulative and other anti-fraud rules that are promulgated pursuant to Section 15(c) of the Exchange Act, thereby contributing to fair and orderly markets.[80] Firms that are government securities dealers (including registered broker-dealers trading government securities) must also comply with rules adopted by Treasury, including but not limited to rules relating to financial responsibility, recordkeeping, financial condition reporting, risk oversight, and large trader reporting.[81] Importantly, dealers and government securities dealers are subject to Commission and SRO examination, inspection, and enforcement for compliance with applicable Federal securities laws and SRO rules.[82]

III. Overview of Proposed Rules

The operative concept in the definitions of ''dealer'' and ''government securities dealer''—that distinguishes the regulated entity from the unregulated trader—is that the dealer is engaged in buying and selling securities for its own account ''as part of a regular business.'' [83] The Commission is proposing two rules—proposed Rules 3a5–4 and 3a44–2—to further define these terms to identify certain activities that would constitute a ''regular business'' requiring a person engaged in those activities to register as a ''dealer'' or a ''government securities dealer,'' absent an exception or exemption.[84] A person (as defined below) who engages in any one of the activities identified in either proposed Rule 3a5–4 or 3a44–2 would be considered a dealer under that rule.[85]

As explained above, over the years the Commission and the courts have identified a number of qualitative factors, including acting as a market maker, de facto market maker, or liquidity provider, that might indicate a person may be engaged in a regular business of buying and selling securities for its own account.[86] The Proposed Rules would expand upon these statements to further define three qualitative standards designed to more specifically identify activities of certain market participants who assume dealer-like roles, specifically, persons whose trading activity in the market ''has the effect of providing liquidity'' to other

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Rule 15c3–1 is a net liquid assets test. This standard is designed to allow a broker-dealer the flexibility to engage in activities that are part of conducting a securities business (*e.g.,* taking securities into inventory) but in a manner that places the firm in the position of holding at all times more than one dollar of highly liquid assets for each dollar of unsubordinated liabilities (*e.g.,* money owed to customers, counterparties, and creditors)''). The rule imposes a ''moment to moment'' net capital requirement in that broker-dealers must maintain an amount of net capital that meets or exceeds their minimal net capital requirement at all times.

[77] *See, e.g.,* FINRA Rule 6730(a)(1) (requiring FINRA members to report transactions in TRACE-Eligible Securities, including Treasury securities, which promotes transparency to the securities markets, including the Treasury market, by providing market participants with comprehensive access to transaction data); FINRA Rule 7200 (Trade Reporting Facilities); FINRA Rule 4530 (Reporting Requirements) which requires FINRA members to report among other things when the member or an associated person of the members has violated certain specified regulatory requirements, is subject to written customer complaint, and is denied registration or is expelled, enjoined, directed to cease and desist, suspended or disciplined by a specified regulatory body. The provision at 17 CFR 240.17a–5(d)(1)(i)(A) (Exchange Act Rule 17a–5(d)(1)(i)(A)) requires broker-dealers, subject to limited exceptions, to file annual reports, including financial statements and supporting schedules that generally must be audited by a Public Company Accounting Oversight Board (PCAOB)-registered independent public accountant in accordance with PCAOB standards.

[78] *See, e.g.,* 17 CFR 240.15c3–5 (Exchange Act Rule 15c3–5)—Risk Management Controls for Brokers or Dealers with Market Access (the ''Market Access Rule'') promotes market integrity by reducing risks associated with market access by requiring financial and regulatory risk management controls reasonably designed to limit financial exposures and ensure compliance with applicable regulatory requirements.

[79] *See, e.g.,* Section 17(a) of the Exchange Act and 17 CFR 240.17a–3 and 240.17a–4 (Rules 17a–3 and 17a–4 thereunder); *see also, e.g.,* FINRA Rules 2268, 4510, 4511, 4512, 4513, 4514, 4515, 5340 and 7440(a)(4) (requiring member firms to make and preserve certain books and records to show compliance with applicable securities laws, rules, and regulations and enable Commission and FINRA staffs to conduct effective examinations); NYSE Rule 440 (Books and Records); CBOE Exchange Rule 7.1 (Maintenance, Retention and Furnishing of Books, Records and Other Information). Among other things, Commission and SRO books and records rules help to ensure that regulators can access information to evaluate the financial and operational condition of the firm, including examining compliance with financial responsibility rules, among other rules, as well as assess whether and how a firm's participation in the securities markets impacted a major market event. *See* Staff Study on Investment Advisers and Broker-Dealers As Required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 2011) at 72. *See also* Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swaps Dealers, Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199 (May 2, 2014) (''The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.'').

[80] *See, e.g.,* Sections 15(c)(1) and (2) of the Exchange Act, 15 U.S.C. 78o(c)(1) and (2), and rules promulgated thereunder.

[81] Under Title I of the Government Securities Act (''GSA''), all government securities brokers and government securities dealers are required to comply with the requirements in Treasury's GSA regulations that are set out in 17 CFR parts 400 through 449. For the most part, Treasury's GSA regulations incorporate with some modifications: (1) Commission rules for non-financial institution government securities brokers and government securities dealers; and (2) the appropriate regulatory agency rules for financial institutions that are required to file notice as government securities brokers and government securities dealers. *See, e.g.,* 17 CFR part 400, Rules of general application; 17 CFR part 401, Exemptions; 17 CFR part 402, Financial responsibility; 17 CFR part 403, Protection of customer securities and balances; 17 CFR part 404, Recordkeeping and preservation of records; 17 CFR part 405, Reports and audit; 17 CFR part 420, Large position reporting; and 17 CFR part 449, Forms, Section 15C of the Exchange Act. The GSA regulations also include requirements for custodial holdings by depository institutions at 17 CFR part 450, which were issued under Title II of the GSA. The Treasury GSA regulations provide in many instances that a registered dealer can comply with a Commission rule to establish compliance with the comparable Treasury requirement. *See, e.g.,* 17 CFR 402.1(b) (Treas. Reg. § 402.1(b)) (''This part does not apply to a registered broker or dealer . . . that is subject to [Exchange Act Rule 15c3–1].''); 17 CFR 403.1 (Treas. Reg. § 403.1) (regarding application to registered brokers or dealers); 17 CFR 404.1 and 405.1(a) (Treas. Reg. §§ 404.1 and 405.1(a)) (same).

[82] *See* Exchange Act Section 15(b) (regarding Commission authority to sanction brokers and dealers); Section 15C(c) (regarding Commission authority to sanction government securities dealers that are registered with it); Section 15C(d) (authorizing the Commission to examine books and records of government securities dealers registered with it); and Section 17(b) (broker-dealer recordkeeping and examination). *See also* Section 15C(g) (restricting the ability of the Commission with respect to government securities dealers that are not registered with the Commission).

[83] As discussed above, the definitions of ''dealer'' and ''government securities dealer'' under the Exchange Act exclude from dealer status a person that buys or sells securities for such person's own account ''but not as a part of a regular business.'' *See* 15 U.S.C. 78c(a)(5)(A) and (B) and 15 U.S.C. 78c(a)(44)(A).

[84] *See* Exchange Act Section 15 (regarding registration of dealers) and Section 15C (regarding registration of government securities dealers).

[85] Status as a securities ''dealer'' or ''government securities dealer'' as a result of engaging in securities or government securities transactions ''as part of a regular business'' under proposed Rules 3a5–4 or 3a44–2 is not determinative of a person's status for purposes of the exclusions in Section 3(c)(2) of the Investment Company Act. Although that exclusion uses some terminology that is similar to that in the Proposed Rules, Section 3(c)(2) includes a number of conditions in addition to the requirement that a person regularly engage in transactions on both sides of the market, each of which an entity would have to satisfy to be able to rely on the investment company exclusion.

[86] *See* 2002 Release (stating that a person generally may satisfy the definition, and therefore, be acting as a dealer in the securities markets, by conducting various activities, including ''acting as a market maker or specialist on an organized exchange or trading system'' or ''acting as a *de facto* market maker whereby market professionals or the public look to the firm for liquidity'').

market participants.[87] While all market participants who buy or sell securities in the marketplace arguably contribute to a market's liquidity, the Proposed Rules focus on market participants who engage in a routine pattern of buying and selling securities for their own account that has the effect of providing liquidity. Said differently, for market participants engaging in any of the activities identified by the qualitative standards of the Proposed Rules, liquidity provision is not incidental to their trading activities. Rather, these persons are ''in the business'' of buying and selling securities for their own account and providing liquidity as part of a regular business.[88] The Proposed Rules would set forth three standards that the Commission believes would appropriately distinguish and identify such liquidity provision as a ''regular business.''

In addition, proposed Rule 3a44–2, which would apply only to government securities dealers, would include a quantitative standard.[89] This quantitative standard would establish a bright-line test, under which a person engaging in certain specified levels of activity would be deemed to be buying and selling government securities ''as a part of a regular business,'' regardless of whether it meets any of the qualitative standards.[90]

A person whose activity meets the quantitative or any of the qualitative standards would be a dealer and so subject to the Exchange Act registration requirements, regardless of whether the liquidity provision is a chosen consequence of its activities.[91]

To account for variations in corporate structure and ownership, the Proposed Rules additionally would define the terms ''own account'' and ''control.'' The Proposed Rules would define a person's ''own account'' to mean, subject to certain exceptions, any account: (i) Held in the name of that person; (ii) held in the name of a person, over whom that person exercises control or with whom that person is under common control; [92] or (iii) held for the benefit of those persons identified in (i) and (ii). In addition, the Proposed Rules would give ''control'' the ''same meaning as prescribed in § 240.13h–l (Rule 13h–l), under the Exchange Act.''

While the Proposed Rules would establish standards that identify when a person is acting as a dealer or government securities dealer, whether a person's activities meet these standards would remain a facts and circumstances determination.[93] Importantly, the Proposed Rules are not the exclusive means of establishing that a person is a dealer or government securities dealer—to the extent consistent with the Proposed Rules, existing Commission interpretations and precedent will continue to apply.[94]

A market participant that is not registered as a dealer that comes within the scope of the Proposed Rules would need to register with the Commission as a dealer or government securities dealer and become a member of an SRO. This would involve filing Form BD with the Commission and completing the SRO's processes for new members.[95] The Commission is proposing to provide such market participants a one-year compliance period from the effective date of any final rules. The proposed compliance period is designed to provide adequate time for persons captured by the Proposed Rules at the time of adoption, if adopted, to apply for dealer registration, and for the relevant SROs to conduct their review of the new member applications, without disrupting the markets or the participants' market activities. The proposed compliance period would not cover market participants whose activities following the effective date of any final rules require registration as dealers under those rules.

A. Persons Excluded From the Proposed Rules

Under the Proposed Rules, the term ''person'' would have the same meaning as prescribed in Section 3(a)(9) of the Exchange Act.[96] As a threshold matter, the Proposed Rules would not apply to: (i) ''[a] person that has or controls total assets of less than $50 million;'' [97] or (ii) ''[an] investment company registered under the Investment Company Act.'' [98]

As discussed above, the Proposed Rules are intended to capture market participants not registered as dealers that serve a critical dealer-like role in the securities and government securities markets through their liquidity provision or significant and regular trading activity in the market. By providing an exception for persons that have or control total assets of less than $50 million, the Proposed Rules would parallel an established standard for distinguishing between ''retail'' and ''institutional'' investors in other

[87] As noted below, the Proposed Rules are not the exclusive means of establishing that a person is a dealer or government securities dealer—to the extent consistent with the Proposed Rules, existing Commission interpretations and precedent will continue to apply. *See above* Section II.A. For example, facts indicating a person may be acting as a ''dealer'' include underwriting, as well as buying and selling directly to securities customers together with conducting any of an assortment of professional market activities such as providing investment recommendations, extending credit, and lending securities in connection with transactions in securities, and carrying a securities account. *See* 2002 Release. *See also SEC* v. *Justin W. Keener d/b/a JMJ Financial,* No. 20–cv–21254 (S.D. Fla. Jan. 21, 2022). Accordingly, a person may still be acting as a dealer even if they do *not,* under the Proposed Rules, engage in a routine pattern of buying and selling securities that has the effect of providing liquidity to other market participants. *See* proposed Rule 3a5–4(c) and proposed Rule 3a44–2(c), discussed below in Section III.E.

[88] PTFs engaging in passive market making, for example, earn revenue primarily from the provision of liquidity, specifically ''by buying at the bid and selling at the offer and capturing any liquidity rebates offered by trading centers to liquidity supplying orders.'' *See, e.g.,* 2010 Equity Market Structure Concept Release at 3607.

[89] *See* Section III.C.

[90] *See id.*

[91] The Proposed Rules focus on effect regardless of a person's intention. The fact that the provision of liquidity is a fundamental aspect of the activities captured by the qualitative standards does not mean that such liquidity provision need be deliberate to come within the Proposed Rules. Intent is not required by the statutory language, nor is it relevant in every circumstance.

[92] The Proposed Rules would exclude from aggregation under paragraph (b)(2)(ii): (A) An account in the name of a registered broker, dealer, government securities dealer, or an investment company registered under the Investment Company Act; (B) with respect to an investment adviser registered under the Advisers Act, an account held in the name of a client of the adviser unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client; or (C) with respect to any person, an account in the name of another person that is under common control with that person solely because both persons are clients of an investment adviser registered under the Advisers Act unless those accounts constitute a parallel account structure.

[93] *Cf.* 2002 Release (''[T]he analysis of whether a person meets the definition of a dealer depends upon all of the relevant facts and circumstances.'').

[94] *See* Section II.A. For example, a person generally may satisfy the statutory definition of ''dealer'' by underwriting, or buying and selling directly to securities customers together with conducting any of an assortment of professional market activities such as providing investment recommendations, extending credit, and lending securities in connection with transactions in securities, and carrying a securities account. *See* 2002 Release.

[95] After receiving a substantially complete application package, FINRA, for instance, must review and process it within 180 calendar days. *See* ''How to Become a Member—Member Application Time Frames,'' *available at https://www.finra.org/registration-exams-ce/broker-dealers/how-become-member-membership-application-time-frames. See also* FINRA Rule 1014.

[96] *See* proposed Rule 3a5–4(b)(1) and proposed Rule 3a44–2(b)(1).

[97] *See* proposed Rule 3a5–4(a)(2)(i) and proposed Rule 3a44–2(a)(3)(i). While a person who has or controls less than $50 million in total assets would not be subject to the Proposed Rules, that person's trading volume or activities may still be aggregated with those of another person under the Proposed Rules definitions of ''own account'' and ''control.'' *See* Section III.D.

[98] *See* proposed Rule 3a5–4(a)(2)(ii) and proposed Rule 3a44–2(a)(3)(ii).

contexts.[99] The Commission believes that this threshold is appropriate in the context of the Proposed Rules because, even though a person that has or controls less than $50 million in assets may be engaged in the activities identified in the Proposed Rules' qualitative standards,[100] the frequency and nature of its securities trading are less likely to pose the types of financial and operational risks to the market that may be associated with the significant dealer-like activity engaged in by certain PTFs and other institutional market participants, that the Proposed Rules are designed to address.[101] This is not an exclusion from the dealer definition for all purposes. Rather, as with other persons not within the ambit of the Proposed Rules, the question of whether a person that has or controls less than $50 million in total assets is acting as a dealer, as opposed to a trader, will remain a facts and circumstances determination, and to the extent consistent with the Proposed Rules, existing applicable interpretations and precedent will continue to apply.[102]

The Commission is proposing to exclude registered investment companies from the application of the Proposed Rules.[103] Registered investment companies are subject to a regulatory framework under the Investment Company Act and rules thereunder, which imposes requirements regarding capital structure,[104] custody of assets,[105] investment activities,[106] transactions with affiliates and other conflicts of interest,[107] and the duties and independence of boards of directors, among other things.[108] Moreover, registered investment companies are subject to statutory limits on indebtedness and rules that limit leverage risk.[109] In addition, registered investment companies must adopt, implement, and review at least annually written policies and procedures reasonably designed to prevent violations of the Federal securities laws by the fund.[110] These policies and procedures must be approved by the fund's board of directors, including a majority of independent directors, and are administered by a designated chief compliance officer.[111] Registered investment companies are required to register under the Investment Company Act and offer their shares under the Securities Act of 1933 (''Securities Act'').[112] They also must report to the Commission on many aspects of their operations and their portfolio holdings.[113] Registered investment companies must maintain certain books and records and make them available for examination by the Commission.[114] As a result, the Commission has extensive oversight of registered investment companies and broad insight into their operations and activities. In light of the regulatory structure that governs registered investment companies, which addresses, among other things, the types of concerns that we seek to address in the Proposed Rules, the Commission is proposing to exclude registered investment companies from the application of the Proposed Rules.[115]

The Proposed Rules would not exclude private funds because we are taking a similar approach to regulating dealer activity across market participants and, unlike registered investment companies, private funds are not subject to the extensive regulatory framework of the Investment Company Act. The Commission is mindful that registered private fund advisers are regulated under the Advisers Act and that information on private fund activities is reported by registered

[99] Under FINRA rules, a ''retail'' account is distinguished from an ''institutional'' account by defining, in part, an institutional account as belonging to ''a person (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least $50 million.'' FINRA Rule 4512(c)(3); *see also* Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Act Release No. 77617 (Apr. 14, 2016), 81 FR 29959, 29995 n.462 (May 13, 2016) (adopting a similar threshold for purposes of 17 CFR 240.15Fh–3(f)(4) (Exchange Act Rule 15Fh–3(f)(4))). The Proposed Rules do not use the definition of ''retail customer'' adopted as part of Regulation Best Interest, as the policy considerations behind that definition are different than those presented here: The focus of Regulation Best Interest is the regulatory protections provided to customers who receive recommendations from broker-dealers, whereas the focus of this proposed rulemaking is the regulation of persons engaging in certain dealer-like activities. *See* Regulation Best Interest: The Broker-Dealer Standard of Conduct, Exchange Act Release No. 86031 (June 5, 2019), 84 FR 33318 (July 12, 2019).

[100] As discussed in Section III.C, to meet the quantitative standard set forth in proposed Rule 3a44–2(a)(2) a person must, in each of four out of the last six calendar months, engage in buying and selling more than $25 billion of trading volume in government securities as defined in Section 3(a)(42)(A) of the Exchange Act. The Commission believes that there will not be any instances where a person who has or controls less than $50 million in total assets will meet this quantitative standard.

[101] Depending on the scope and nature of its activities, such a person could come within the definition of ''pattern day trader'' under FINRA rules. *See* FINRA Rule 4210. Notably, among other requirements, a pattern day trader must maintain a minimum amount of equity in its margin account on any day that the customer day trades and this minimum equity must be in the account prior to engaging in any day-trading activities. *Id.* If the account falls below the minimum requirement, the pattern day trader will not be permitted to day trade until the account is restored to the minimum equity level. *Id.*

[102] As discussed above, dealer status involves engaging in ''more than a few isolated'' securities transactions. *See supra* note 47 and accompanying text.

[103] A registered investment company includes any issuer which is or holds itself out as being primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. 15 U.S.C. 80a–3(a)(1)(A). The Investment Company Act generally prohibits a domestic registered investment company from offering or selling any security unless the company is registered under Section 8 of the Investment Company Act. 15 U.S.C. 80a–7(a).

[104] *See* 15 U.S.C. 80a–18.

[105] *See* 15 U.S.C. 80a–17(f); 17 CFR 270.17f–1 through 270.17f–7.

[106] *See, e.g.,* 15 U.S.C. 80a–12(d)(1), 12(d)(3).

[107] *See* 15 U.S.C. 80a–17(a), (d), (e); 17 CFR 270.17d–1, 270.17e–1.

[108] *See, e.g.,* 15 U.S.C. 80a–2(a)(41), 15, 17(f), 17 CFR 270.17(j), 270.31(a); 17 CFR 270.2a–4, 270.2a–5, 270.10f–3, 270.12b–1, 270.17a–7, 270.17e–1, 270.22c–1, 270.38a–1.

[109] *See* 15 U.S.C. 80a–18 (Section 18 prohibits closed-end funds from issuing or selling senior securities that represent indebtedness unless it has at least 300 percent asset coverage, and open-end funds from issuing or selling a senior security other than borrowing from a bank, also subject to 300 percent asset coverage and defines ''senior security,'' in part, as ''any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness.''); 17 CFR 270.18f–4 (generally requiring investment companies that use derivatives to adopt a derivatives risk management program that includes a limitation on leverage risk based on Value-at-Risk (VaR)). *See also* Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 2, 2021), 85 FR 83162 (Dec. 21, 2020).

[110] 17 CFR 270.38a–1. The fund's policies and procedures also must provide for the oversight of compliance by the fund's advisers, principal underwriters, administrators, and transfer agents. *See also* 15 U.S.C. 80a–47(a) (''It shall be unlawful for any person, directly or indirectly, to cause to be done any act or thing through or by means of any other person which it would be unlawful for such person to do under the provisions of this subchapter or any rule, regulation, or order thereunder.'').

[111] 17 CFR 270.38a–1.

[112] Depending on the organizational form, investment companies register under the Investment Company Act and offer their shares under the Securities Act on Forms N–1A (open-end management investment companies), N–2 (closed-end management investment companies), N–3 (separate accounts organized as management companies), N–4 (separate accounts organized as unit investment trusts), N–5 (small business investment companies), and N–6 (separate accounts organized as unit investment trusts that offer variable life insurance products).

[113] Registered investment companies report certain census information annually to the Commission on Form N–CEN. Registered investment companies also are required to report monthly portfolio-wide and position-level holdings data to the Commission on Form N–PORT. This includes information regarding repurchase agreements, securities lending activities, and counterparty exposures, terms of derivatives contracts, and discrete portfolio level and position level risk measures to better understand fund exposure to changes in market conditions.

[114] 15 U.S.C. 80a–30.

[115] As discussed in Section III.D, for purposes of the definition of ''own account,'' an account held in the name of a person that is a registered investment company would not be attributed to a controlling person or another person under common control.

private fund advisers on Form PF.[116] The information the Commission obtains on private funds through its regulation of registered investment advisers, however, differs from that the Commission collects for the purposes of dealer regulation. In addition, dealer registration enhances regulatory oversight of market participants' trading activities and interactions with the market overall and dealer regulatory requirements focus broadly on market functionality (along with protecting investors under principles of fair dealing between parties).

Similarly, the Proposed Rules would not apply a blanket exclusion for registered investment advisers. A registered investment adviser trading for its ''own account'' as defined in the Proposed Rules could implicate dealer registration requirements.[117] The Commission is mindful, however, that with some clients, a registered investment adviser only exercises investment discretion over the client's account, while with some other clients, the adviser also may control the client through an ownership interest. The Proposed Rules take into account a registered investment adviser's role in determining what client trading activity should be attributed to the adviser for purpose of the rules.[118]

Request for Comments

The Commission generally requests comment on this aspect of the Proposed Rules. In addition, the Commission requests comment on the following specific issues:

1. Should the Proposed Rules exclude persons that have or control less than $50 million in total assets? Are there instances in which persons that have or control less than $50 million in total assets that are buying and selling securities or government securities for their own accounts provide liquidity to the markets or have a significant impact on the markets that would warrant regulation as dealers or government securities dealers? Please explain.

2. Does the proposed $50 million in total assets threshold sufficiently distinguish persons whose activity should not be captured for purposes of the Proposed Rules? If not, is there another amount or measurement that would better distinguish these smaller market participants and achieve the purposes of the Proposed Rules? Please explain.

3. Would persons that would be captured by the Proposed Rules (*i.e.,* have or control more than $50 million in total assets) restructure their activities or change their corporate structures for the purpose of avoiding registration, including withdrawing or reducing their trading activities or ceasing investment strategies that trigger the application of the Proposed Rules? What would be the effects of such restructuring, withdrawal, or cessation? Please explain.

4. Should the Commission exclude registered investment companies from the scope of the Proposed Rules? Why or why not? If they are not excluded, do registered investment companies engage in activities that would be captured by the Proposed Rules? Could a registered investment company comply with the requirements applicable to dealers? What would be the potential costs and/or benefits of requiring registered investment companies to register as dealers or government securities dealers? Could the registered investment companies restructure their activities to avoid dealer registration? What would be the effects of such restructuring? Please explain.

5. The Proposed Rules do not exclude private funds, that is, pooled investment vehicles that are exempted from the definition of ''investment company'' under Section 3(c)(1) or 3(c)(7) of the Investment Company Act. Should the Commission except or exclude private funds from the scope of the Proposed Rules? Why or why not? Should the Commission except or exclude private funds advised by registered investment advisers from the scope of the Proposed Rules? Do some private funds engage in activities that would be captured by the Proposed Rules? Could a private fund comply with the requirements applicable to dealers? What would be the potential costs and/or benefits of requiring private funds to register as dealers or government securities dealers? Would private funds restructure their activities to avoid registration as a dealer? What would be the effects of such restructuring? Would private funds cease or reduce investment strategies captured by the Proposed Rules to avoid registration as a dealer? If so, what would be the effects of removing or reducing these investment strategies from the markets? Please explain.

6. Should registered investment advisers trading for their own accounts be excluded partially or entirely from the Proposed Rules? Why or why not? Could some registered investment advisers engage in activities that meet the proposed qualitative standards and trigger the application of the Proposed Rules? Could some registered investment advisers engage in trading volume in government securities that could exceed the quantitative threshold in proposed Rule 3a44–2? If registered investment advisers were captured by the Proposed Rules, how would they comply with the requirements applicable to dealers? Would the registered investment advisers restructure their activities to avoid registration as a dealer, including withdrawing or reducing their trading activities or ceasing or reducing investment strategies that trigger the application of the Proposed Rules? What would be the effects of such restructuring, withdrawal, or cessation? Please explain.

7. Instead of addressing investment adviser and private fund dealer concerns under the framework of existing dealer regulation, should the Commission consider a proposed rulemaking under the Advisers Act to address these concerns? What elements should be included in such a rulemaking? For example, should it include transaction reporting and/or capital requirements?

8. Should the Commission except or exclude any other categories of persons from the scope of the Proposed Rules? If so, what persons, and why? If not, why not?

B. Qualitative Standards

The qualitative standards in the Proposed Rules would build on existing statements by the Commission and the courts regarding ''dealer'' activity to further define certain standards for determining when a person that is engaged in buying and selling securities for its own account is engaged in that activity ''as a part of a regular business,'' as that phrase is used in Sections 3(a)(5) and 3(a)(44)(B) of the Exchange Act. Specifically, under paragraph (a)(1) of the Proposed Rules, a person would be engaged in buying and selling securities for its own account ''as a part of a regular business'' and so a dealer or a government securities dealer, if that person engages in a routine pattern of buying and selling securities (or

[116] The Commission recently has issued a proposal to amend Form PF, which would provide the SEC and the Financial Stability Oversight Counsel (''FSOC'') with additional confidential information about private funds. Information reported on Form PF has helped establish a baseline picture of the private fund industry for use in assessing systemic risk. These proposed amendments would apply to large hedge fund advisers, private equity advisers, and large liquidity fund advisers and are designed to enhance FSOC's and the Commission's ability to monitor systemic risk, bolster the Commission's regulatory oversight of private fund advisers, and enhance investor protection efforts. *See* Form PF Proposing Release, *supra* note 34.

[117] *See* proposed Rule 3a5–2(b)(2) and proposed Rule 3a44–2(b)(2).

[118] *See infra* note 185 and accompanying text.

government securities) that has the effect of providing liquidity to other market participants.

The Proposed Rules further identify three types of activities that would be considered to have the effect of providing liquidity to other market participants: (i) Routinely making roughly comparable purchases and sales of the same or substantially similar securities (or government securities) in a day; or (ii) routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants; or (iii) earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests. The following discussion of the proposed qualitative standards is applicable to both rules, and references to ''dealer'' activity apply equally to both ''dealers'' and ''government securities dealers'' under Sections 3(a)(5) and 3(a)(44) of the Exchange Act, respectively, unless otherwise indicated.

Under the Proposed Rules, a person's securities trading activity would form a ''part of a regular business'' when that person ''engages in a routine pattern of buying and selling securities [or government securities] that has the effect of providing liquidity to other market participants.'' [119] Under this qualitative standard, when the frequency and nature of a person's securities trading is such that the person assumes a role—described as either market-making, de facto market-making, or liquidity-providing—similar to the role that historically has been performed by a set of registered dealers, that person would be deemed to be acting as a dealer or government securities dealer.[120] As elaborated below, the Proposed Rules identify three patterns of buying and selling that the Commission views as having the effect of providing liquidity—any one of which is sufficient to require a person to register as a dealer. As discussed below, no presumption shall arise that a person is not a dealer solely because that person does not engage in the activities described in the Proposed Rules.[121] Other patterns of buying and selling may have the effect of providing liquidity to other market participants or otherwise require a person to register under the Proposed Rules in accordance with applicable precedent.

The Commission has long identified activities related to liquidity provision as factors that would indicate a person is '' 'engaged in the business' of buying and selling securities.'' [122] Historically, persons who provide liquidity in securities markets in exchange for compensation, earning revenue from the act of buying and selling itself, have registered as dealers.[123] And, from the enactment of the Exchange Act, the term ''dealer'' has included a class of liquidity providers that includes but is broader than market makers, encompassing, for example, professional floor traders who trade ''in and out,'' effect ''about half of the transactions on the floor of the stock exchange,'' and whose ''profits depend upon . . . running along and playing with the trends and not getting caught taking positions.'' [124] As securities markets have evolved, and new market participants have increasingly taken on market-making and liquidity-providing roles, the Commission has stated that dealer activity includes not only ''acting as a market maker'' but also ''acting as a *de facto* market maker whereby market professionals or the public look to the firm for liquidity.'' [125] Traders, by contrast, the Commission indicated, do ''not mak[e] a market in securities.'' [126]

In the context of the Proposed Rules, and as discussed further below, a ''pattern'' of trading means buying and selling repetitively. For a pattern to come within the Proposed Rules, both purchases and sales would have to be ''routine'' and have ''the effect of providing liquidity'' to other market participants. Further, as discussed below, the Proposed Rules would set forth three standards that the Commission believes would appropriately distinguish and identify such liquidity provision as a ''regular business'' as opposed to non-dealer, or trader, activity.

In this respect, the Proposed Rules focus on activity rather than label or status. The Proposed Rules by their terms would cover any person (as defined above) who ''engages in a routine pattern of buying and selling securities [or government securities] that has the effect of providing liquidity to other market participants,'' regardless of whether the person labels itself, or is commonly known as, a PTF.

The liquidity-providing activity captured by the Proposed Rules would include not only passive liquidity-providing activity [127] but also aggressive trading strategies, including structural or directional trading [128] that similarly

[119] *See* proposed Rule 3a5–4(a)(1) and proposed Rule 3a44–2(a)(1).

[120] *See, e.g.,* 2002 Release at 67499.

[121] *See* proposed Rule 3a5–4(c) and proposed Rule 3a44–2(c), discussed in Section III.E.

[122] 2002 Release at 67498–500. In addition, the staff has stated that, while ''the practical distinction between a 'trader' and a 'dealer' is often difficult to make and depends substantially upon the facts, . . . [a]s a general matter, a trader does not[, among other things,] . . . furnish the services which are usually provided by dealers, such as quoting the market in one or more securities.'' National Council of Savings Inst., SEC No-Action Letter, 1986 WL 67129 (July 27, 1986) (the staff declined to take a no-action position with respect to national trade association's members as ''a determination of a Member's status under the [Exchange] Act would depend upon an analysis of all of that Member's securities activities, and not just'' the activities described in the request).

[123] *See, e.g.,* Exchange Act Section 3(a)(38), 15 U.S.C. 78c(a)(38) (''The term 'market maker' means any specialist permitted to act as a *dealer,* any *dealer* acting in the capacity of block positioner, and any *dealer* who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.'') (emphasis added). *See also* Stock Exchange Regulation: Hearing on H.R. 7852 and H.R. 8720 Before the Committee on Interstate and Foreign Commerce, 73rd Congr. 117 (1934) (statement of Thomas Corcoran) (''The term 'dealer' is broad enough to include . . . the floor trader . . . [whose] profits depend upon his running along and playing with the trends and not getting caught taking positions.''); 2002 Release at 67499 (''A person generally may satisfy the definition, and therefore, be acting as a dealer in the securities markets by . . . acting as a market maker or specialist on an organized exchange or trading system [or] acting as a de facto market maker whereby market professionals or the public look to the firm for liquidity . . . .'').

[124] *See* Stock Exchange Regulation: Hearing on H.R. 7852 and H.R. 8720 Before the Committee on Interstate and Foreign Commerce, 73rd Congr. 117 (1934) (statement of Thomas Corcoran). *See also* U.S. Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker 21, 25, 85, 109 (1936).

[125] *See* 2002 Release at 67499.

[126] *Id.*

[127] *See* Algorithmic Trading Staff Report at 39 (''Passive market-making involves submitting non-marketable orders on both sides (buy or 'bid,' and sell or 'offer') of the marketplace.'').

[128] *See id.* at 39–41 (citing 2010 Equity Market Structure Concept Release and SEC Staff of the Division of Trading and Markets, Equities Market Structure Literature Review Part II: High Frequency Trading (Mar. 18, 2014)) (describing broad types of short-term high frequency trading strategies). Market participants of the kind that this release addresses, including PTFs, may carry out passive market making strategies. They may also engage in a range of trading strategies that involve submitting aggressive orders, or a combination of passive and aggressive orders, ''sometimes rapidly demanding liquidity, in order to quickly liquidate positions accumulated through providing liquidity.'' *See* Algorithmic Trading Staff Report at 39–40; *see also* ''Making,'' ''taking'' and the material political economy of algorithmic trading, Donald MacKenzie, Economy and Society, 47:4, 501–23 (2018); High-Frequency Trading Strategies Michael Goldstein, Babson College, Amy Kwan, University of Sydney, Richard Philip, University of Sydney (Dec. 8, 2016); Exploring Market Making Strategy for High Frequency Trading: An Agent-Based Approach, Yibing Xiong, Takashi Yamada, Takao Terano (2015); SEC Staff of the Division of Trading and Markets, Equities Market Structure Literature

Continued

permit a person to earn revenue from the act of buying and selling itself. In this regard, the Proposed Rules would cover persons who trade, as part of a regular business,[129] ''in and out'' and whose ''profits depend upon . . . running along and playing with the trends and not getting caught taking positions''—activity understood from the enactment of the Exchange Act to be a form of dealer activity—as well as more traditional forms of liquidity provision, such as market making.[130]

The Proposed Rules further define three patterns of buying and selling that the Commission views as having the effect of providing liquidity, which are discussed in turn below.

i. Routinely Making Roughly Comparable Purchases and Sales of the Same or Substantially Similar Securities in a Day

Under the first enumerated pattern, in proposed Rules 3a44–2(a)(1)(i) and 3a5–4(a)(1)(i) respectively, a person that, trading for its own account, ''routinely mak[es] roughly comparable purchases and sales of the same or substantially similar securities in a day'' would be engaged in a pattern of trading that ''has the effect of providing liquidity to other market participants,'' and therefore be a dealer or government securities dealer.[131]

''Routinely'' as used in this standard relates to the frequency with which a person engages in making roughly comparable purchases and sales of the same or substantially similar securities in a day. Here, ''routinely'' means more frequent than occasional but not necessarily continuous,[132] such that a person's transactions in roughly comparable positions, throughout the day and routinely over time, constitute ''[engaging] in a routine pattern of buying and selling securities that has the effect of providing liquidity for market participants'' under the Proposed Rules. The Commission believes that this interpretation of ''routinely'' will separate persons engaging in isolated or sporadic securities transactions from persons whose regularity of participation in securities transactions demonstrates that they are acting as dealers.

As discussed above, the frequency with which a person buys and sells securities for its own account is a common component of the dealer analysis: More frequent buying and selling is indicative of dealer activity.[133] The first qualitative standard of the Proposed Rules describes a regularity of participation far beyond the isolated transactions of non-dealers,[134] and focuses on a pattern of trading because the consistency and regularity of their participation indicates that their liquidity provision forms a part of a regular business.

Under the Proposed Rules, ''roughly comparable'' would generally capture purchases and sales similar enough, in terms of dollar volume, number of shares, or risk profile, to permit liquidity providers to maintain near market-neutral positions by netting one transaction against another transaction. To be ''roughly comparable,'' the dollar volume or number of shares of, or risk offset by, the purchases and sales need not be exactly the same, as requiring a full netting of positions may fail to capture a number of significant firms, due to the unique characteristics of certain liquidity providers in today's markets.[135] Instead, ''roughly comparable'' purchases and sales would fall within a reasonable range that generally would have the effect of offsetting one transaction against the other. Generally speaking, although the Proposed Rules do not provide a bright-line test in connection with the qualitative factors, the Commission believes that a person that closes or offsets, in the same day, the overwhelming majority of the positions it has opened, has likely made ''roughly comparable purchases and sales.'' [136] This proposed standard would capture a fundamental aspect of both the traditional dealer—who ''buys securities . . . with a view to disposing them elsewhere'' and ''receives no brokerage commission but relies for his compensation upon a favorable difference or spread between the price at which he buys and the amount for which he sells'' [137]—and the liquidity provider whose trading strategies generally involve frequent turnover of positions on a short-term basis, with overnight holdings of unhedged positions that are a fraction of their overall intraday positions.[138]

Review Part II: High Frequency Trading (Mar. 18, 2014). These passive and aggressive strategies are often referred to as ''liquidity providing'' and ''liquidity demanding'' or ''liquidity taking'' strategies respectively. *See, e.g.,* Algorithmic Trading Staff Report. Under the Proposed Rules, both passive and aggressive trading strategies would be considered forms of liquidity provision.

[129] *See supra* note 39.

[130] Stock Exchange Regulation: Hearing on H.R. 7852 and H.R. 8720 Before the Committee on Interstate and Foreign Commerce, 73rd Congr. 117 (1934) (statement of Thomas Corcoran). For a discussion of ''liquidity providing'' versus ''liquidity demanding'' trading strategies, *see supra* note 128.

[131] *See, e.g.,* Amendments to Regulation SHO, Exchange Act Release No. 58775, 73 FR 61690, 61699 (Oct. 17, 2008) (''Regulation SHO Amendments''), in which the Commission stated that ''[a] pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers'' would be one indicia of bona-fide market-making activity for purposes of the exceptions in 17 CFR 242.200 through 242.204 (Regulation SHO) to the locate and close-out requirements. The determination of eligibility for the bona-fide market-making exceptions is distinct from the determination of whether a person's trading activity indicates that such person is acting as a dealer under the Proposed Rule. Under the Regulation SHO exception, for instance, the broker-dealer must also be providing widely disseminated quotations near or at the market and put itself at market risk. As the Commission has stated on numerous occasions, the determination of whether a particular short sale qualifies for the bona-fide market-making exception depends on the particular facts and circumstances surrounding the transaction(s). *See infra* note 157. Importantly, under the Proposed Rules, a person's intent is irrelevant; the Proposed Rules focus on the ''effect'' of a person's activity, and where a person's activity ''has the effect of providing liquidity,'' whether or not that effect is intended, the person would fall within the scope of the Proposed Rules.

[132] As discussed below in Section III.A.ii, the Commission believes it is appropriate to use ''routine,'' rather than ''regular'' or ''continuous,'' as these standards may fail to capture a number of significant firms, due to the unique characteristics of certain liquidity providers in today's markets. Unlike many traditional types of liquidity providers, there are liquidity providers in today's markets, such as PTFs, that despite routine participation in the market, may at times interrupt their market activity so that it is not always ''continuous.'' The Commission adopted a similar approach in connection with its joint rulemaking with the Commodity Futures Trading Commission regarding, among other things, the definitions of ''swap dealer'' and ''security-based swap dealer.'' *See* Entities Adopting Release at 30609 (''making a market in swaps is appropriately described as routinely standing ready to enter into swaps at the request or demand of a counterparty. In this regard, 'routinely' means that the person must do so more frequently than occasionally, but there is no requirement that the person do so continuously.'').

[133] *See* Section II.A.

[134] *See SEC* v. *Justin W. Keener d/b/a JMJ Financial,* No. 1:20–CV–21254 (S.D. Fla. Jan. 21, 2022) (''Case law has established that the primary indicia in determining that a person has 'engaged in the business' within the meaning of the term 'dealer' is that the level of participation in purchasing and selling securities involves *more than a few isolated transactions.*'' (emphasis added) (*quoting Sodorff,* 1992 WL 224082, at *4)).

[135] *See, e.g.,* 2002 Release (focusing, among other things, on a ''regular turnover of inventory'' rather than requiring completely neutral positions).

[136] The Proposed Rules do not provide a bright-line test to determine ''roughly comparable'' purchases and sales. However, for purposes of the Economic Analysis of the Proposed Rules, the Commission assumes a daily buy-sell imbalance between two identical or substantially similar securities, in terms of dollar volume, below 10 percent or, alternatively, 20 percent may be indicative of purchases and sales that are ''roughly comparable,'' as described below in Section V.B.2.c. The Commission has requested comment on whether this approach is appropriate and whether this standard should include a trading threshold.

[137] *See* U.S. Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker XIV (1936).

[138] *See* 2010 Equity Market Structure Concept Release at 3607–09. *See also* 2015 Joint Staff Report.

The Proposed Rules reflect the statutory distinction between ''dealers'' and ''traders.'' The Commission has long distinguished dealer activity from trader activity by focusing on, among other things, a dealer's frequent turnover of positions—stating, for example, that the dealer ''sells securities . . . he has purchased or intends to purchase elsewhere or buys securities . . . with a view to disposing of them elsewhere'' [139]—as well as the frequency with which a person buys and sells.[140] By targeting persons who routinely make roughly comparable purchases and sales of the same or substantially similar securities, the Proposed Rules identify persons whose trading has the effect of providing liquidity that requires dealer registration, and so distinguish those persons who are acting as traders.[141]

The Proposed Rules take into account the speed at which technology permits liquidity providers today to turn over their positions and the fact that high-speed, anonymous trading platforms allow liquidity providers to act as intermediaries without customers and without holding an inventory of securities.[142] In addition, the Proposed Rules take into consideration the frequency with which a person buys and sells securities, which is a factor historically considered as part of the dealer analysis.[143] Because they are based on activity, the Proposed Rules would cover not only PTFs, but also any other persons engaging in the identified activities.

Paragraph (a)(1)(i) of the Proposed Rules would also provide that the securities bought and sold must be ''the same or substantially similar'' in order to further distinguish liquidity providing dealer activity from non-dealer trader activity. As discussed above, routinely making roughly comparable purchases and sales of securities keeps a liquidity provider's market positions near neutral only to the extent that a sale or another trade offsets the risk taken on through a purchase. For purposes of the rule, ''the same'' securities means that the securities bought and sold are securities of the same class and having the same terms, conditions, and rights.[144] Securities bearing the same Committee on Uniform Securities Identification Procedures (''CUSIP'') number, for example, would be considered ''the same.'' In addition, the determination of what would constitute ''substantially similar'' securities for purposes of the rule would be based on the facts and circumstances analysis that would take into account factors such as, for example, whether: (1) The fair market value of each security primarily reflects the performance of a single firm or enterprise or the same economic factor or factors, such as interest rates; and (2) changes in the fair market value of one security are reasonably expected to approximate, directly or inversely, changes in, or a fraction or a multiple of, the fair market value of the second security. A person routinely making roughly comparable purchases and sales of the same or substantially similar securities, such that the sale or purchase of one security offsets the risk associated with the sale or purchase of the other, permitting that person to maintain a near market-neutral position, would meet this aspect of this standard.

Applying these principles, the Commission believes that the following are nonexclusive examples of purchases and sales of ''substantially similar'' securities:

- Selling a Treasury security and buying another Treasury security in the same maturity range, as used by the Federal Reserve Bank of New York's Open Market Operations.[145] For example, selling a 4.5-year Treasury security and buying a 5-year Treasury security, or a 9.5 year Treasury security versus a 10-year Treasury security.
- Buying an exchange traded fund and selling the underlying securities that make up the basket of securities held by the exchange traded fund that was purchased.
- Buying a European call option on a stock and selling a European put option on the same stock with the same strike and maturity.
- Buying an OTC call option on a stock and selling a listed option on the same stock with the same strike and maturity.

Conversely, the Commission believes that the following are examples of purchases and sales of securities that are not ''substantially similar'':

- Buying stock in one company (*e.g.,* Ford) and selling stock in another company in the same industry (*e.g.,* Chrysler).
- Buying stock and selling bonds issued by the same company.
- Buying cash Treasury securities and selling Treasury futures.

Finally, the standard under paragraph (a)(1)(i) of the Proposed Rules would apply with respect to purchases and sales made ''in a day.'' As discussed above, dealer liquidity providers are distinguishable, in part, from traders and other market participants by the frequent turnover of their positions. Traditional dealers often hold an inventory to enable them to buy from one market participant and sell to another. Technological advancements have increased the speed at which this process happens, eliminating in some cases the need to carry a traditional inventory at all, as liquidity providers are able to source and unload securities extremely rapidly. The Commission believes that a temporal component is necessary in paragraph (a)(1)(i) to distinguish dealer liquidity providers from other market participants who may contribute liquidity to the market periodically but not in the repeated, routine—and often relied upon—manner of liquidity providers. The Commission believes that ''in a day'' is a period of sufficient duration to capture the trading activity typical of dealer liquidity providers that are the focus of the Proposed Rules, and still brief enough to exclude non-dealers pursuing longer-term investment strategies. In addition, because PTFs tend to turn over their positions over the course of a day, ''end[ing] the day with little net directional exposure,'' [146] market practices support drawing the temporal line at the end of the day.

ii. Routinely Expressing Trading Interests That Are at or Near the Best Available Prices on Both Sides of the Market and That Are Communicated and Represented in a Way That Makes Them Accessible to Other Market Participants

Proposed Rules 3a44–2(a)(1)(ii) and 3a5–4(a)(1)(ii) set forth the second

[139] *See* U.S. Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker XIV (1936).

[140] *See* Section II.A.

[141] *See* Section I.

[142] *See, e.g.,* Stock Exchange Regulation: Hearing on H.R. 7852 and H.R. 8720 Before the Committee on Interstate and Foreign Commerce, 73rd Congr. 117 (1934) (statement of Thomas Corcoran) (discussing floor traders, which have long been viewed as dealers). As the markets have evolved, the role of floor traders has largely been replaced by PTFs, which play a role—albeit, electronically and through the use of algorithmic trading strategies—similar to that of the floor traders that traditionally have been regulated as dealers. *See* 2010 Equity Market Structure Concept Release at 3607–08.

[143] *See* Section II.A.

[144] *See* 17 CFR 227.300(b)(2) (Rule 300(b)(2) of Regulation Crowdfunding) (permitting an intermediary to have a financial interest in an issuer if, among other things, the financial interest consists of securities of the same class and having the same terms, conditions and rights as the securities being offered and sold on the intermediary's platform.).

[145] *See* Federal Reserve Bank of New York, ''FAQs: Treasury Purchases,'' *https://www.newyorkfed.org/markets/treasury-reinvestments-purchases-faq.*

[146] *See* 2021 IAWG Joint Staff Report at 5.

pattern of trading activity that ''has the effect of providing liquidity to other market participants.'' Specifically, under paragraph (a)(1)(ii), a person buying and selling for its own account that ''routinely express[es] trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants'' would be engaged in a pattern of trading in securities or government securities that ''has the effect of providing liquidity to other market participants,'' and therefore would be a dealer or government securities dealer under the Proposed Rules. As discussed below, the Proposed Rules would update the longstanding understanding that regular or continuous quotation is a hallmark of market making or de facto market making (and, hence, dealer) activity,[147] to reflect technological changes to the ways in which buyers and sellers of securities are brought together.

The Proposed Rules would apply when a person ''routinely'' expresses trading interests. Here, as well as in paragraph (a)(1)(i), ''routinely'' means that the person must express trading interests more frequently than occasionally, but not necessarily continuously.[148] As discussed above in connection with paragraph (a)(1)(i), ''routinely'' relates to the frequency of the activity both intraday and across time, and means both repeatedly within a day and on a regular basis over time. The Commission believes it is appropriate to use ''routinely,'' rather than ''regular'' or ''continuous,'' as the latter standards may fail to capture a number of significant firms, due to the unique characteristics of certain liquidity providers in today's markets. Specifically, by using ''routinely,'' the Proposed Rules are intended to reflect market evolution to capture significant liquidity providers who express trading interests at a high enough frequency to play a significant role in price discovery and the provision of market liquidity, even if their liquidity provision may not be continuous like that of some traditional dealers. At the same time, they are very active in the markets—their participation is very routine—as demonstrated by the ''key role'' they play ''in price discovery and the provision of market liquidity'' in both the interdealer U.S. Treasury market[149] and the equity markets.[150]

Paragraph (a)(1)(ii) would also use the term ''trading interest'' rather than ''quotations.'' The Commission has recently proposed to define ''trading interest'' to mean ''an order, as defined in paragraph (e) of [Rule 300 of Regulation ATS],[151] or any non-firm indication of a willingness to buy or sell a security that identifies at least the security and either quantity, direction (buy or sell), or price.'' [152] Technological advancements have proliferated methods by which market participants hold themselves out as willing to buy or sell securities, or otherwise communicate their willingness to trade. The broader term ''trading interest'' would reflect the prevalence of non-firm trading interest offered by market places today,[153] and account for the varied ways in which developing technologies permit market participants to effectively make markets. The broader term appropriately captures the traditional quoting engaged in by dealer liquidity providers, new and developing quoting equivalents, and the orders that actually result in the provision of liquidity that the Commission intends the Proposed Rules to address. Using ''trading interest,'' as defined above, rather than ''quotation'' will allow for clear and consistent application of the definition of dealer and government securities dealer.

Further, the Commission is proposing that the rules encompass trading interests expressed ''at or near the best available prices on both sides of the market.'' [154] The phrase ''best available prices on both sides of the market'' more specifically and clearly describes the activity of liquidity-providing dealers, which help determine the spread between the best available bid price and the best available ask price for a given security. Among other market benefits, by competing to both buy and sell at the best available prices, liquidity providers help to narrow bid-ask spreads.[155] The Commission further believes that the proposed formulation helps emphasize that a liquidity provider, to come within the rule, must both buy and sell securities.[156]

Finally, the Proposed Rules would apply only when these trading interests that are at or near the best available prices on both sides of the market are ''communicated and represented in a way that makes them accessible to other market participants.'' Under the Proposed Rules, a market participant that routinely makes these trading interests available to other market participants would be considered to have engaged in a routine pattern of trading that has the effect of providing liquidity to other market participants.[157]

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[147] The term ''market maker'' includes, among other things, ''any dealer who, with respect to a security, holds itself out (by entering quotations in an inter-dealer quotation system or otherwise) as being willing to buy and sell such security for its own account on a regular or continuous basis.'' *See* 15 U.S.C. 78c(a)(38). Moreover, the Commission has stated previously that a market maker engaged in bona-fide market making is a ''broker-dealer that deals on a regular basis with other broker-dealers, actively buying and selling the subject security as well as regularly and continuously placing quotations in a quotation medium on both the bid and ask side of the market.'' *See, e.g.,* Exchange Act Release No. 32632 (July 14, 1993), 58 FR 39072, 39074 (July 21, 1993).

[148] *See, e.g.,* Entities Adopting Release at 30609 (''In this regard, 'routinely' means that the person must do so more frequently than occasionally, but there is no requirement that the person do so continuously.'').

[149] 2021 IAWG Joint Staff Report at 5, 13.

[150] *See, e.g.,* Algorithmic Trading Staff Report; 2010 Equity Market Structure Concept Release.

[151] 17 CFR 242.300(e) defines an ''order'' to mean ''any firm indication of a willingness to buy or sell a security, as either principal or agent, including any bid or offer quotation, market order, limit order, or other priced order.''

[152] *See* 2022 ATS Proposing Release, proposed Rule 300(q). In proposing this new term, the Commission noted the incidence of ''non-firm trading interest that includes the symbol and one of the following: quantity, direction, or price. . . . The Commission believes that . . . the use of a message that identifies the security and either the quantity, direction, or price would provide sufficient information to bring together buyers and sellers of securities because it allows a market participant to communicate its intent to trade and a reasonable person receiving the information to decide whether to trade or engage in further communications with the sender.'' *Id.* at 15505.

[153] *See* 2022 ATS Proposing Release at 15500–15502.

[154] *See, e.g.,* Regulation SHO Amendments, in which the Commission stated that quotations near or at the market for a short sale in a security may provide an indication of bona-fide market making for purposes of Regulation SHO, depending on the facts and circumstances surrounding the activity. *See also supra* note 131.

[155] *See, e.g.,* Prohibitions and Restrictions on Proprietary Trading, Release No. BHCA–1; File No. S7–41–11 (Dec. 10, 2013), 79 FR 5535, 5585–86 (Jan. 31, 2014), *available at https://www.sec.gov/rules/final/2013/bhca-1.pdf* (setting forth, among other things, the circumstances in which a banking entity may engage market making-related activities) (''Volcker Rule Adopting Release'') at 177.

[156] *See, e.g.,* 15 U.S.C. 78c(a)(5) (''The term 'dealer' means any person engaged in the business of buying *and* selling securities'' (emphasis added)); *see also* 15 U.S.C. 78c(a)(44).

[157] *See, e.g.,* Regulation SHO Amendments (''Continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers are also an indication that a market maker is engaged in bona-fide market making activity.''). *But see supra* note 131 (explaining that the determination of eligibility for Regulation SHO's bona-fide market-making exceptions is distinct from the determination of whether a person's trading activity indicates that such person is acting as a dealer under the Proposed Rule). The Commission further notes that the bona-fide market-making exceptions under Regulation SHO are only available to registered broker-dealers that publish continuous quotations for a specific security in a manner that puts the broker-dealer at economic risk. Broker-dealers that do not publish continuous quotations, or publish quotations that do not subject the broker-dealer to such risk (*e.g.,* quotations that are not publicly accessible, are not near or at the market,

iii. Earning Revenue Primarily From Capturing Bid-Ask Spreads, by Buying at the Bid and Selling at the Offer, or From Capturing Any Incentives Offered by Trading Venues to Liquidity-Supplying Trading Interests

Proposed Rules 3a44–2(a)(1)(iii) and 3a5–4(a)(1)(iii) set forth the final enumerated pattern of activity that ''has the effect of providing liquidity to other market participants.'' Under paragraph (a)(1)(iii) of each rule, a person that, trading for its own account, ''earn[s] revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests,'' would be engaging in a routine pattern of trading that has the effect of providing liquidity to other market participants, and as a result, would be a dealer under the Proposed Rules.

As with other aspects of the Proposed Rules, this standard focuses on activity rather than label or status. The Proposed Rules would apply to any person regardless of whether the person labels itself, or is commonly known as, a PTF.

As discussed above, one fundamental characteristic typical of market makers and liquidity providers—and one that has historically been viewed as dealer activity—is trading in a manner designed to profit from spreads or liquidity incentives, rather than with a view toward appreciation in value.[158] The Commission has previously identified a person's seeking, through its presence in the market, compensation through spreads or fees, or other compensation not attributable to changes in the value of the security traded, as a factor indicating dealer activity.[159] Dealer liquidity providers frequently are distinguishable from other market participants whose trades arguably ''provide liquidity'' inasmuch as dealers seek to be compensated for the service of contributing to a market's liquidity, whether by bid-ask spreads or liquidity incentives. They are ''in the business'' of providing liquidity because they routinely supply it and the revenue they earn as a result through bid-ask spreads or liquidity incentives is their primary source of revenue.

Both forms of revenue are accounted for in the Proposed Rules. The first—capturing bid-ask spreads—is done by buying at the bid and selling at the offer, which would include buying at a lower price than, and selling at a higher price than, the midpoint of the bid-ask spread. The spread between these prices compensates them for providing the service of liquidity—that is, of generally standing ready to buy or sell and enabling other market participants to reliably make purchases and sales. When a liquidity provider routinely buys and sells securities in a manner designed to capture a spread with such frequency and consistency that its revenue is made up primarily of this form of compensation, it will be considered to be engaged in a routine pattern of providing liquidity as a service and will fall within the scope of the rules.

The second major source of revenue for market makers and other liquidity providers is explicit liquidity-compensation arrangements. For example, many exchanges in the equities markets have adopted a ''maker-taker'' pricing model to compensate (and thereby attract) liquidity providers.[160] Under this model, non-marketable, resting orders that offer (make) liquidity at a particular price receive a liquidity rebate if they are executed, while incoming orders that execute against (take) the liquidity of resting orders are charged an access fee.[161] When a liquidity provider, as a result of its routine purchases and sales of securities, captures ''incentives offered by trading venues to liquidity-supplying trading interests'' with such frequency and consistency that its revenue is made up primarily of this form of compensation, it will be considered to be engaged in a routine pattern of providing liquidity as a service and generally standing ready to buy or sell securities, so would fall within the scope of the Proposed Rules.

To come within this paragraph of the Proposed Rules, a liquidity provider would have to earn its revenue primarily from bid-ask spreads or trading incentives. The Proposed Rules use the phrase ''earn revenue''—rather than, for example, ''profit from''—to make clear that a person's trading strategies would not need to be profitable to bring them within the rule because a market participant can provide liquidity without being profitable. Furthermore, under the Proposed Rules, a person whose revenue is derived ''primarily'' from capturing bid-ask spreads or liquidity incentives, or a combination of the two, would be a liquidity provider that is engaged in the regular business of buying and selling securities for its own account and, as a result, a dealer or government securities dealer. Generally speaking, although the Proposed Rules do not provide a bright-line test in connection with the qualitative factors, the Commission believes that if a person derives the majority of its revenue from the sources described in paragraph (a)(3)(iii), it would likely be in a regular business of buying and selling securities or government securities for its own account.

Finally, the paragraph would apply with respect to activity on ''trading venues.'' The Commission has recently proposed to define the term ''trading venue'' to mean ''a national securities exchange or national securities association that operates an SRO trading facility, an ATS, an exchange market maker, an OTC market maker, a futures or options market, or any other broker- or dealer-operated platform for executing trading interest internally by trading as principal or crossing orders as agent.'' [162]

Market evolution has given rise to a variety of venues in which liquidity providers can express trading interests,

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or are skewed directionally towards one side of the market), would not be eligible for the bona-fide market-maker exceptions under Regulation SHO. In addition, broker-dealers that publish quotations but fill orders at different prices than those quoted would not be engaged in bona-fide market making for purposes of Regulation SHO.

[158] *See, e.g.,* U.S. Securities and Exchange Commission, Report on the Feasibility and Advisability of the Complete Segregation of the Functions of Dealer and Broker XIV (1936) (''The dealer . . . receives no brokerage commission but relies for his compensation upon a favorable difference or spread between the price at which he buys and the amount for which he sells.''). *See also* Entities Adopting Release at 30609 (''seeking to profit by providing liquidity to the market is an indication of dealer [as opposed to trader] activity'').

[159] *See* Entities Adopting Release at 30617 (identifying as an indication of dealer activity which is consistent with the definition's ''regular business'' requirement, ''seeking compensation in connection with providing liquidity . . . by seeking a spread, fees or other compensation not attributable to changes in the value of the [security itself]''). With respect to bid-ask spreads, the connection between liquidity provision and bid-ask spreads is evident in the relationship among high volume, liquidity, and bid-ask spreads: Because high volume can reduce a dealer's overhead, high volume tends to make liquidity provision more profitable; as liquidity provision becomes more profitable, more persons compete to provide liquidity, and this increased competition tightens bid-ask spreads, as the more competitive liquidity providers are willing to be compensated less for the liquidity they provide in order to compete. *See* Section V.C.3.c. *See also* Volcker Rule Adopting Release at 177 (''[L]iquidity provides important benefits to the financial system, as more liquid markets are characterized by competitive market makers, narrow bid-ask spreads, and frequent trading.''). Notably, a person may be acting as a dealer by profiting from a spread even if they are not profiting from ''bid-ask spreads'' under the Proposed Rules. *See, e.g., River North,* 415 F. Supp. at 859 (discussing *Sodorff,* 1992 WL 224082, at *5).

[160] *See* 2010 Equity Market Structure Concept Release at 3599.

[161] *See* 2010 Equity Market Structure Concept Release at 3599. Highly automated exchange systems and liquidity rebates have contributed to the rise of PTFs that focus on liquidity provision. *Id.*

[162] 2022 ATS Proposing Release at 15540.

and the definition is designed to capture the breadth of these different venues. For example, Communication Protocol Systems, which are electronic systems that offer the use of non-firm trading interest and make available communication protocols to bring together buyers and sellers of securities but do not fall within the current definition of an ''exchange'' under Federal securities laws, have come to perform the function of a market place and become a preferred method for market participants to discover prices, find counterparties, and execute trades.[163] The Proposed Rules are designed to capture dealer activity wherever that activity occurs, whether on a national securities exchange, an ATS, a Communication Protocol System, or another form of trading venue. For purposes of the Proposed Rules, the particular trading venue matters less than the fact that a market participant provides liquidity on it. Using the broad term ''trading venue,'' as defined above, will allow for clear and consistent application of the definitions of dealer and government securities dealer.

Request for Comment

The Commission generally requests comment on these provisions of the Proposed Rules. In addition, the Commission requests comments on the following specific issues:

9. Is there sufficient specificity provided for the terms used in the qualitative standards? Are there any terms that should be defined in rule text or addressed in the release?

- Is there sufficient specificity provided for the term ''pattern''? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by ''pattern''? Why or why not? Is the Proposed Rules' use of ''pattern'' appropriate? Would ''manner'' or another word be more appropriate? Why or why not?
- Is there sufficient specificity provided for the term ''effect of providing liquidity''? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by ''effect of providing liquidity''? Why or why not? Is the Proposed Rules' use of ''effect of providing liquidity'' appropriate? Would replacing ''effect of providing liquidity'' with ''market making'' be more appropriate? Are there other words that would more appropriate? Why or why not?
- Is there sufficient specificity provided for the term ''primarily''? Should the rule text define what is meant by ''primarily''? Why or why not? Is the Proposed Rules' use of ''primarily'' appropriate? Would ''mostly'' or another word be more appropriate? Why or why not?
- Is there sufficient specificity provided for the term ''trading venue''? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by ''trading venue''? Why or why not? Is the Proposed Rules' use of ''trading venue'' appropriate? Are there other words that would be more appropriate? Why or why not?

10. Is liquidity provision an appropriate factor to use in defining which buying and selling activity for one's own account qualifies as ''regular business''? Are there other factors the Commission should include? If so, which factors and why? Are there trading activities or investment strategies that should not be considered providing liquidity? If so, please describe why.

11. Are the three qualitative factors identified in the Proposed Rules as having the ''effect of providing liquidity to other market participants'' that would qualify as ''regular business'' appropriate? Are there any other forms of liquidity provision, or any other factors, that the Commission should include or exclude instead or in addition to those proposed? Are the factors over or under-inclusive? If so, please provide specific examples of any alternative suggestions.

- For example, should the Commission include as an example of a ''liquid market,'' ''a market in which participants have the ability to readily trade at a predictable price and in a desired size without materially moving the market''? Why or why not?
- In addition to passive ''liquidity providing'' trading strategies, the Proposed Rules would capture certain aggressive ''liquidity demanding'' strategies as having the ''effect of providing liquidity to other market participants''? Is this appropriate? Why or why not?

12. Under the Proposed Rules, a person routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day would have the effect of providing liquidity to other market participants, and therefore would be a dealer. Is this an appropriate measure or illustration of liquidity provision? Why or why not? Would the provision capture persons that should not be dealers? If so, who and why?

- For example, would the Proposed Rules capture private funds and other persons pursing investment strategies such as relative value fixed income arbitrage or share class arbitrage? If so, should such strategies be included or excluded? Why or why not?
- Is there sufficient specificity to determine which securities would be considered ''same'' or ''substantially similar''? Why or why not? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should additional or different factors be considered? Are there other words that would be more appropriate? Why or why not?
- Should the rule text define what is meant by ''same'' or ''substantially similar''? Why or why not?
- Are there other types of purchase and sale transactions that would be examples of purchases and sales of securities that are ''substantially similar'' (*i.e.,* other types of roughly comparable purchases and sales of substantially similar securities, such that the sale or purchase of one security offsets the risk associated with the sale or purchase of the other, permitting a person to maintain a near market-neutral position)? Are there examples of types of purchase and sale transactions involving derivatives, or other products that represent the economic equivalent of another security, that would be purchases and sales of securities that are ''substantially similar''? Please explain.

13. Although the Proposed Rules do not provide a bright-line test to determine ''roughly comparable'' purchases and sales, depending on the facts and circumstances, the Commission believes a daily buy-sell imbalance, as described below in Section V.B.2.c., between two identical or substantially similar securities, in terms of dollar volume below 20 percent may be indicative of purchases and sales that are ''roughly comparable.'' Is this an appropriate measurement of ''roughly comparable''? Why or why not? Would another measurement be more appropriate? Should there be a minimum trading volume or dollar amount threshold as part of the qualitative standard under paragraph (a)(1)(i), daily buy-sell imbalance, or other measurement?

- Is there sufficient specificity provided for the term ''roughly comparable''? Why or why not? If not,

[163] *See* 2022 ATS Proposing Release at 15496 n.5 and 15501. This is particularly true for government securities and other fixed income securities. *Id.*

what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Is the Proposed Rules' use of ''roughly comparable'' appropriate? Are there other words that would be more appropriate? Why or why not?

- Should the rule text define, as opposed to the release addressing, what is meant by ''roughly comparable''? Why or why not?
- Does there need to be more specificity provided as to how many transactions must be executed (or positions opened and/or closed) in a day to be ''roughly comparable''?
- Is ''in a day'' an appropriate period of time during which to measure whether a person has made roughly comparable purchases and sales of the same or substantially similar securities? If not, what is an appropriate time period?
- If an institutional investor seeks to rebalance its portfolio, would the institutional investor typically ''routinely make roughly comparable purchases and sales of the same or substantially similar securities in a day,'' or otherwise trigger the Proposed Rules?

14. Under the Proposed Rules, a person that ''routinely express[es] trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants'' would have the effect of providing liquidity to other market participants, and thus would be a dealer. Is this an appropriate measure or illustration of liquidity provision? Why or why not? Would the provision capture persons that should not be dealers? If so, who and why?

- Is the Proposed Rules' use of ''routinely'' appropriate? Would ''regularly'' or ''continuously'' or another word be more appropriate? Why or why not?
- Is there sufficient specificity provided for the term ''routinely''? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Should the rule text define what is meant by ''routinely''? Why or why not?
- Is the Proposed Rules' use of ''trading interest'' appropriate? Would ''quotations'' or another term be more appropriate? Why or why not?
- Is there sufficient specificity provided for the term ''trading interest''? Should the rule text define what is meant by ''trading interest''? Why or why not? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity.
- The Proposed Rules would require that trading interests be communicated and represented in a way that makes them accessible to other market participants in order to come within the rule. Should the Commission require that the trading interests be communicated ''widely''? Why or why not?

15. Under the Proposed Rules, a person that ''earn[s] revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interest,'' would have the effect of providing liquidity to other market participants. Is this an appropriate measure or illustration of liquidity provision? Why or why not? Would the provision capture persons that should not be dealers? If so, who and why?

- Is there sufficient specificity provided for the term ''earn revenue''? If not, what additional specificity should the Commission provide and please provide specific examples on the types of specificity. Is the Proposed Rules' use of ''earn revenue'' appropriate? Are there other words that would be more appropriate? Why or why not? Should the rule text define what is meant by ''earn revenue''? Why or why not?
- Should the Proposed Rules include additional or other forms of revenue?
- Should the Proposed Rules include other measures of liquidity provision? If so, what measures and why?
- As explained above, buying at the bid and selling at the offer would include buying at lower than, and selling at higher than, the midpoint of the bid-ask spread. Should the rule text define ''capturing bid-ask spread'' to expressly include buying at lower than, and selling at higher than, the midpoint of the bid-ask spread?

16. Do the Proposed Rules provide sufficient specificity to permit market participants to distinguish between revenue derived from capturing bid-ask spreads and revenue derived from realization of appreciation of the underlying asset?

C. Quantitative Standard

In addition to the qualitative standards described above, proposed Rule 3a44–2 would also include a quantitative standard that would establish a bright-line test under which persons engaging in certain specified levels of activity in the U.S. Treasury market would be defined to be buying and selling securities ''as a part of a regular business,'' regardless of whether they meet any of the qualitative standards. Specifically, proposed Rule 3a44–2(a)(2) would provide that a person [164] that is engaged buying and selling government securities for its own account is engaged in such activity ''as a part of a regular business'' if that person in each of four out of the last six calendar months, engaged in buying and selling more than $25 billion of trading volume in government securities as defined in Section 3(a)(42)(A) of the Exchange Act.[165]

The Commission believes that four out of the last six calendar months is an appropriate range of time to evaluate the trading volume of a market participant and should help to ensure the proposed quantitative standard does not capture market participants with relatively low trading volume that may have had an anomalous increase in trading. The proposed time measurement period would smooth monthly variations by reducing the effect of trading fluctuations in a particular month that could misrepresent or distort a market participant's overall trading pattern.[166] A shorter period of time could potentially cause a market participant to fall within the scope of the quantitative standard solely as a result of an atypical, short-term increase in trading, which

[164] In light of the statutory definition of ''person,'' in conjunction with the proposed definitions of ''own account'' and ''control,'' as discussed in Section III.D, trading volume would be determined by aggregating volume at the firm or legal-entity level (rather than market participant identifier (''MPID'') or global firm level). *See* 15 U.S.C. 78c(a)(9).

[165] Proposed Rule 3a44–2(a)(2) only applies to government securities as defined in Section 3(a)(42)(A) of the Exchange Act. Accordingly, the trading volume threshold set forth in the proposed rule does not apply to all government securities as defined by Section 3(a)(42); but rather, it is limited to ''securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States'' (''U.S. Treasury Securities''). *See* 15 U.S.C. 78c(a)(42)(A). For purposes of determining whether the trading volume threshold is met, a person would include transactions in U.S. Treasury Securities—that is, Treasury bills, notes, floating rate notes, bonds, inflation-protected securities (''TIPS''), and Separate Trading of Registered Interest and Principal Securities (''STRIPS'')—and would exclude auction awards and repurchase or reverse repurchase transactions in U.S. Treasury Securities. *See* 2022 ATS Proposing Release at 15542 nn. 512–517 (describing U.S. Treasury Securities). Additionally, for purposes of determining whether the trading volume threshold is met, Treasury when-issued transactions would be included.

[166] This Commission has adopted regulations that use the four out of the last six calendar months metric in Regulation ATS, Rules 301(b)(5) and (6), and Regulation SCI Rule 1000. *See* 17 CFR 242.301(b)(5)–(6) (definition of an SCI alternative trading system or SCI ATS); *see also* Regulation Systems Compliance and Integrity, Exchange Act No. 73639 (Nov. 19, 2014), 79 FR 72251 (Dec. 5, 2014) (noting that time measurement period of four of the preceding six months is consistent with the current standard under Regulation ATS).

potentially could discourage participation in the U.S. Treasury market by a new market participant that has not had as long of a time period to develop its business prior to having to incur compliance costs associated with being subject to dealer registration. In addition, the Commission does not believe that a longer period of time is necessary to identify those market participants that play a significant role, and regularly transact, in U.S. Treasury Securities. The Commission believes that the proposed time measurement period provides sufficient trading history data so as to indicate a market participant's significance to the market, and that the structure of the measurement (*i.e.,* requiring a market participant to meet the threshold for four out of the last six calendar months) identifies regularity of such significant trading levels.

As discussed below, the Commission's analysis of market participants that are not members of FINRA in the U.S. Treasury market found that these participants accounted for approximately 19 percent of the aggregate Treasury trading volume in July 2021, with PTFs representing the highest volumes of trading among these participants.[167] In addition, PTFs dominate the interdealer U.S. Treasury market, representing 61 percent of the trading activity on the electronic IDB platforms and 48 percent of the total interdealer market.[168]

Although, as noted previously, the Proposed Rules alone will not necessarily prevent future market disruptions, the operation of proposed Rule 3a44–2 will support transparency; market integrity and resiliency; and investor protection across the U.S. Treasury market by helping to close the regulatory gap that currently exists and by ensuring consistent regulatory oversight.[169] The lack of consistent visibility across the market today constrains the ability of regulators to understand and respond to significant market events. The proposed quantitative standard is intended to capture the most significant market participants that are regularly buying and selling U.S. Treasury Securities, and subject these participants that are not already registered as dealers or government securities dealers to a regulatory regime designed to minimize the risks they may pose to the U.S. Treasury market and provide regulators with appropriate oversight of their activities.

As described below in Section V, the proposed trading volume threshold was derived from analysis of historical U.S. Treasury Securities transactions reported to TRACE.[170] Based on this analysis, the Commission is proposing a trading volume amount of $25 billion; this quantitative standard would likely capture mostly unregistered PTFs, but also may capture certain other significant market participants not currently registered as government securities dealers.[171] In determining whether the trading volume threshold is met, a market participant would include transactions in U.S. Treasury Securities that are currently reported to TRACE—that is, Treasury bills, notes, floating rate notes, bonds, TIPS, and STRIPS—and would exclude auction awards and repurchase or reverse repurchase transactions in U.S. Treasury Securities.[172] The proposed quantitative standard is intended to be a straightforward threshold identifying those market participants that, as a result of their regularly high trading volume in government securities, serve dealer-like roles significantly impacting the U.S. Treasury market. In this regard, the Commission believes that setting forth a trading volume threshold would provide an easily measurable and observable standard.

As discussed above, the market structure for U.S. Treasury securities has evolved, with PTFs accounting for a large percent of trading volume.[173] In some ways, PTFs have displaced the role of traditional dealers in the interdealer U.S. Treasury market, and the Commission believes that PTFs, and other market participants that similarly have a significantly large, and regular, amount of trading volume and have a significant impact on the U.S. Treasury market, should register as government securities dealers.[174] Proposed Rule 3a44–2(a)(2) is designed to make clear the Commission's view that a person engaging in this regular volume of buying and selling activity is engaged in the buying and selling of government securities for its own account as a part of a regular business, and therefore, should be subject to the same regulatory requirements as other dealers.

The Commission believes the need for a quantitative rule is most acute in the U.S. Treasury market. Thus, while proposed Rules 3a5–4 and 3a44–2 share common qualitative standards, the Commission is proposing a quantitative standard only with respect to the U.S. Treasury market at this time. As explained more fully in Section V, the quantitative standard is derived from trading data related to the U.S. Treasury market, and is intended to identify significant market participants not registered as dealers that are performing dealer-like activities in the U.S. Treasury market.[175]

The recent disruptions in the U.S. Treasury market referenced above, together with the significant role played

[167] *See* Section V.B.2. Specifically, the analysis identified 174 market participants who were active in the U.S. Treasury market in July 2021 and that were not members of FINRA. Although FINRA membership is not synonymous with dealer registration status, the Commission believes that many of the market participants who are not FINRA members are also likely not registered as government securities dealers. These 174 identified non-FINRA member market participants accounted for approximately 19 percent of aggregate Treasury trading volume in July 2021. PTFs had the highest volumes among these identified non-FINRA member U.S. Treasury market participants. *See* Section V.B.2.

[168] *See supra* note 2.

[169] For example, regulators do not have the same insight into the trading activities of unregistered PTFs because, unlike registered dealers, they do not report their U.S. Treasury Securities transactions to FINRA's Trading Reporting and Compliance Engine (''TRACE''), do not file annual reports with the Commission, and are not subject to Commission examinations. *See* Section V.B.3. Market participants that are private funds are generally managed by registered investment advisers that file regular financial reports with the Commission on Form PF, and are subject to examination concerning their private fund clients, but private funds do not report securities transactions such as those required by the rules governing registered dealers. *See id.* Transactions in fixed income securities, such as U.S. Treasury Securities, are not currently reported to the Consolidated Audit Trail (''CAT''). *See* Section V.B.2 (explaining the type of transactions reported to CAT).

[170] TRACE reporting requirements apply to all marketable U.S. Treasury Securities, including Treasury bills, notes, floating rate notes, bonds, TIPS, and STRIPS. *See* FINRA Rule 6700 series. Under FINRA Rules, ''Bona fide repurchase and reverse repurchase transactions involving TRACE-Eligible Securities'' and ''Auction Transactions'' are not reported to TRACE. *See* FINRA Rule 6730(e).

[171] As described in Section V.B.2, the analysis found 46 non-FINRA member firms with trading volumes of at least $25 billion in July 2021. Based on classifications (further explained *infra* note 218), of these 46 non-FINRA member firms, 22 are classified as PTFs and 20 are classified as dealers. *See* Section V.B.2, Table 1. To the extent a non-FINRA member firm is a financial institution, it would not register with the Commission but instead would provide written notice of its government securities dealer status with the appropriate Federal banking regulator. *See* Section II; 17 CFR 400.1. Additionally, a non-FINRA member firm may be operating in reliance on an exception or exemption. *See supra* note 29 and accompanying text.

[172] *See supra* notes 165, 170.

[173] *See* Section II.

[174] 2010 Equity Market Structure Concept Release at 3607.

[175] The Commission believes that due to the varying characteristics of the other securities markets, setting a quantitative standard would be more complicated and each market would need to be separately assessed before a quantitative threshold is set. Accordingly, the Proposed Rules do not set forth a comparable quantitative standard for proposed Rule 3a5–4. The Commission is seeking comment, however, on whether proposed Rule 3a5–4 should include a quantitative standard, and if so, how it should be established. *See* Question 26.

by market participants not registered as dealers, distinguishes that market from other markets where these types of participants are more typically registered as dealers. Indeed, it is the Commission's understanding that in the equity markets, because PTF trading strategies typically depend on latency and cost advantages made possible by trading directly (via membership) on a national securities exchange, and the Exchange Act limits exchange membership to registered broker-dealers, there is incentive for many PTFs to register as broker-dealers to gain these advantages.[176] In the U.S. Treasury market, however, where trading occurs on ATSs and other non-exchange venues, PTFs lack this incentive to register.

Request for Comments

The Commission generally requests comment on this aspect of proposed Rule 3a44–2. In addition, the Commission requests comment on the following specific issues:

17. Is there sufficient specificity provided for the terms used in the quantitative standard? Are there any terms that should be defined in rule text or addressed in the release?

18. Is the threshold of more than $25 billion of trading volume in each of four out of the last six calendar months an appropriate proxy for determining whether a person is engaged in buying and selling U.S. Treasury Securities for its own account is engaged in such activity as a part of a regular business? Why or why not? If not, what thresholds would be appropriate? For example, should the quantitative standard include a separate trading volume threshold for: (1) Buying; (2) selling; and (3) both buying and selling U.S. Treasury Securities, all three of which would be required to be satisfied in order to meet the quantitative standard? Commenters should provide data to support their views.

19. Should the Commission apply a different look-back period for applying the quantitative threshold from four out of the preceding six months to something different? Is the time period measurement of four out of the last six calendar months an appropriate metric to evaluate a market participant's trading volume? Should the time period be a weekly measurement or is there another measurement that would better determine whether a person is engaged in buying and selling U.S. Treasury Securities for its own account is engaged in such activity as a part of a regular business?

20. Should the look-back period for the quantitative standard take into consideration the general auction schedule for U.S. Treasury securities? Should the look-back period correspond with the schedule of any particular U.S. Treasury security? Why or why not? For example, the 10-year U.S. Treasury note auctions are usually announced in the first half of February, May, August, and November and generally auctioned during the second week of these months and are issued on the 15th of the same month.[177] Should the look-back period take into consideration these particular months for purposes of the quantitative standard? Why or why not? How could the look-back period incorporate the auction schedule? Please explain.

21. Are there persons that would meet the quantitative standard under the proposed rule but that should not be classified as government securities dealers (*i.e.,* is the quantitative standard over-inclusive?). If so, who are they and why should the Commission not classify them as government securities dealers?

22. Are there persons that would not meet the quantitative standard under the proposed rule—and would not be otherwise captured by the qualitative factors—but that should be classified as government securities dealers based on their trading volume (*i.e.,* is the quantitative standard under-inclusive)? If so, who are they and why should they be classified as government securities dealers?

23. Should the quantitative standard include an additional standard related to routinely expressing trading interests? For example, activity related to resting orders on a central-limit order book, or expressing trading interest on Communication Protocol Systems? If so, what measure of activity, including sources of data and calculation methodology, would appropriately identify market participants as government securities dealers?

24. Are there other ways of calculating a quantitative standard, such as using a measurement based on turnover (*e.g.,* a turnover ratio) rather than volume, or other measurements of significance (*e.g.,* a trading volume ratio, net/gross ratio) that would appropriately identify market participants as government securities dealers? If so, what are they, and why are they relevant in the context of analyzing dealer status? Commenters should provide any data or information to support their views.

25. Should the quantitative standard be a dynamic trading volume threshold that changes with the market over time, such as percentage of transactions reported to TRACE, a percentage of U.S. Treasury Securities outstanding or issued, or other inflation-adjusted threshold? Why or why not?

26. Should a quantitative standard be included in proposed Rule 3a5–4? To the extent a quantitative standard should be included, are there ways of calculating the standard for other securities markets? Is a trading volume threshold suitable for other types of securities markets?

27. In determining whether the trading volume threshold is met, the Commission has indicated that market participants should exclude auction awards and repurchase or reverse repurchase transactions. Is this exclusion appropriate? Should some or all of these transactions be included? Are there other transactions that should be excluded (*e.g.,* Treasury when-issued transactions)? Please explain. Should any excluded transactions be specifically addressed in rule text? Should there be a similar exclusion of these types of transactions for purposes of evaluating whether a market participant has met the qualitative standards? Are there any types of transactions that should be included in calculating the trading volume amount?

28. Are there market participants that would fluctuate between meeting or not meeting the quantitative standard (or qualitative standard) (*e.g.,* initially meet the standard, a few months later no longer meet the standard, and later meet the standard again)? Would this pattern be associated with a particular type of trading such that there may be periods in which the participant meets neither the quantitative standard nor any qualitative standard?

29. Are there circumstances in which a person triggering the quantitative threshold would not also trigger the proposed qualitative standards? Please describe those circumstances in detail. In such case, would firms implement compliance systems to monitor trading volumes? Do firms have systems in place that already or could easily be programmed to monitor for the proposed quantitative threshold? What are the costs of implementing such systems or updating existing systems? Would firms be incentivized to trade below the proposed quantitative standard to avoid registration?

[176] *See* 15 U.S.C. 78f(c)(1) (''A national securities exchange shall deny membership to (A) any person, other than a natural person, which is not a registered broker or dealer or (B) any natural person who is not, or is not associated with, a registered broker or dealer.'').

[177] *See* TreasuryDirect, General Auction Timing, *available at https://www.treasurydirect.gov/instit/auctfund/work/auctime/auctime.htm.*

D. Definitions of ''Own Account'' and ''Control''

The Exchange Act defines a ''dealer'' or ''government securities dealer'' as a person engaged in the business of buying and selling securities for its ''own account.'' [178] The Proposed Rules define a person's ''own account'' in a way that recognizes that corporate families and entities may be organized in various structures. The proposed definitions of ''own account'' and ''control'' are designed to focus on the trading activity occurring at the firm or legal-entity level or the trading activity that is being employed on behalf of, or for the benefit of, the entity, and limit the registration burden to those entities engaged in dealer activity. In addition, the proposed definitions are intended to avoid incentivizing market participants to change their corporate structures for the purpose of avoiding registration.

Under paragraph (b)(2) of the Proposed Rules, a person's ''own account'' means any account that is: ''held in the name of that person''; or ''held in the name of a person over whom that person exercises control or with whom that person is under common control, provided that this paragraph (b)(2)(ii) does not include [the accounts described in paragraphs (b)(2)(ii)(A)–(C)]''; or ''held for the benefit of those persons identified in paragraphs (b)(2)(i) and (ii).'' [179] Paragraphs (b)(2)(ii)(A)–(C) excludes an account in the name of a registered broker, dealer, or government securities dealer, or an investment company registered under the Investment Company Act of 1940; with respect to an investment adviser registered under the Investment Advisers Act of 1940, an account held in the name of a client of the adviser unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client; and with respect to any person, an account in the name of another person that is under common control with that person solely because both persons are clients of an investment adviser registered under the Investment Advisers Act of 1940 unless those accounts constitute a parallel account structure.[180]

With respect to which accounts should be aggregated for purposes of paragraph (b)(2)(ii), the Proposed Rules would incorporate the definition of ''control'' under Exchange Act Rule 13h–l.[181] The Commission believes that incorporating the established definition of ''control'' under Exchange Act Rule 13h–l into the Proposed Rules would promote consistency and assist persons in applying the definition. The Commission further believes that the proposed definition of ''control'' is sufficiently limited to capture only those market participants with a significant enough controlling interest to warrant registration as a dealer.[182] The proposed definition of ''control'' used in Rule 13h–l is appropriate because it is less burdensome than other Commission rules defining control, but still achieves the goal of identifying persons who exert direct or indirect control over significant market participants.[183] In addition, the Commission believes that this definition of control would appropriately deter the structuring of corporate relationships or establishment of multiple legal entities to avoid the Proposed Rules.

The Proposed Rules exclude three types of accounts from being aggregated with another account for purposes of the definition of ''own account.'' First, under paragraph (b)(2)(ii)(A), where an account is held in the name of a person who is a registered broker, dealer, government securities dealer, or registered investment company (collectively, ''registered person''), the Commission believes that it would be inappropriate to attribute the registered person's accounts to controlling persons or persons under common control, because the registered person is already subject to the broker-dealer regulatory regime or the investment company regulatory regime.[184] Thus, the definition of ''own account'' would not include those types of accounts.

Second under paragraph (b)(2)(ii)(B), the Proposed Rules would not attribute to a registered investment adviser an account held in the name of a client of the adviser, unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client.[185]

Under the aggregation provisions of the Proposed Rules, a registered investment adviser that has an investment advisory relationship and is determined to control the client would be required to aggregate its trading activities with those of the client.[186] The

[178] 15 U.S.C. 78c(a)(5) (''The term 'dealer' means any person engaged in the business of buying and selling securities . . . for such person's *own account* through a broker or otherwise.'') (emphasis added); 15 U.S.C. 78c(a)(44) (''The term 'government securities dealer' means any person engaged in the business of buying and selling government securities for his *own account,* through a broker or otherwise . . .'') (emphasis added).

[179] *See* proposed Rule 3a5–4(b)(2) and proposed Rule 3a44–2(b)(2).

[180] *See* proposed Rule 3a5–4(b)(2)(ii)(A)–(C) and proposed Rule 3a44–2(b)(2)(ii)(A)–(C).

[181] Exchange Act Rule 13h–l(a)(3) provides that control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of securities, by contract, or otherwise. For purposes of Rule 13h–l only, any person that directly or indirectly has the right to vote or direct the vote of 25 percent or more of a class of voting securities of an entity or has the power to sell or direct the sale of 25 percent or more of a class of voting securities of such entity, or in the case of a partnership, has the right to receive, upon dissolution, or has contributed, 25 percent or more of the capital, is presumed to control that entity. 17 CFR 240.13h–l(a)(3). The definition of ''control'' in Rule 13h–l is based on the definition of ''control'' in Form 1 (Application for the Registration or Exemption from Registration as a National Securities Exchange) and Form BD (Uniform Application for Broker-Dealer Registration).

[182] As noted above, the Commission has applied this standard in other contexts. *See* Large Trader Reporting, Exchange Act Release No. 61908 (Apr. 14, 2010), 75 FR 21456, 21461 (Apr. 23, 2010) (''The Commission preliminarily believes that the proposed definition of control is sufficiently limited to capture only those persons with a significant enough controlling interest to warrant identification as a large trader.''). The definition of ''control'' in Rules 13h–l and on Forms 1 and BD is less expansive than the definition of control as used in 17 CFR 240.19h–1 (Rule 19h–1), for example. In Rule 19h–1(f)(2), the definition of ''control'' features a 10 percent threshold with respect to the right to vote 10 percent or more of the voting securities or receive 10 percent or more of the net profits.

[183] The Commission is not incorporating the provision contained in the Form 1 and Form BD relating to directors, general partners, or officers that exercise executive responsibility. Instead, the proposed definition of ''control'' focuses on the existence of a corporate control relationship over significant market participants.

[184] As discussed in Section II.A, the Proposed Rules would exclude registered investment companies in light of the regulatory framework that applies under the Investment Company Act and rules thereunder.

[185] Registered investment advisers typically have investment discretion over the assets of the accounts of their clients, including private funds and other client accounts that are managed separately (''separately managed accounts''). Each of these clients has its own independent investment objectives and strategies, which the registered investment adviser implements as agent for the client. Moreover, investors in different private funds typically differ in their investment objectives and strategies, as do owners of the assets in separately managed accounts. A registered investment adviser has a duty to provide investment advice in the best interest of its client, based on the client's investment objectives, *see* Investment Advisers Act Release No. 5248 (June 5, 2019), 84 FR 33669, 33671 (July 12, 2019), and so the Proposed Rules would not require aggregation solely because a registered investment adviser exercises discretion.

[186] For purposes of the Proposed Rules ''control'' is defined to include ''the possession, direct or indirect, of the power to direct or cause the direction of the management and policies whether

Proposed Rules' aggregation provisions are designed to account for trading activity within a corporate family in which trading activity at a firm or legal-entity level is employed on behalf of or for the benefit of another legal entity. In the case of registered investment advisers that have no controlling ownership interest in an entity for which they are solely managing client assets, the trading activities of the adviser and each client are independent of each other and are not for the benefit of the adviser or any other client. Nevertheless, the Commission recognizes, in the absence of the proposed exclusion for such accounts, questions could arise whether the Proposed Rules could require the aggregation of client trading activities with those of the registered investment adviser. Because some clients may have similar trading strategies, their trading activities in the aggregate could meet the proposed qualitative or quantitative standards. This would result in the application of the Proposed Rules to the activities of a registered investment adviser and those of its clients even when none of the entities is engaged in dealer activity for the economic benefit of another. To reduce the potential for capturing registered investment advisers and their clients in these circumstances, we are proposing to exclude registered investment advisers from aggregating their trading activities with those of their clients when the adviser and client only have a discretionary investment management relationship (*i.e.,* where the registered investment adviser does not control the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client).[187]

The Proposed Rules, however, are designed to address situations in which a registered investment adviser might use the proposed exclusion to avoid the application of the Proposed Rules. For example, a registered investment adviser that has a controlling ownership interest in a client could attempt to divide trading activities among several clients it controls to avoid dealer registration by any individual client whose trading activities would meet either of the Proposed Rules. In those circumstances, the aggregate trading activities of each client could be designed to economically benefit the registered investment adviser and, if aggregated, the activities would fall within the intended scope of the Proposed Rules. To prevent such potentially evasive structures, the proposed exclusion from aggregation does not apply to any registered investment adviser that controls the client as a result of the registered investment adviser's right to vote or direct the vote of voting securities of the client, the registered investment adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client.[188]

Third, under paragraph (b)(2)(ii)(C), a person under common control with another person solely because both persons are clients of a registered investment adviser would not aggregate their trading activities and volume to determine if each meet the Proposed Rules, unless those accounts constitute a parallel account structure. The Proposed Rules would define parallel account structure to mean ''a structure in which one or more private funds (each a 'parallel fund'), accounts, or other pools of assets (each a 'parallel managed account') managed by the same investment adviser pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another parallel fund or parallel managed account.'' [189] The aggregation provisions would require clients of a registered investment adviser that are determined to be under ''common control'' of the registered investment adviser to aggregate their trading activities under certain circumstances. As noted above, in many instances, a registered investment adviser's clients are engaged in independent investment objectives and strategies and no individual client is engaged in trading activities for the benefit of any other client. As a result, in the absence of the proposed exclusion, questions could arise whether clients who would not otherwise be scoped into the Proposed Rules either because of their individual trading activities or their trading activities for the economic benefit of any other client, could nevertheless be captured by the Proposed Rules as a result of having to aggregate their trading activities with those of other clients. To reduce the potential for capturing these registered investment adviser clients in these circumstances, we are proposing to exclude from the proposed requirement to aggregate trading activities of clients of a registered investment adviser that are under common control solely because both are clients of the same registered investment adviser.[190]

At the same time, however, the Proposed Rules are designed to prevent a registered investment adviser from dividing trading activities among multiple clients to avoid the application of the Proposed Rules. A registered investment adviser could, for example, create a parallel fund structure in which one or more private funds pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another private fund. The registered investment adviser could limit the trading activity of each ''parallel fund'' so that individually it does not meet the qualitative or quantitative standards, even though the funds' trading activities in the aggregate are part of a single trading strategy. To prevent such potential structuring of funds to avoid dealer registration, the proposed exclusion would not apply to client accounts that constitute a parallel account structure.[191]

Finally, it is important to note that, as discussed above, while a person that meets the qualitative or quantitative standards in paragraph (a) is not subject to the Proposed Rules if that person has or controls total assets less than $50 million,[192] the accounts of such under-$50-million persons must be considered for purposes of determining whether another person's trading activities or volume falls within the qualitative or quantitative standards set forth in paragraph (a). In particular, a person must consider for aggregation purposes any accounts (including those under $50 million) that are controlled by, or under common control with, that person. The Commission believes that requiring aggregation of accounts of those persons that have or control less than $50 million in total assets would prevent the organizing of corporate

through the ownership of securities, by contract or otherwise.'' *See supra* note 181; 17 CFR 240.13h–l(a)(3).

[187] *See* text in 3a5–4(b)(2)(ii)(B) and 3a44–2(b)(2)(ii)(B) of the Proposed Rules.

[188] *Id.* Paragraph (b)(2)(ii)(B) reflects the definition of control under Exchange Act Rule 13h–l. *See* 17 CFR 240.13h–l(a)(3).

[189] *See* proposed Rule 3a5–4(b)(4) and proposed Rule 3a44–2(b)(4). The proposed definition of ''parallel account structure'' corresponds to definitions of ''parallel fund structure'' and ''parallel managed account'' under Form PF. *See* Form PF Glossary of Terms, *available at https://www.sec.gov/files/formpf.pdf.*

[190] *See* proposed Rule 3a5–4(b)(2)(ii)(C) and proposed Rule 3a44–2(b)(2)(ii)(C).

[191] *Id.*

[192] *See* Section III.A; proposed Rule 3a5–4(a)(2)(i) and proposed Rule 3a44–2(a)(3)(i).

structures for the purpose of avoiding dealer registration.

The following examples illustrate the application of the Proposed Rules' definition of ''own account'' as discussed above. In these examples, whether any of the firms' relationship and activities meet the definition of ''control'' would remain a facts and circumstances determination. Additionally, as discussed in Section III.E, although a firm may not meet the Proposed Rule's definition of dealer or government securities dealer in the examples, the firm may be a dealer or government securities dealer pursuant to existing Commission interpretations and precedent to the extent consistent with the Proposed Rules.

Example 1

- A, B, and C are under common control; all are controlled by D. A, B, C, and D are all limited liability companies. None of the firms are registered brokers, dealers, government securities dealers, or registered investment companies.

Aggregation by Parent D

○ D would aggregate the trading activities and volume of A, B, C, and D to determine if D would be captured by paragraph (a) of the Proposed Rules. If as a result of this aggregation, D meets the quantitative or qualitative standards of paragraph (a), and it has or controls more than $50 million in total assets, it would be captured by the Proposed Rules.

Aggregation by D's Subsidiaries

○ A, B, and C would also need to aggregate each other's trading activities and volume to determine if they would individually be captured by the qualitative or quantitative standards of paragraph (a) of the Proposed Rules. If, as a result of aggregation A, B, and C each meet the qualitative or quantitative standards of paragraph (a), but A has or owns less than $50 million in total assets, A would be excluded from the Proposed Rules under paragraph (a). A's activities and volume, however, would still be considered for purposes of B, C, and D.

○ If B registers as a dealer, its trading activities and volume would no longer be considered by A, C, or D.

Example 2

- A is a registered investment adviser with clients B, C, D, E, F, and G. A has an investment advisory contract with each of B and C under which A exercises investment discretion with respect to B's and C's assets each in an account separately managed by A. D and E are hedge funds. A is the general partner of both D and E, and controls D and E as a result of its capital contributions to and rights to amounts upon dissolution of each fund. F and G are also hedge funds. A has an investment advisory contract with each of F and G under which A exercises investment discretion with respect to F's and G's assets. F and G pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions. Neither A nor any of its clients is a registered broker, dealer, government securities dealer, or registered investment company.

Aggregation by A

○ A would not need to aggregate its trading activities with the trading activities of B, C, F, or G unless A controls B, C, F, or G as a result of the right to vote or direct the vote of the voting securities issued by these clients, the right to sell or direct the sale of the voting securities issued by these clients, or the amount of capital contributions to or rights to amounts upon these clients' dissolution.

○ A would need to aggregate its trading activities with the trading activities of both D and E because A has control over each fund as a result of its capital contributions to and rights to amounts upon dissolution of each fund.

Aggregation by A's Clients

○ B and C would not need to aggregate their trading activities even if B and C were determined to be under common control (which would be a facts and circumstances determination), because common control would be solely because both are clients of A.

○ D and E would need to aggregate their trading activities because they are under common control of A, which has the right to direct the vote of the voting securities of each fund and the right to capital contributions upon dissolution of the fund and not solely because each fund is a client of A.

○ Each of F and G would need to aggregate the trading activities of the other fund. F and G's activities would constitute a parallel account structure (even if they are under common control solely because both F and G are clients of A) because F and G are managed by the same investment adviser, pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another parallel fund or parallel managed account.

The Commission believes that the definitions of own account and control are appropriate and will help to ensure that there is no circumvention of the Proposed Rules through, for example, the establishment of multiple legal entities whose activities may not separately rise to a level of engagement that qualifies for dealer or government dealer status, but, when aggregated, does demonstrate that the entities are selling and buying securities or government securities as a part of a regular business.

Request for Comments

The Commission generally requests comment on this aspect of the Proposed Rules. In addition, the Commission requests comment on the following specific issues:

30. Does the proposed definition of ''own account'' appropriately reflect complexities and differences in corporate structures and business models of proprietary trading firms, investment advisers, private funds, and other market participants, and the ownership structures of their trading accounts? Why or why not? Commenters should provide descriptions to support their responses.

31. Except as described in paragraph (b)(2)(ii), are there instances when an account of a controlled person, or person under common control, should not be considered a person's ''own account'' for purposes of the Proposed Rules? For example, should an account held in the name of a bank be excluded from the definition of ''own account''? Commenters should provide descriptions of any such instances.

32. Is the proposed definition of ''control'' appropriate? What is the effect of using the Exchange Act definition of ''control'', as opposed to the Investment Company Act definition? Please describe potential alternative definitions and why they are more appropriate.

33. Are there instances where two entities may meet the proposed definition of ''control'' and where these entities are in different lines of business and/or unaware of the other's trading strategies? Are there any situations where two entities may meet the proposed definition of ''control'' but communications between two entities would be prohibited?

34. Under the Proposed Rules, a registered investment adviser would aggregate its account with its client accounts (private funds and separately managed accounts), except as described in paragraph (b)(2)(ii).

- Should registered investment advisers be included only with respect to their own proprietary trading activities (*i.e.,* not with respect to activities that could be attributed to

them by the aggregation contemplated by the definitions of ''own account'' and ''control'')? Why or why not?

- How would such aggregated accounts comply with the requirements for dealer registration?
- In these cases, would the investment adviser registering itself avoid registering a private fund or separately managed account client? If not, are there other actions these accounts would seek to take to avoid all such accounts either registering as dealers or ceasing investment strategies that trigger the Proposed Rules application? Would any of such accounts avoid certain investment strategies to prevent application of the Proposed Rules? If so, which investment strategies and at which types of accounts?
- Would the registered investment adviser restructure its activities or those of its private fund or separately managed account clients to avoid registering a private fund or separately managed account client as a dealer? For example, would a registered investment adviser create an affiliated broker-dealer to avoid registering itself and/or any clients as dealers? What would be the effects of any restructuring? Please explain.

35. Should the Proposed Rules require registered investment advisers to aggregate client accounts when the adviser controls a person other than through an ownership interest? Why or why not? We understand that, for tax and other purposes, hedge fund offshore companies are often controlled by boards of directors or legal entities that are separate from the hedge fund's adviser. Should the aggregation provisions of the Proposed Rules cover those arrangements? Will the exclusion in paragraph (b)(2)(ii)(B) have different impacts on registered investment adviser client funds that are organized domestically as general partnerships and funds that are organized offshore as companies with independent directors? If so, could registered investment advisers restructure certain funds to avoid application of the Proposed Rules? What would be the effects of any restructuring? Would a registered investment adviser's use of an omnibus account to trade client securities on an aggregate basis present particular interpretative questions or raise operational issues for these purposes?

36. Should registered investment adviser clients that are under common control solely because they are clients of the same registered investment adviser be required to aggregate accounts? Why or why not? Does the definition of ''parallel control structure'' adequately capture ways in which a registered investment adviser could seek to separate trading activities among accounts to avoid registration by their clients? Would the aggregation provisions of the Proposed Rules appropriately capture activity that would raise the concerns that the Proposed Rules are designed to address? Would the aggregation provisions of the Proposed Rules capture activity that it should not? If so, please explain.

37. Are there any incentives created by the aggregation provisions that may cause market participants to reevaluate or restructure their corporate structures? What costs and benefits are there associated with restructuring?

38. Would market participants exit certain strategies or exit the market to avoid registration? If so, what would be the effects?

E. No Presumption

The Proposed Rules would further define the phrase ''as a part of a regular business'' by identifying certain activities that would cause persons engaging in such activities to be ''dealers'' or ''government securities dealers'' within the meaning of Sections 3(a)(5) and 3(a)(44) of the Exchange Act.[193] They would not seek to address all persons that may be acting as dealers or government securities dealers under otherwise applicable interpretations and precedent.[194] A person that does not meet the conditions set forth in the Proposed Rules may nonetheless be a dealer if it is otherwise engaged in a regular business of buying and selling securities for its own account by, for example, acting as an underwriter.[195]

To emphasize this point, the Proposed Rules would state that no presumption shall arise that a person is not a dealer or government securities dealer as defined by the Exchange Act solely because that person does not satisfy paragraph (a) of the Proposed Rules. Proposed Rules 3a5–4(c) and 3a44–2(c) thus would provide that a person may still meet the statutory definition of dealer and government securities dealer even absent the activity identified in paragraph (a) of the Proposed Rules if the person is otherwise engaged in buying and selling securities or government securities for its own account as a part of a regular business.[196]

IV. General Request for Comments

The Commission generally requests comment on all aspects of the Proposed Rules. In addition, the Commission requests comment on the following specific issues:

39. Are there standards of activity other than the standards under the Proposed Rules that the Commission should apply in the context of analyzing dealer status? If so, which standards and why?

40. Would the Proposed Rules capture persons that should not be regulated as dealers? If so, who? Why would they be captured under the Proposed Rules, and why is that not appropriate?

41. Are there any categories of persons that would not meet the Proposed Rules, yet should be registered as dealers? Commenters should identify any such categories of persons and describe why they should be registered despite not meeting the proposed thresholds.

42. Would the Proposed Rules cause market participants to reevaluate or restructure their activities to avoid registration as a dealer or cease investment strategies that trigger the application of the Proposed Rules? What would be the effects of such restructuring, withdrawal, or cessation? Please explain.

43. For purposes of determining whether a person is a dealer, are there significant differences between equity securities, government securities, or other securities that should be addressed by the Proposed Rules? Commenters should identify and discuss any such differences.

44. Would the Proposed Rules appropriately apply the requirements applicable to dealers (*e.g.,* capital, margin, and business conduct requirements) to the entities that would be subject to those requirements? Is the scope of the Proposed Rules appropriate in light of the costs and benefits associated with those substantive rules?

45. How are each of PTFs, hedge funds, and investment advisers typically capitalized? Would the requirement of the Net Capital Rule (Exchange Act Rule 15c3–1) deter any of these entities from

[193] As discussed above, each qualitative standard in proposed Rules 3a5–4 and 3a44–2 is a separate definition that further defines when a person is acting as a dealer or government securities dealer. *See* Section III.B. Accordingly, a person would register with the Commission if it satisfied any one of the three qualitative standards. *Id.* Similarly, the quantitative standard in proposed Rule 3a44–2(a)(2) is a discrete definition and a person would register as a government securities dealer upon meeting this standard even if it did not satisfy any of the qualitative standards in proposed Rule 3a44–2(a)(1). *See* Section III.C.

[194] *See supra* note 87; *see, e.g.,* 2002 Release at 67499 (stating that ''[a]s developed over the years, the dealer/trader distinction recognizes that dealers normally . . . hold themselves our as buying and selling securities at a regular place of business'').

[195] *See* 2002 Release at 67499.

[196] *See* proposed Rule 3a5–4(c) and proposed Rule 3a44–2(c).

registering? Would the Net Capital Rule cause these entities to alter trading activity that would trigger the rules' application?

46. Would a pension plan or other institutional investor that rebalances its portfolio be captured by the Proposed Rules? Please explain how. If so, should the rule specifically exclude periodic portfolio rebalancing (*e.g.,* on a monthly or quarterly basis) from the concept of ''as a part of a regular business?'' Why or why not?

47. Should the Commission view rebalancing differently if it occurs only at a certain frequency or by certain institutional investors? Why or why not?

48. Are there any other terms used in the Proposed Rules that the Commission should define? Why or why not? Please identify what term(s) and how the term(s) should be defined.

49. Should the Proposed Rules include an anti-evasion provision similar to Rule 13h–l(c)(2), and why?

50. Will the Proposed Rules appropriately account for trading activity occurring through sponsored access arrangements? Is there anything more that the Commission should address regarding how such Proposed Rules will interrelate with such arrangements?

51. If the Proposed Rules are adopted, which staff letters, if any, should or should not be withdrawn, and why?

52. Are there additional standards, consistent with the Commission's objectives, that should be incorporated into the Proposed Rules? Commenters should identify and discuss any such standards.

53. Are there any additional factors that the Commission should address in relation to the Proposed Rules?

54. Are there any alternative approaches to the Proposed Rules that the Commission should propose? Commenters should identify any such alternative approach and describe the advantages and disadvantages of the alternative approach.

55. Other than what is discussed herein, are there any costs of compliance with the Proposed Rules that the Commission has not addressed? Commenters should describe any additional costs of compliance with the proposed rule and include any empirical data, to the extent available.

56. The Commission is proposing a one-year compliance period from the effective date of any final rules if adopted. Would the proposed compliance period provide sufficient time for market participants to comply with the Proposed Rules? Why or why not?

V. Economic Analysis

A. Introduction

The Commission is sensitive to the economic effects of its rules, including the costs and benefits and effects on efficiency, competition, and capital formation. Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking pursuant to the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[197] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the effect such rules would have on competition.[198] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[199]

The Commission believes the Proposed Rules will support orderly markets and protect investors by addressing negative externalities that may arise in relation to market participants' financial and operational risks. The Proposed Rules would also improve transparency in markets. Specifically, the Commission believes the Proposed Rules would promote the financial and operational resilience of individual liquidity providers in securities markets and would improve the Commission's ability to monitor market activity, conduct research, and detect manipulation and fraud. The Proposed Rules would have uncertain impacts on efficiency, competition, and capital formation, due to the likelihood of offsetting effects. As discussed further below, the Proposed Rules may create a more level competitive landscape by applying similar rules to all activities that meet the proposed standards, and they may also promote market efficiency and capital formation by strengthening market stability and investor protection. However, offsetting effects could arise due to costs that the Proposed Rules would impose on activities that provide liquidity.

Any person whose activities satisfy the qualitative or quantitative standards would be affected by the Proposed Rules. The list of affected parties would primarily include PTFs, but private funds may also be affected. Registered investment advisers may be affected if their own proprietary trading activity triggers the application of the Proposed Rules or if they have certain control over client accounts (including private funds and separately managed accounts) that, individually or collectively, engage in activities that satisfy the Proposed Rules. However, the Proposed Rules' aggregation provisions exclude an account held in the name of a client of the registered investment adviser unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client.[200] Registered investment companies would be excluded from the Proposed Rules, along with all persons that have or control assets of less than $50 million, as described below. Other parties who may be indirectly affected include the competitors, customers or clients (if any), and creditors (if any) of the above-mentioned affected parties.

B. Baseline

Dealers perform an important market function, absorbing order imbalances and providing liquidity to buyers and sellers who may not arrive at the same time, and a regulatory regime exists to govern their activities. However, market participants that do not register as dealers—and so are not required to comply with the dealer regulatory regime—increasingly perform similar economic functions as dealers. This difference in regulatory treatment creates the potential for negative externalities, as described below. Furthermore, the unevenness of regulation potentially places a greater burden on registered dealers than on other market participants that engage in similar activities, which may allow market participants not registered as dealers to gain market share from registered dealers.

1. Regulatory Baseline

Dealers, unless excepted or exempted, are required to register with the Commission,[201] join an SRO, and adhere to a comprehensive regulatory regime. As discussed above in Section II, this regime includes provisions that limit risk (*e.g.,* the Net Capital Rule and rules promoting operational integrity),

[197] 15 U.S.C. 78c(f).

[198] 15 U.S.C. 78w(a)(2).

[199] *Id.*

[200] *See supra* note 185 and associated text.

[201] As of August 2, 2021, 3,559 firms were registered with the Commission as broker-dealers. *See Data: Company Information About Active Broker-Dealers,* SEC (updated Feb. 1, 2022), *available at https://www.sec.gov/help/foiadocsbdfoiahtm.html.*

books and records requirements,[202] various reporting and disclosure requirements,[203] and dealer-specific anti-manipulative and other anti-fraud rules.[204] The Net Capital Rule (Rule 15c3–1) requires registered dealers to maintain minimum amounts of net liquid assets at all times, even intraday, thus constraining dealer leverage.[205] In addition to the financial and regulatory risk management controls required by the Market Access Rule, broker-dealers with market access must comply with a number of underlying regulatory requirements when conducting their business.[206] Registered dealers are also subject to the Commission's authority to conduct examinations and impose sanctions,[207] and to the examination and enforcement authority of the relevant SRO.[208] Government securities dealers are further subject to rules issued by the Treasury that concern financial responsibility, capital requirements, recordkeeping, reports and audits, and large position reporting.[209] Finally, since registered dealers must join an SRO, they are bound by additional rules set by the SROs.[210]

Among other things, these rules help to ensure that dealers are financially responsible, including adequately capitalized, that they maintain internal controls, and that the Commission and the SROs have tools to help them detect manipulation or fraud by analyzing transaction reports and examining other records kept by the dealer.

2. Other Market Participants

Market participants who are not registered as dealers also conduct significant activity in securities markets,[211] and the Commission believes that some of these entities nevertheless perform the economic function of dealers. Because the Proposed Rules would apply to activities rather to persons' legal descriptions or other characteristics, they could potentially capture a wide array of persons.[212]

The list of affected parties would not include persons who have or control assets less than $50 million, and we estimate that this provision would exclude the majority of investors.[213] Established FINRA rules distinguish retail investors from institutional investors, in part, based on a threshold of $50 million in assets, and we follow that standard to exclude small investors who are unlikely to conduct a significant degree of dealer-like activity.[214] Certain financial institutions may also be exempt from the Proposed Rules.[215]

The first two subsections below explain why we preliminarily believe that PTFs and private funds, particularly hedge funds, are the most likely firms other than registered dealers to be engaged in activities that would satisfy the Proposed Rules. As discussed above, the activities of clients would not be attributed to a registered investment adviser for purposes of determining whether the adviser would fall under the Proposed Rules, except in cases where (i) the adviser controls the clients as a result of voting rights, capital contributions, or the rights to amounts upon dissolution and (ii) the clients over which the registered adviser has such control collectively engage in activities that satisfy the Proposed Rules. Therefore, registered investment advisers would not fall under the Proposed Rules solely due to client activities over which the adviser has investment discretion. Advisers may still fall under the Proposed Rules on the basis of their own proprietary trading. The third subsection below discusses evidence regarding the number of persons whose activities may satisfy the Proposed Rules. The final subsection covers the Proposed Rules' exclusion for registered investment companies.

[202] *See supra* note 79.

[203] *See supra* note 77.

[204] *See supra* note 80.

[205] *See supra* note 76. Rule 15c3–1 requires dealers to maintain, at all times, net capital above the greater of: A percentage of debt (6.25 percent, or 11.1 percent for 12 months after commencing business as a broker or dealer), or a fixed minimum amount based on the types of business in which the dealer engages (the general amount for dealers without customers is $100,000).

[206] These regulatory requirements include, for example, pre-trade requirements such as exchange-trading rules relating to special order types, trading halts, odd-lot orders, and SEC rules under Regulation SHO and Regulation NMS, as well as post-trade obligations to monitor for manipulation and other illegal activity. Also *see supra* note 78 on the Market Access Rule (15c3–5).

[207] *See supra* note 82 and Section II.D.

[208] Exchange Act Section 17(b) subjects broker-dealers to inspections and examinations by Commission staff and by the relevant SRO. In addition, 17 CFR 240.15b2–2 (Exchange Act Rule 15b2–2) generally requires the SRO that has responsibility for examining a dealer member to inspect a newly registered dealer for compliance with applicable financial responsibility rules within six months of registration, and for compliance with all other regulatory requirements within 12 months of registration. *See also* 17 CFR 240.17d–1 (Exchange Act Rule 17d–1), Examination for compliance with applicable financial responsibility rules. Thereafter, FINRA or another SRO, as applicable, continues to inspect each firm periodically, based on the firm's risk profile.

[209] *See supra* note 81.

[210] For example, see FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade); FINRA Rule 2020 (Use of Manipulative, Deceptive, or Other Fraudulent Devices); and FINRA Rule 4510 Series (Books and Records Requirements). Other SROs have comparable and sometimes equivalent rules. *See, e.g., NYSE Rules,* NYSE, *available at https://nyseguide.srorules.com/rules, Rulebook—The Nasdaq Stock Market,* Nasdaq, *available at https://listingcenter.nasdaq.com/rulebook/nasdaq/rules.*

[211] For fixed income securities, where TRACE data allow us to observe some of the activity of non-dealers, we estimate that in July 2021 the combined volume of non-FINRA firms accounted for approximately 45 percent of the volume of U.S. Treasury securities, approximately 44 percent of the total corporate bond volume, and approximately 42 percent of the volume of agency pass-through mortgage backed securities (including securities traded in specified pool transactions and securities traded to be announced). While FINRA membership is not synonymous with dealer registration status, the Commission believes that many non-FINRA entities are also not registered as dealers.

[212] Upon the adoption of any final rule, some letters and other staff statements, or portions thereof, may be moot, superseded, or otherwise inconsistent with the final rules and, therefore, would be withdrawn or modified. *See supra* note 41.

[213] Most U.S. investors are households, and most household investors have less than $50 million in assets. The 2019 Survey of Consumer Finance, sponsored by the Federal Reserve Board of Governors and the U.S. Treasury, shows that 68 million U.S. families owned stocks and bonds, either directly or indirectly, and that 93 percent own less than $1 million. The survey also showed that the mean (median) U.S. household had total assets of $858,000 ($227,000). This number of household investors is much larger than the number of institutional investors. For example, there are currently 16,127 registered investment companies and 14,874 registered investment advisers.

[214] *See supra* note 99.

[215] *See supra* notes 9 and 29.

a. Proprietary Trading Firms

PTFs have emerged as consequential players in securities markets. While some PTFs have registered with the Commission, many others have not. Some studies of high-frequency trading—a primary feature of PTF activity, according to the 2015 Joint Staff Report—show that this activity may have positive effects on transaction costs and competition, while other studies show that the net effects may be negative.[216] PTFs that are not registered with the Commission are subject to the anti-manipulation and anti-fraud provisions under Securities Act Section 17(a) and to Exchange Act Section 10(b), but they are not subject to the more targeted provisions under Exchange Act Section 15(c), to examinations, to net capital requirements, or to various reporting requirements that apply to dealers.

Because regulatory TRACE data pertaining to Treasury securities reported by certain ATSs contains the identity of non-FINRA member trading parties, we are able to analyze PTFs' importance in the U.S. Treasury market during July 2021 [217] and summarize the number and type of market participants by monthly trading volume in Table 1 below.[218] The analysis included 626 firms [219] who were active in the U.S. Treasury market in July 2021, of which 452 were FINRA members and 174 were not. While FINRA membership is not synonymous with dealer registration status, we believe that many of the large participants in the U.S. Treasury market who are not FINRA members are also not registered as dealers. The 174 identified non-FINRA member firms in Table 1 accounted for approximately 19 percent of aggregate Treasury trading volume in July 2021. PTFs had by far the highest volumes among identified non-FINRA member participants in the U.S. Treasury market, and the largest PTFs had trading volumes that were roughly comparable to the volumes of the largest dealers. A Federal Reserve staff analysis found that PTFs were particularly active in the interdealer segment of the U.S. Treasury market in 2019, accounting for 61 percent of the volume on automated interdealer broker platforms and 48 percent of the interdealer broker volume overall.[220] Figure 1 also shows that non-FINRA member firms in the U.S. Treasury market (most of which we believe are not dealers) have a volume distribution that is comparable to the volume distribution of FINRA-members (most of whom are dealers). Based on PTFs' high trading volumes, and on the Federal Reserve staff finding that PTFs are particularly active in the interdealer segment of the U.S. Treasury market, we believe that PTFs have emerged as *de facto* liquidity providers in the U.S. Treasury market.

[216] For a survey of the literature, *see,* Albert J., 2016, The Economics of High-Frequency Trading: Taking Stock, *Annual Review of Financial Economics (8),* 1–24. *See also* Baron, Matthew, Jonathan Brogaard, Björn Hagströmer, and Andrei Kirilenko, 2019, Risk and Return in High-Frequency Trading, *Journal of Financial and Quantitative Analysis 54(3),* 993–1024.

[217] The analysis is limited to a subsection of TRACE data where the identity of trading counterparties is known. In July 2021, approximately 58 percent of the non-FINRA member volume in TRACE belonged to anonymous market participants. Non-FINRA member participants generally appear anonymously when they trade with FINRA members, who report their activity to TRACE but maintain the anonymity of the non-FINRA member counterparties. When non-FINRA member participants trade on an ATS that is covered by FINRA Rule 6730.07, the ATS reports the transaction to TRACE along with a unique, non-anonymous MPID for each counterparty.

[218] TRACE identifies counterparties by MPIDs, of which an individual firm may have many. The firm classification is based on an understanding of the individual firms' businesses (*see also* the 2015 Joint Staff Report at 50).

[219] The analysis does not aggregate affiliated firms, but counts them separately, even though they may be controlled by a common corporate parent. For example, if a firm were to have a FINRA-member broker-dealer affiliate and a non-FINRA hedge fund affiliate, the analysis would consider the broker-dealer and the hedge fund as separate firms.

[220] *See supra* note 2. *See also* FEDS Notes, ''Unlocking the Treasury Market Through TRACE'' (Sept. 28, 2018).

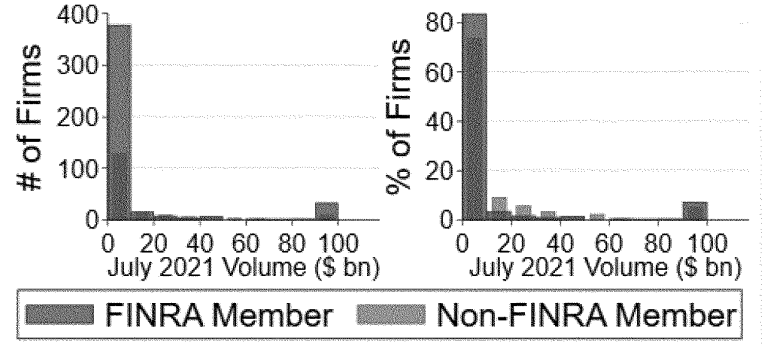
TABLE 1—COUNT OF ACTIVE FIRMS IN THE TREASURY MARKET BY TYPE: JULY 2021

Firm type	# Firms with (buy + sell) volume >					
	$0	*$1 bn*	*$10 bn*	*$25 bn*	*$50 bn*	*$100 bn*
FINRA-member firms	452	126	74	53	38	32
Dealers	420	101	51	35	25	21
Non-FINRA member firms	174	95	46	23	14	9
Asset Managers	(†)	(*)	(*)	(*)	(*)	(*)
Dealers	80	42	20	(*)	(*)	(*)
Hedge Funds	41	17	(*)	(*)	(*)	(*)
Others	(†)	(*)	(*)	(*)	(*)	(*)
PTFs	38	30	22	18	13	9
*Sum of *s*	*15*	*6*	*4*	*5*	*1*	*0*

† *Suppressed; strictly greater than zero.*
* *Suppressed; greater than or equal to zero.*

Figure 1. Treasury Trading Volume Distributions of FINRA Members and non-FINRA Members, July 2021

This figure plots the number and percentage of identifiable firms in TRACE data for July 2021, by size category. The plots are truncated on the right by grouping together all firms with monthly volume of $100 billion or greater.



Since the analysis behind Table 1 is limited to the subset of TRACE data where we can identify the individual firms,[221] the numbers of firms with trading volume above the various thresholds may be greater than shown in the table. This is also to say that, were the data to include all market participants, we would need higher thresholds to be able to report numbers of firms similar to what are shown in the table. We make this adjustment as follows. In July 2021, the analysis was able to determine the firm identity and FINRA membership status of 42 percent of the non-FINRA member volume; the remaining 58 percent of non-FINRA member volume was anonymous.[222] Under the assumption that all non-FINRA member market participants are equally represented in both the anonymous and identified subsets of TRACE, the analysis equally undercounts the volume of all firms—*i.e.,* we assume that our analysis only contains 42 percent of identified non-FINRA member firms' volume. We acknowledge considerable uncertainty regarding this assumption. The assumption of equal representation in the observed and non-observed data suggests dividing the thresholds shown in Table 1 by 0.42 (or multiplying them by approximately 2.5). For example, Table 1 shows that our analysis counted 46 non-FINRA member firms with trading volumes of at least $10 billion in July 2021; the adjustment would suggest that those 46 firms actually had trading volumes of above $25 billion. However, firms in the various categories may not be equally represented in the identified and anonymous data. If, for example, PTFs are overrepresented in the identified data, then the actual number of PTFs with volumes over $25 billion will be closer to 18 than to 22. We preliminarily estimate that approximately 46 non-FINRA member firms would surpass the $25 billion volume threshold given in the quantitative standard of the Proposed Rules. Although the analysis behind Table 1 only uses data from July 2021, we find that the number of firms that would have surpassed the $25 billion volume threshold in four out of the last six calendar months remained relatively steady between 39 and 50 from September 2019 to July 2021, or the entire period for which data was available. Non-FINRA member counterparties are first identified in TRACE beginning in April 2019, so September 2019 is the first month in which we can count how many non-FINRA member firms would surpass the quantitative threshold in four out of the last six calendar months.

b. Private Funds

Private funds[223] are prominent participants in U.S. securities markets. As of the second quarter of 2021, the Commission observed the following

[221] *See supra* note 217.

[222] For each transaction, we consider each counterparty to be responsible for half of the volume. Therefore, for a transactions where we observe the identity of only one counterparty, we consider that we have only determined the firm identity and FINRA membership for half of the transaction's volume. We observe the identity of at least one counterparty for all transactions in TRACE, since trades between non-FINRA member firms are not reported to TRACE.

[223] *See supra* note 30.

types of private funds reported on Form PF:[224]

TABLE 2—PRIVATE FUND STATISTICS AS OF 2021Q2

Fund type	Count	Gross asset value		Net asset value	
		Total ($B)	*Avg ($mm)*	*Total ($B)*	*Avg ($mm)*
Hedge Fund	9,613	9,584	997	5,132	534
Private Equity Fund	15,861	4,825	304	4,270	269
Venture Capital Fund	1,424	222	156	214	150
Liquidity Fund	76	330	4,342	319	4,197
Other Private Fund	10,557	3,041	288	2,167	205

Note: These statistics rely on Form PF. Only SEC-registered advisers with at least $150 million in private fund assets under management must report to the Commission on Form PF; SEC-registered investment advisers with less than $150 million in private fund assets under management, SEC exempt reporting advisers, and state-registered investment advisers are not required to file Form PF.

Of the 9,613 hedge funds reported on Form PF, there were 1,968 qualifying hedge funds that reported information on their positions, and these held $3.2 trillion in listed equities and $1.7 trillion in U.S. Government securities. Of the 76 liquidity funds, 56 liquidity funds reported information on their positions, and these held $94.8 billion in U.S. Government securities and $21.7 billion in asset-backed securities.

Among private funds, hedge funds are the most likely to be engaged in activities that meet the Proposed Rules. As reported on Form PF, hedge funds and private equity funds are the largest by count and aggregate assets, and hedge funds and liquidity funds are the largest by average fund assets. However, the business models of private equity funds [225] and liquidity funds [226] are unlikely to fall under the Proposed Rules' qualitative factors, since they are generally long-only investors that are not likely to routinely make roughly comparable purchases and sales of the same or substantially similar securities in a day or to routinely quote markets to capture bid-ask spreads. As described above, ''routinely'' in the Proposed Rules means both repeatedly within a day (multiple times in a single day) and repeatedly over time (on the majority of days in a calendar month). Regarding the quantitative volume standard, liquidity funds may trade large volumes of U.S. Treasury securities, but the average reporting liquidity fund, as of the second quarter of 2021, held only $1.7 billion of Treasury securities and held the average positions for 40–50 days.[227] Such a fund is unlikely to regularly trade $25 billion in U.S. Treasury securities in a month.

An important similarity between private funds and PTFs is the incentives involved for those making trading and investment decisions. PTFs, as the name implies, invest money for the principals, who then benefit directly from the trading gains. This is similar to many registered dealers. Similarly, private fund advisers, including their affiliates that operate as general partners of private funds, typically have a compensation arrangement by which they receive a significant portion of gains (often 20 percent). In both cases, these compensation arrangements may incentivize aggressive trading.

Certain hedge funds, on the other hand, may satisfy either the qualitative or the quantitative standards of the Proposed Rules, or both. The remainder of this section discusses whether current hedge fund activity may meet the standards, and describes regulations that currently apply to registered hedge fund advisers. The qualitative standards could potentially capture certain hedge fund trading strategies, such as those that may involve automated or high-frequency buying and selling of substantially similar securities in the same day. It is also possible that a large hedge fund could trade sufficient volumes of U.S. Treasury securities to satisfy the quantitative standard. The extent to which hedge funds may satisfy these standards is uncertain. Hedge funds do not report their transactions, so they are not currently identifiable in CAT data or in TRACE data (beyond the subset of U.S. Treasury TRACE discussed previously).[228] Structured data are not available that would indicate how many hedge funds would satisfy the qualitative standards, but some hedge fund strategies would likely do so. We observe at least one hedge fund (number suppressed in Table 1 above) that surpassed the quantitative standard's threshold of $25 billion in U.S. Treasuries in July 2021. Additional hedge funds may meet the quantitative threshold beyond those we observe—for instance, hedge funds who trade outside of covered ATSs and so only appear in TRACE anonymously, or hedge funds that trade with other non-FINRA members (such as banks) and so do not appear in TRACE at all.

One hedge fund strategy that stands out is the Treasury basis trade,[229] as one study estimated that approximately 65 percent of hedge funds' total Treasury exposure was tied to the basis trade before March, 2020.[230] A hedge fund's basis trade is not likely to satisfy the qualitative standards of the Proposed Rules, because a futures contract and a Treasury of similar maturity would not qualify as substantially similar securities since the futures contract is not a security. Also, since transactions associated with repurchase agreements would not count toward the Proposed Rules' quantitative standard, most hedge funds' basis trading would likely not satisfy that standard. A large-volume

[224] *See* Division of Investment Management Analytics Office, SEC, Private Fund Statistics: Second Calendar Quarter 2021 (Jan. 14, 2022), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q2.pdf*

[225] *See* Investor.gov, Private Equity Funds, *available at https://www.investor.gov/introduction-investing/investing-basics/investment-products/private-investment-funds/private-equity.*

[226] *See* D. Hiltgen, ''Private Liquidity Funds: Characteristics and Risk Indicators,'' DERA White Paper (Jan. 2017).

[227] *See supra* note 224, figures 18–19.

[228] *See supra* note 169. Regarding CAT data availability, hedge funds are currently not identifiable because CAT Firm Designated ID (''FDID'') numbers do not map to broker-dealers' customers. Starting in July 2022, CAT data will identify broker-dealers' customers, including hedge funds.

[229] In a long Treasury basis trade, participants take a long position in Treasury securities and a short position in Treasury futures, and then profit from the eventual convergence of cash and futures prices toward the delivery date. Hedge funds typically post the Treasury securities as collateral for repo funding.

[230] *See* Barth, Daniel, and R. Jay Kahn, ''Hedge Funds and the Treasury Cash-Futures Disconnect,'' OFR Working Paper 21–01 (Apr. 1, 2021).

basis trading hedge fund could hypothetically be captured by the quantitative standard, but a recent study suggests that few, if any, basis trades involve enough Treasury trading volume to meet the threshold of $25 billion per month in four out of the past six calendar months.[231] In 2019, when the basis trade was more attractive than at present, the study reported that the aggregate basis trade of the 44 largest participants held a long Treasury position of about $400–$500 billion (an average of only about $9–$11 billion per large basis trader). Furthermore, the basic strategy of the basis trade involves holding Treasury securities to the earlier of: (i) Maturity; or (ii) a time when the basis trade is no longer attractive.

As described above in Section III.A, the Commission is mindful that registered private fund advisers are currently regulated under the Advisers Act, and that advisers' requirements under the Advisers Act affect the activities of private funds. This regulatory regime includes anti-fraud measures applicable to all advisers and requires that many private fund advisers register with the Commission. The Advisers Act establishes reporting and recordkeeping requirements for registered advisers to private funds for investment protection and systemic risk purposes. Specifically, Section 204(a) of the Advisers Act requires registered investment advisers to keep certain books and records (records of the advised private funds are considered records of the adviser for these purposes), and Section 206 subjects registered investment advisers to several anti-fraud provisions, including antifraud liability with respect to current and prospective clients. Registered investment advisers also have fiduciary duties, which comprise a duty of care and a duty of loyalty.[232] Certain registered investment advisers must also submit annual and, for certain large advisers to certain large hedge funds, quarterly reports to the Commission,[233] and they are subject to Commission examinations.

Differences between the regulatory regime that applies to registered advisers to private funds and the one that applies to securities dealers include leverage constraints, and reporting. Registered dealers' leverage is limited by net capital requirements, which must be maintained at all times, even intraday, while private funds have no formal leverage constraints. Private funds also do not report their securities transactions. Their fixed-income transactions do not appear in TRACE, or may appear anonymously as part of the reporting obligation of broker-dealers. Transactions in fixed-income securities other than municipal securities and U.S. Treasury securities are reported to TRACE and publicly disseminated (transactions in U.S. Treasury securities are reported to regulatory TRACE but not publicly disseminated), so markets have more post-trade transparency with regards to registered dealers than with regards to private funds. Private funds' transactions in national market system (''NMS'') stocks, OTC equities, and listed options already appear in CAT, but some additional information is only available for firms that report directly to CAT. For example, currently, when a PTF sends orders to a broker-dealer, CAT will include the timestamp indicating when the order was received by the broker-dealer, but not the timestamps indicating when the order was originated or routed by the PTF. Additionally, if the PTF originates a larger order and splits it into smaller orders for routing to the broker-dealer, CAT will only include the smaller orders as they are received by the broker-dealer, but CAT will not include the larger order as originated. Regulators may be able to obtain more complete data on private funds' pre- and post-trade securities trading activity through examinations, but such information is more readily available for registered dealers.

c. Number of Affected Parties

The precise number of affected parties is uncertain, since existing data does not provide a clear picture of all market participants' activities. For instance, we do not know how many PTFs routinely express trading interests that are at or near the best available prices on both sides of the market. Nevertheless, the discussion in this section seeks to provide some idea, based on available data, of the Proposed Rules' scope. First, we provide data on the number of entities that may satisfy the first qualitative factor by ''routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day.'' The analysis requires us to assume a particular functional form for this qualitative standard, but we do not mean to imply that the standard would be defined this way in practice. For the highest-volume U.S. Treasury security in July 2021 (the 10-year on-the-run note, with 15 percent of total U.S. Treasury volume), we compute a buy-sell volume imbalance for each firm and for each trading day as |B–S|/(B+S), where B is the firm's daily buy volume and S is the firm's daily sell volume. A low buy-sell imbalance indicates purchases and sales in more similar dollar amounts. We then repeat the analysis for the highest-volume security in equity markets in October 2021 (the SPDR S&P 500 ETF, or ''SPY'', with 6.1 percent of the total volume of NMS stocks[234]).

For the U.S. Treasury market, Table 3 shows the number of non-FINRA member firms, by firm type, that had a ''low'' buy-sell volume imbalance—below 10 percent or, alternatively, below 20 percent—for at least 14 of the 21 trading days in July 2021. Twenty non-FINRA member firms had a buy-sell volume imbalance of less than 20 percent in at least 14 of 21 trading days and 15 non-FINRA member firms had a buy-sell volume imbalance of less than 10 percent in at least 14 of 21 trading days. All of these firms were PTFs.[235]

[231] *See id.*

[232] *See* Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019) 84 FR 33669 (July 12, 2019), at 24–25.

[233] These reports are submitted through Form PF, which was adopted in 2011 as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Pub. L. 111–203, 124 Stat. 1376 (2010). *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Advisers Act Release No. 3308 (Oct. 31, 2011), 76 FR 71128 (Nov. 16, 2011) at section I.

[234] For SPY volume, we use data from Intraday Indicators Aggregate Market Liquidity—WRDS. We rely on CBOE statistics for the total dollar volume of NMS stocks. *See U.S. Equities Market Volume Summary,* CBOE, *available at https://www.cboe.com/us/equities/market_share/.*

[235] *See supra* note 218.

TABLE 3—COUNT OF NON-FINRA MEMBER FIRMS BY TYPE FOR THE TREASURY CUSIP WITH THE HIGHEST VOLUME IN JULY 2021

Total # firms	Firm type	# Firms with at least 14 of 21 days of buy-sell volume imbalance less than	
		10%	20%
Asset Manager	*	0	0
Dealer	74	0	0
Hedge Fund	29	0	0
Other	*	0	0
PTF	34	15	20
*Sum of *s*	6	0	0
Total	143	15	20

Notes: 1. Buy-sell volume imbalance = |B–S|/B+S, where B is firm's daily buy volume and S is firm's daily sell volume. 2. The Treasury CUSIP with the highest volume in July 2021 is for 10-year on-the-run Treasury note. In July 2021, the total volume for this CUSIP was about 15 percent of the total volume for all Treasury securities. 3. * Suppressed; at least 1 firm of each type exists in the data (all suppressed numbers in the first column are greater than zero).

A comparison of these 15 or 20 firms with the list of 46 firms (see Table 1) that had total monthly Treasury-trading volume of more than $10 billion [236] in July 2021 revealed considerable overlap between first qualitative standard and the qualitative standard: 17 of the 20 non-FINRA member PTFs with frequent buy-sell volume imbalance of less than 20 percent in Table 3 also had monthly volume greater than $10 billion in Table 1; 14 of the 15 non-FINRA member PTFs with frequent buy-sell volume imbalance of less than 10 percent in Table 3 also had monthly volume greater than $10 billion in Table 1.

The analysis for the equity market relied on CAT data. While PTFs and private funds do not directly report to CAT, their trades in NMS stocks, OTC equity securities, and listed options are reported to CAT by registered broker-dealers with whom they interact as customers (*e.g.,* by trading through a registered broker-dealer or with a registered broker-dealer, including with an ATS). Specifically, for the original receipt or origination of an order, registered broker-dealers report to CAT the Firm Designated ID (''FDID''), which is then assigned to various other CAT order events in the order lifecycle. These CAT FDIDs uniquely identify trading accounts of registered broker-dealers and can represent firm or customer accounts. Firm trading accounts include market-making accounts and other proprietary accounts of the registered broker-dealer. Customer accounts include mainly institutional customer accounts and individual customer accounts, but they also include customer average-price accounts and employee accounts where an employee of the registered broker-dealer is exercising discretion over multiple customer accounts.

Because the activity of all market participants is captured in CAT FDID customer accounts and because the Proposed Rules do not cover persons with total assets of less than $50 million, in our analysis of SPY we focused on CAT FDID institutional customer accounts. Specifically, we computed buy-sell dollar volume imbalance for each CAT FDID institutional customer account and each trading day in October 2021. As in our analysis of Treasuries, we defined buy-sell volume imbalance as |B–S|/(B+S), where B is the firm's daily buy volume and S is the firm's daily sell volume. We also computed the total (*i.e.,* buy plus sell) dollar volume in SPY for each CAT FDID institutional customer account and each trading day in October 2021.

Table 4 shows the number of CAT FDID institutional customer accounts that had both (i) a ''low'' buy-sell dollar volume imbalance in SPY and (ii) total buy plus sell dollar volume in SPY above a *de minimis* threshold, in at least 14 of 21 trading days in October 2021. We again define ''low'' to mean less than 10 percent or less than 20 percent. We include the *de minimis* threshold to remove small entities that are the most likely to be excluded from the Proposed Rules for having less than $50 million in assets.[237] Table 4 shows results for two alternate *de minimis* thresholds: $10,000 per day or $100,000 per day. In addition to the number of CAT FDID institutional customer accounts that satisfied these criteria, Table 4 also shows the combined dollar volume of these accounts as percent of total SPY dollar volume in October 2021.

TABLE 4—NUMBER OF CAT FDID INSTITUTIONAL CUSTOMER ACCOUNTS WITH AT LEAST 14 OF 21 TRADING DAYS IN OCTOBER 2021 WITH THE SPECIFIED BUY-SELL DOLLAR VOLUME IMBALANCE AND BUY PLUS SELL DOLLAR VOLUME IN SPY

Buy-sell dollar volume imbalance less than	10%	20%	10%	20%
	AND			
Total buy plus sell dollar volume more than	$10,000	$10,000	$100,000	$100,000
# CAT FDID institutional customer accounts	44	61	41	57

[236] As discussed above, we believe that the $10 billion threshold in our analysis, which is limited to the subsection of TRACE where we can verify traders' identities, corresponds to the Proposed Rules' quantitative threshold of $25 billion.

[237] We did not discuss a *de minimis* threshold in the previous analysis for the U.S. Treasury market (*see supra* Table 3), because imposing a volume threshold even as high as $1 million did not affect the count of firms that had low-imbalance and above *de minimis* trading on each of 14 out of 21 days.

TABLE 4—NUMBER OF CAT FDID INSTITUTIONAL CUSTOMER ACCOUNTS WITH AT LEAST 14 OF 21 TRADING DAYS IN OCTOBER 2021 WITH THE SPECIFIED BUY-SELL DOLLAR VOLUME IMBALANCE AND BUY PLUS SELL DOLLAR VOLUME IN SPY—Continued

Combined dollar volume of these accounts as percent of total SPY dollar volume in October 2021	3.3	6.3	3.3	6.3

Notes: 1. Buy-sell volume imbalance = |B–S|/B+S, where B is firm's daily buy volume and S is firm's daily sell volume. 2. There were a total of 21,115 CAT FDID institutional customer accounts that traded SPY in October 2021. A CAT FDID ''institutional customer account'' is an institutional account as defined in FINRA rule 4512I. See supra note [26] for further details.

The results in Table 4 indicate that between 41 and 61 CAT FDID institutional customer accounts (depending on the thresholds used) had both low buy-sell dollar volume imbalance in SPY and above *de minimis* total dollar volume in SPY in at least 14 of 21 trading days in October 2021, and the combined dollar volume of these accounts represented between 3.3 percent and 6.3 percent of total SPY dollar volume in October 2021. If the entities behind these accounts are not excluded or otherwise exempted, such trading activity could satisfy the qualitative standard of ''routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day.''

The precise number of affected parties is highly uncertain, due to several shortcomings. The U.S. Treasury market analysis has the following caveats. First, we only analyze the buy-sell imbalance within a single CUSIP, though firms could potentially satisfy the standard based on other CUSIPs or on a combination of CUSIPs (the qualitative standard includes trading in either the ''same'' or ''substantially similar'' securities). Second, we do not observe the universe of U.S. Treasury trading. Third, this analysis imposes quantitative cutoffs in place of the qualitative standard, which is ''roughly comparable purchases and sales.'' Due to the first two shortcomings, the actual number of parties affected by this qualitative standard may be higher than the 15 or 20 firms we estimate here. The third shortcoming introduces additional uncertainty, since we do not know whether the cutoffs assumed in the analysis—buy-sell imbalance less than 10 percent or 20 percent in at least 14 of 21 trading days—would align with the qualitative standard in all cases.

There are also caveats to the equity market analysis, as follows. First, there is currently no one-to-one correspondence between CAT FDID accounts and firms (although such information will be available starting in July 2022). Some market participants may have several CAT FDID institutional customer accounts, and some CAT FDID institutional customer accounts may represent more than one customer. Therefore, the number of CAT FDID institutional customer accounts that satisfy various thresholds in Table 4 does not necessarily equal the number of market participants that would satisfy the qualitative standard of ''routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day.'' Furthermore, some of the CAT FDID institutional customer accounts that satisfy various thresholds in Table 4 may represent investments companies registered under the Investment Act, which are excluded from the Proposed Rules.

Despite these caveats, we believe that the results in Tables 3 and 4 provide useful indications about the scope of the Proposed Rules in the markets for U.S. Treasury securities and NMS stocks.

3. Externalities

When market participants who effectively provide liquidity do not comply with existing dealer regulations, including rules specifically designed to limit risk-taking and to deter manipulative or fraudulent behavior, the probability of behaviors that are financially risky, manipulative, or fraudulent increases. As described below, such behavior on the part of one firm may create negatively externalities on other firms. Although all liquidity providers are subject to Exchange Act Section 17(a), Section 10(b), and 17 CFR 240.10b–10 (Rule 10b–10 thereunder), liquidity providers that are not registered as dealers currently have more regulatory allowance to accept operational or financial risk. For example, net capital requirements limit the leverage that dealers are allowed to take on, while PTFs and private funds have no regulatory leverage constraints. We estimate that qualifying hedge funds are more leveraged than registered dealers. As of the second quarter of 2021, registered investment advisers reported that qualifying hedge funds had $1.4 trillion in assets that could be liquidated within a day, $3.4 trillion in assets that could be liquidated within a year, and $3.6 trillion in secured debts, so that qualifying hedge funds' aggregate secured debt obligations appear much higher than their aggregate liquid assets.[238] In contrast, the Net Capital Rule requires dealers to have highly liquid assets in excess of unsubordinated debt.[239] We are unable to estimate PTFs' leverage due to data limitations. PTFs and private funds also may not have the same obligations as dealers to implement operational risk controls.[240] In addition, PTFs are not subject to any examination or reporting requirements, and neither PTFs nor private funds are required to report securities transactions.

Even though all market participants face incentives to remain solvent and profitable, certain market participants may not bear all the costs of their failure. Therefore, they may not have sufficient incentive to ensure their ability to weather adverse shocks. When entities have leverage, for example, creditors may bear some of the costs of failure. As another example, entities that perform a significant share of liquidity provision may disrupt market trading if they fail, thus imposing costs on other entities.

These incentives, or lack of incentives, create externalities that market forces alone cannot resolve. A market participant who is unable to meet its obligations may harm its creditors, other financial institutions related to its creditors, its trading counterparties, and other participants in securities markets including investors. Although creditors can seek to estimate a borrower's probability of failure and price the credit extension accordingly, large losses can potentially propagate through the financial system—especially when indirect exposures are not well understood and financial firms misread their total exposure. Instability in securities markets may appear when a failed liquidity provider exits the market or when a stressed liquidity provider temporarily reduces its

[238] Using data from ''Private Fund Statistics'' (*see supra* note 228), we estimate qualifying hedge funds' net capitalization as highly liquid assets minus secured debt. Dollar values of liquid assets are from Table 49 (portfolio liquidity for qualifying hedge funds as a percent of aggregate net asset value) and Table 4 (net asset value), and the value of secured debt is from Table 51 (borrowings of qualifying hedge funds).

[239] *See supra* notes 76 and 205.

[240] *See supra* note 206 and accompanying text.

activity, thereby reducing market liquidity for all traders until other liquidity providers can fill the gap. During the U.S. Treasury market volatility in March 2020, PTFs (most of whom are not registered as dealers) appeared to especially pull back from market-making activity, possibly because ''their lower capitalization relative to dealers may [have left] them with less capacity to absorb adverse shocks.'' [241] Other research also shows that, in equity markets, the presence of high-frequency traders can further reduce market liquidity during periods of extreme volatility (high frequency is one of the primary features of PTF activity, according to the 2015 Joint Staff Report).[242] Instability may also appear when a struggling market participant rapidly exits a large position in one or more securities, leading to volume and price spikes that can quickly push market prices away from fundamental values and can overwhelm exchanges and clearing houses. The associated volatility may heighten the inventory and operational risks of market participants throughout the securities markets. The failure of a large market participant can potentially propagate instability across securities markets if the failed entity actively trades many different asset classes simultaneously.

As discussed above, the Commission and the SROs have established rules designed to address the externalities related to financial stress, by promoting registered dealers' financially responsibility and operational capability. Specifically, the rules seek to minimize the disruptions that can occur from losses related to operational risk. One risk is that a firm may not be able to find offsetting trades, and so accumulates an unexpectedly large position that must be rapidly liquidated at a loss. Another risk is that errors in trading algorithms or other systems (including human errors) lead to an unexpectedly large position that must be rapidly liquidated at a loss.[243] Since, as discussed above, losses on the part of one market participant can harm others, dealer regulations are designed to mitigate the magnitude of these externalities and to reduce the probability that they occur at all. However, these regulations do not currently apply to market participants that are not registered as dealers. We do not have sufficient oversight to understand what risk-management controls PTFs may have in place, how much leverage they use, or how liquid their assets are. Private funds' risk-taking may be constrained by their advisers' fiduciary duties, but, as described above, we believe that the average hedge fund is more leveraged than the Net Capital Rule would allow (although we acknowledge the uncertainty around our estimate).

The potential for market manipulation or fraud constitutes other negative externalities, since such behavior may distort market prices or give the perpetrator unfair advantages over other market participants. Several elements of the dealer regulatory regime address these risks, but some important elements do not currently apply to market participants that are not registered as dealers, including financial reporting, examinations, and other regulations that facilitate examinations. Financial statement reporting, transaction reporting (to TRACE [244] or CAT [245]), and examinations help the Commission detect manipulation or fraud and determine whether firms are in compliance with applicable regulations. Books and records requirements facilitate examinations by ensuring that data entries are defined, recorded, and preserved in a consistent manger across all dealers. PTFs do not submit financial reports to regulators or report their transactions, are not subject to examinations, and have no regulatory books and records guidelines. Private funds also do not report transactions to TRACE or directly to CAT, but registered private fund advisers are subject to regular reporting requirements [246] and to books and records rules. In addition, the Commission has examination authority with respect to registered private fund advisers.

Private information that market participants who are not registered as dealers do not report to regulators also creates an impediment to regulators' ability to study markets in a structured way, to detect and respond to market events, or to inform investors. For regulators, the gap between what information registered dealers report and what information other market participants report varies by type of participant, but may include annual or quarterly reporting, and transactions reports. For investors, the gap consists of transactions reports for fixed-income securities other than U.S. Treasury and municipal securities, which reports are made publicly available. As discussed previously, large private fund advisers file regular reports to the Commission on Form PF, and the Commission also has authority to examine private fund advisers. However, private funds do not report their securities transactions to TRACE. Private funds' fixed-income transactions may appear in TRACE with the private fund identified, if the trade occurs on certain ATSs; the transactions may appear in TRACE with the private fund anonymous, if the trade occurs outside certain ATSs but with another FINRA member firm; or the transactions may not appear in TRACE at all if the private fund trades with a non-FINRA member firm. PTFs do submit financial reports to regulators, do not report transactions, and are not subject to examinations, so regulators have very little insight into their activities. Private funds also do not report their securities transactions directly to CAT. As discussed previously, their trades in NMS stocks, OTC equities, and listed options are indirectly reported to CAT by other counterparties, but CAT does not contain certain other information on firms who do not report directly.

Information limitations in the market for U.S. Treasury securities became especially apparent during the instability of March 2020. The IAWG noted in its 2021 IAWG Joint Staff Report on November 8, 2021, that ''In March 2020 . . . there was a [particular]

[241] *See* 2021 IAWG Joint Staff Report at 13. Initially, PTFs increased trading activity, but they pulled back from market making several days later when volatility reached very high levels. (''In the first week of March, a large share of the increased trading volume came from PTFs, and on March 9, PTFs' share of trading on electronic IDB platforms was just over 60 percent, a typical level. But as heavy net investor sales continued, the balance of activity in the interdealer market shifted . . . PTFs' total share of activity fell to a low of 45 percent on March 16. Dealers' total volumes on electronic IDB platforms also declined, but less sharply than PTFs' volumes.'')

[242] *See* Brogaard, Jonathan, Allen Carrion, Thibaut Moyaert, Ryan Riordan, Andriy Shkilko, Konstantin Sokolov, 2018, High Frequency Trading and Extreme Price Movements, *Journal of Financial Economics 128(2),* 253–265.

[243] In 2012, an algorithm error at a single trader temporarily affected the prices of 150 stock tickers, causing some to increase or decrease more than 30 percent versus the day's opening. *See Knight Capital Americas LLC,* Exchange Act Release No. 70694 (Oct. 16, 2013) (settled matter). Another firm, after a change in code and in routing logic, erroneously allowed millions of orders with a notional value of approximately $116 billion to be sent between 2010 and 2014. *Latour Trading LLC,* Exchange Act Release No. 76029 (Sept. 30, 2015) (settled matter).

[244] Registered dealers report their transactions in fixed-income securities (other than municipal bonds) to TRACE. Unregistered traders' fixed-income transactions only appear in TRACE in two cases: (i) When they trade with a FINRA member, the FINRA member reports the transaction to TRACE but keeps the counterparty anonymous; or (ii) when they trade government securities on an ATS that is a FINRA member, the ATS reports the transaction to TRACE along with the identity of the counterparties.

[245] As discussed above, CAT also includes the transactions of firms that are not registered as dealers, but certain other information is only available for firms that report directly to CAT.

[246] *See supra* note 233 and accompanying text.

need for timely information on the positions and transactions of institutions other than dealers.'' [247] Wider TRACE reporting would have provided more of such information. Similar information limitations exist in the markets for other fixed-income securities. Unregistered market participants' transactions in NMS stocks, OTC equities, and listed options are reported to CAT by other (registered) parties, but their identities in the data remain anonymous and some pre-trade data are not reported at all—*e.g.,* time stamps and indications that a large order has been broken into several smaller orders. Investors who rely on publicly disseminated TRACE also are impacted by the unreported or the anonymity of important market participants' trading activities.

4. Competition Among Liquidity Providers

An analysis of the cash U.S. Treasury market for July 2021 [248] finds that liquidity provision in the market is reasonably competitive.[249] Table 5 below categorizes firms as potential liquidity providers in three ways and displays two measures of market concentration. In column 1, potential liquidity providers include only dealers. In column 2, the list of liquidity providers also includes PTFs. In column 3, the list of liquidity providers further includes hedge funds.[250] The first measure of concentration displayed in each column is the volume share of the 5 highest-volume firms. The second concentration measure is the Herfindahl-Hirschman index (HHI), which is equal to the sum of squared market shares. An index of 1 would indicate a completely concentrated market with a single liquidity provider. The inverse of the HHI provides some intuition by giving the number of equally sized competitors that would lead to such a HHI. For example, a market with 5 equally sized competitors would have a HHI of ⅕ or 0.2. The first column of Table 5 shows that 500 dealers were active in the U.S. Treasury market in July, 2021, and that the 5 highest-volume of these accounted for 43 percent of the group's total volume. The HHI of liquidity provision in this column is 0.054, or comparable to the competitive environment that would exist if there were 18 equally sized liquidity providers. If we also consider PTFs (limited to the PTFs that we can identify in TRACE) to be liquidity providers (column 2), then 545 liquidity providers were active in July 2021 and the 5 highest-volume firms accounted for 34 percent of the group's total. The HHI in this case is 0.04, which is comparable to the competitive environment that would exist among 25 equally sized firms. If we further consider hedge funds (again, limited to the hedge funds that we can identify in TRACE) to be liquidity providers (column 3), then 586 liquidity providers were active in the U.S. Treasury market in July, 2021, and the 5 highest-volume firms accounted for one-third of the group's total volume. In this third column, the HHI is 0.039, which is comparable to the competitive environment that would exist among 26 equally sized firms. The minimal difference between the numbers in row 2, columns 2–3, does not suggest that hedge funds do not provide significant liquidity in the U.S. Treasury market. The minimal difference only means that the hedge funds that we can identify in TRACE do not appear to provide significant liquidity in the U.S. Treasury market.

TABLE 5—COMPETITION AMONG LIQUIDITY PROVIDERS IN THE TREASURY MARKET, JULY 2021

[The largest 5 firms in this table overall are dealers]

	Liquidity providers: dealers	Liquidity providers: dealers + PTFs	Liquidity providers: dealers + PTFs + hedge funds
No. of liquidity providers	500	545	586
Share of entire TRACE Sample	52.1%	68.7%	69.4%
Top-5 volume share (within group)	42.6%	33.6%	33.3%
HHI	0.054	0.040	0.039
comparable to N equal-size competitors	18	25	26

The Commission also understands that a large number of firms provide liquidity provision in the markets for corporate bonds and for equities (not necessarily the same firms), and that intermediation activity is reasonably competitive in both markets. Research has documented that, as of the first quarter of 2020, about 600 dealers intermediated in the market for corporate bonds, but that the top 10 dealers controlled approximately 70 percent of the volume.[251] Another analysis by the Commission [252] found that of the 3,972 broker-dealers that filed Form X–17a–5 (FOCUS report) in 2016, 430 of them were also members of U.S. equities exchanges, and that the largest 20 broker-dealers controlled approximately 75 percent of the total assets of all broker-dealers.

The current competitive landscape among liquidity providers is also shaped by the difference in regulatory treatment between registered dealers and unregistered market participants that the Commission believes perform dealer-like roles in the markets. The additional requirements to which registered dealers are subject may result in higher compliance for registered dealers, which could incentivize less-regulated firms such as PTFs to gain market share, or to continue to gain market share, from more-regulated dealers. These dynamics may especially apply to the electronic interdealer segment of the Treasury market, where PTFs now account for a majority of trading activity (as of 2019).[253]

[247] *See supra* note 5.

[248] *See supra* notes 217, 218, and 219, and accompanying text.

[249] A Federal Reserve analysis from 2020 finds that activity on electronic interdealer platforms is slightly more concentrated, with an HHI of 0.082. *See supra* note 2.

[250] Firms are classified based on an understanding of the individual firms' businesses. *See supra* note 218.

[251] O'Hara, Maureen, and Alex Zhou, Anatomy of a Liquidity Crisis: Corporate Bonds in the Covid-19 Liquidity Crisis, May 2020, working paper.

[252] Transaction Fee Pilot for NMS Stocks, Exchange Act Release No. 82873 (Mar. 14, 2018), 83 FR 13008 (Mar. 26, 2018).

[253] *See supra* note 2.

C. Economic Effects, Including Impact on Efficiency, Competition, and Capital Formation

As described above in Section II, the Commission believes that the Proposed Rules would support the stability and transparency of U.S. Treasury and other securities markets by closing the regulatory gap that currently exists and ensuring consistent regulatory oversight of persons engaging in the type of activities described in the Proposed Rules. As described in Section II, the Commission believes that the Proposed Rules would support the stability and transparency of U.S. Treasury and other securities markets by closing the regulatory gap that currently exists and ensuring consistent regulatory oversight of persons engaging in the type of activities described in the Proposed Rules. Specifically, the rules would result in increasing the share of liquidity provision undertaken by persons who are subject to dealer rules related to financial risk-taking, reporting, deceptive practices, and examinations. As discussed above, these benefits would all be associated with PTFs registering as dealers, but private funds' potential dealer registration would also bring benefits related to net capital requirements and transaction reporting. If registered private fund advisers were to register as dealers, the benefits of transaction reporting would apply, but the marginal benefits of other reporting requirements, net capital requirements, books and records rules, and examinations might be very small, since the regulatory regime that applies to registered private fund advisers already contains similar provisions to the rules that apply to dealers.

Costs of the Proposed Rules include registration and membership fees, costs of record-keeping and reporting, and costs associated with net capital requirements. Additionally, the Proposed Rules may influence patterns of market participation, which may in turn affect competition among liquidity providers, market efficiency, and capital formation.

1. Benefits

The Proposed Rules seek to mitigate the externalities, discussed in the baseline, that may arise when market participants who effectively provide liquidity experience financial stress, engage in manipulative or fraudulent behavior, or whose operations are not subject to regulatory oversight. To the extent that unregistered market participants engage in activities that satisfy the qualitative or quantitative standards of the Proposed Rules, requiring them to register as dealers would promote stability in U.S. securities markets and would help protect investors. Specifically, the Proposed Rules would bring liquidity providers that are not registered as dealers into compliance with dealer regulations related to financial risk-taking, reporting, and examinations. As previously discussed, we believe that PTFs would be the most affected parties, though potentially some private funds may be affected. Registered private fund advisers may also be affected under limited circumstances.

Regulations on Financial Risk-Taking: Registered dealers are subject to net capital requirements (Exchange Act Rule 15c3–1) and to various risk management rules that promote operational integrity.[254] Unregistered PTFs and private funds do not have net capital requirements, and they may not have the same risk-management requirements. The Net Capital Rule requires dealers to maintain sufficient liquid resources to meet all liabilities at all times,[255] thus limiting their probability of financial failure by constraining leverage and creating incentives against excessive risk-taking,[256] and also helping protect creditors. These provisions help reduce the externalities related to defaults and disorderly trading, which may arise due to firms' financial stress. As discussed in Section III, the Proposed Rules would require registration of persons whose trading activity contributes significantly to market liquidity or to price discovery. Such persons have the ability to significantly impact the markets, so placing these regulatory safeguards around their risk-taking would benefit investors and support capital formation by promoting stable markets. These benefits would be largest for PTFs and private funds, who are currently under no regulations related to risk-taking, but they could also apply to registered private fund advisers.[257]

Regulations on Reporting: Registered dealers must file annual reports with the Commission that include audited financial statements.[258] They also report their transactions of NMS stocks, OTC equities, and listed options directly to CAT,[259] and registered dealers who have selected FINRA as their SRO report their transactions in fixed-income securities (other than municipal securities) to TRACE.[260] Unregistered PTFs do not report any of this information to regulators. Private fund advisers report certain information on the private funds they manage to the Commission annually (and, for certain large advisers of certain large hedge funds, each quarter), but they do not report transactions.

Reporting requirements, particularly requirements to report transactions directly, enable regulators to conduct market research that informs their efforts to detect or respond to market events, to inform investors, to ensure that dealers' activities are in compliance with regulation, and research has also shown that transaction reporting can improve market efficiency and liquidity.[261] Transaction reporting in general enhances the ability of the Commission and SROs to more efficiently and in a more timely manner monitor trading, which should further enhance the ability of the Commission and SRO staff to effectively enforce SRO rules and the Federal securities laws, rules, and regulations.[262] This enhanced ability of the Commission and SROs staff to enforce the Federal securities laws, rules, and regulations should help ensure the efficiency and stability of the markets, and promote investor confidence in the fairness of the securities markets, which may in turn promote capital formation.[263] TRACE for fixed-income securities other than municipal securities and U.S. Treasury

[254] *See supra* notes 205 and 206 and accompanying text.

[255] *See supra* note 76.

[256] *See also* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers, Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872 (Aug. 22, 2019).

[257] Registered private fund advisers are currently regulated in their capacity as advisers, and the current adviser regulation contains provisions related to financial risk-taking. However, the Proposed Rules could also apply to advisers that trade with their own proprietary capital. The adviser's proprietary trading is not currently regulated, so the benefits of registering such an adviser would be comparable to the full benefit of registering a PTF.

[258] *See supra* note 77.

[259] Unregistered market participants' transactions in NMS stocks, OTC equities, and listed options are reported to CAT by other (registered) parties, but, as described above, certain information is only available for entities that report directly to CAT.

[260] Unregistered market participants' transactions in U.S. Treasury securities may appear in TRACE under certain conditions, but they usually appear with the unregistered counterparty's identity kept anonymous. *See supra* note 217.

[261] *See* Bessembinder, Hendrik, William Maxwell, and Kumar Venkataraman, 2006, ''Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds,'' *Journal of Financial Economics* 82(2), 251–288; and Edwards, Amy K., Lawrence E. Harris, and Michael S. Piwowar, 2007, ''Corporate Bond Market Transaction Costs and Transparency,'' *The Journal of Finance* 62(3), 1421–1451.

[262] *See* Consolidated Audit Trail, Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

[263] *Id.*

securities are made publicly available to investors, so this transaction reporting to non-regulatory TRACE particularly informs investors. The absence of reporting requirements for consequential market participants thus creates negative externalities for investors. The Proposed Rules are designed to target persons whose activities can significantly impact markets or who otherwise trade large volumes of U.S. Treasuries Securities; requiring such persons to further inform regulators of their activities further promotes market stability, investor protection, and capital formation. To the extent that registered dealers were to select an SRO other than FINRA, the benefits related to fixed-income transaction reporting would not appear.[264]

Regulations on Deceptive Practices: Registered dealers are subject to the anti-manipulation and antifraud provisions of Sections 10(b) and 17(a) of the Exchange Act, but they are also subject to the specific anti-manipulative and other anti-fraud rules promulgated under Section 15(c) of the Exchange Act.[265] Neither unregistered PTFs nor private funds are subject to Section 15(c)(1) and related rules, but registered private fund advisers are subject to antifraud provisions under Section 206 of the Advisers Act. The persons whom the Proposed Rules would require to register would be those with the ability to significantly impact markets, including by manipulation or fraud. Therefore, subjecting them (particularly the PTFs) to the anti-fraud rules that apply to registered dealers, would contribute to fair and orderly markets and to investor protection.

Regulations related to Examinations: Registered dealers are subject to examinations by the Commission and by the relevant SRO, and they are also required to comply with certain books and records requirements.[266] PTFs that are not registered as dealers are not subject to examinations or to books and records rules, but the Commission has examination authority with respect to private fund advisers, and registered private fund advisers are subject to recordkeeping requirements. Examinations help regulators detect manipulative or fraudulent activities, as well as verify more generally that persons are in compliance with all relevant regulations. Books and records requirements facilitate examinations by ensuring that data entries are defined, recorded, and preserved in a consistent manner across all dealers. The Proposed Rules would allow regulators to examine firms that currently are not registered, including PTFs, who are not currently subject to examinations, but whose activity contributes significantly to market liquidity or to price discovery. Therefore, since examinations help ensure compliance with other rules, this benefit of the Proposed Rules supports all the other benefits discussed above.

Some entities who would satisfy the Proposed Rules' qualitative or quantitative standards might nevertheless avoid the registration requirement by exiting a liquidity-providing strategy. If unregistered entities were to exit and bid-ask spreads were to meaningfully widen, other (registered) dealers might step in to replace the lost activity. This scenario would result in an effective transfer of dealer activity from unregistered market participants to registered dealers, and so would preserve the benefits (and costs) of the Proposed Rules.

2. Costs Associated With Becoming a Registered Dealer

The Proposed Rules would impose costs on certain market participants, including costs of registering with the Commission and with an SRO, recordkeeping and reporting costs, direct costs that may stem from meeting net capital requirements (*i.e.,* continuously monitoring capitalization), and self-evaluation as to whether one is a dealer or not.[267]

The initial registration costs would include the costs associated with filing Form BD and Form ID, SRO membership application fees, and any related legal or consulting costs that may be needed to (*e.g.,* ensure compliance with rules), including drafting policies and procedures as may be required. The ongoing costs would include the costs associated with amending Form BD, ongoing fees associated with SRO membership, and any legal work relating to SRO membership.

The Commission estimates compliance costs of approximately $600,000 initially and $265,000 annually thereafter to register as a broker-dealer with the Commission, become a member of an SRO, and comply with the associated dealer regulations.[268] The costs include personnel hours, outside legal services, building and maintaining books and records systems, obtaining or maintaining employee licensure, and direct costs associated with calculating net capital to comply with the Net Capital Rule. The compliance costs associated with net capital, reporting, and recordkeeping requirements would depend on the business structure of a registered dealer (*i.e.,* the capital structure of a dealer and the scope of a dealer's activities).[269] For example, these costs may be lower for private funds, since their advisers are already subject to requirements concerning books and records, examinations, and internal control systems. In general, the costs would also vary significantly depending on the types of securities a broker-dealer holds, the level of net capital a broker-dealer maintains, and whether a broker-dealer carries customer accounts, carries for other broker-dealers, is a registered investment adviser, is affiliated with an investment adviser, or transacts in a principal capacity.[270]

For dealers that select an SRO other than FINRA (*i.e.,* an exchange), we believe that the initial and ongoing costs would be less than $600,000 initially and less than $265,000 annually thereafter. Dealers that select FINRA as their SRO would incur the costs of reporting their fixed-income transactions (other than municipal securities) to TRACE.[271] Dealers that

[264] *See supra* note 77.

[265] *See supra* note 80.

[266] *See supra* note 79.

[267] Registered dealers would be subject to requirements, such as Exchange Act Rule 15c3–1 and 17 CFR 240.17a–1, 240.17a–3, 240.17a–4, and 240.17–a5 (Exchange Act Rules 17a–1, 17a–3, 17a–4, and 17–a5).

[268] Exchange Act Release No. 76324 (Oct. 30, 2015), 80 FR 71388, 71509 (Nov. 16, 2015) (''Regulation Crowdfunding Adopting Release'')

estimates the costs of registering as a dealer, becoming a member of a national securities association, and complying with the associated regulation would be approximately $520,000 initially and $230,000 annually thereafter. Most of these costs involve personnel hours and legal services (currently, the direct costs of FINRA registration range between $7,500 and $60,000). Since the cost of legal services and nominal wages paid to administrative and financial operations employees have approximately risen with the consumer price index since 2015, we adjust these estimates for inflation of 15.33 percent between October 2015 and September 2021, based on the Consumer Price Index for All Urban Consumers (CPI–U) as recorded by the Bureau of Labor Statistics. *See Consumer Price Index,* U.S. Bureau of Labor Statistics, *available at https://www.bls.gov/cpi/data.htm.* We therefore estimate the costs to be approximately $600,000 initially and $265,000 annually thereafter. We recognize that these costs may vary significantly across registrants, depending on facts and circumstances.

[269] 2022 ATS Proposing Release at 15629.

[270] *Id.*

[271] TRACE fees include system fees of between $20 and $260 per month plus transaction reporting fees, which are one of: (i) $0.475 per trade for trades with par value up to $200,000, (ii) $2.375 per million dollars par value for trades with par value more than $200,000 but less than $1 million, or (iii) $2.375 per trade for trades with par value of at least $1 million or $1.50 per trade for agency pass-through MBS that are traded TBA or SBA-backed ABS that are traded TBA. *See* FINRA Rule 7730

Continued

trade NMS stocks, OTC equities, or listed options would incur the costs of reporting their transactions in these securities to CAT.[272] As discussed in the CAT Notice and in the CAT Approval Order, the costs of CAT reporting may vary significantly across broker-dealer firms depending on the size and scope of their activities (*e.g.,* the number of CAT-reportable order events that the firm has and whether the firm needs to report customer information).[273] In these releases, the Commission estimated that the one-time implementation costs related to CAT reporting could range from $849,000 for small firms that did not previously report to the Order Audit Trail System (OATS) to $7,231,000 for many large firms.[274] The Commission also estimated that the ongoing annual costs of CAT reporting could range from $443,000 for small firms to $4,756,000 for many large firms.[275] We adopt these estimates and adjust them for inflation between November 2016 and September 2021.[276] This adjustment yields a per-firm cost estimate of approximately $965,000 to $8,218,000 for one-time implementation plus ongoing costs of approximately $503,000 to $5,405,000 annually.

The wide range of these estimates indicates significant uncertainty about the costs related to CAT reporting that individual firms that trade equities or options may have to incur if they are required to register as dealers as a result of the Proposed Rules. We make two related observations. First, firms that would start reporting to CAT as a result of the Proposed Rules are likely to have a relatively large number of CAT-reportable order events, since the Proposed Rules are targeting significant liquidity-providers. Therefore, for these firms, the costs of CAT reporting are likely to be higher than the lower bounds of $965,000 for implementation costs and $503,000 for ongoing annual costs.[277] Second, firms that would be required to report to CAT as a result of the Proposed Rules do not carry customer accounts and would therefore not need to report any customer information to CAT. Thus, for these firms, the costs of CAT reporting are likely to be lower than the upper bounds of $8,218,000 for implementation costs and $5,405,000 for ongoing annual costs.[278]

The Commission recognizes that the costs associated with obtaining and maintaining SRO membership and reporting transactions may vary significantly depending on entity characteristics, activity characteristics, and the degree of the firm's reliance on outside legal or consulting advice. For example, the costs of FINRA membership[279] depend on, among other things, the number of associated persons being registered, the scope of brokerage activities, revenue,[280] the number of registered persons, the number of branch offices, and trading volume. TRACE and CAT reporting costs also vary depending on security type, order size, and trading venue, among other factors. Entities with a smaller number of registered persons, fewer brokerage activities, smaller trading volume, and smaller revenue would face lower direct costs.

In addition to the monitoring costs incurred to comply with the Net Capital Rule, described above, newly registered dealers who previously held less capital than what is required would have to increase their capitalization either by raising equity or by scaling back trading activities. However, since higher levels of net capital reduce a firm's probability of default, these direct costs of net capital requirements may be partially offset by reductions in the firm's cost of capital.

Market participants may also incur costs related to self-evaluation regarding whether the qualitative standards describe their activities. Since the quantitative standard is based on monthly Treasury-trading volume, which is easy to define and measure, we do not believe any market participants would incur additional costs to assess whether this standard would require them to register.

Some currently unregistered market participants may be affiliated with other firms that are currently registered dealers, and in such cases, the unregistered firm may seek to avoid the direct costs described above by shifting trading volume to its affiliated dealer. Other entities that are captured by the Proposed Rules may restructure their legal organization to isolate the activity that triggered the rules into a separate entity. Such activity shifting and legal reorganizations may incur costs, such as the costs of changing computer systems or paying attorney fees. To the extent that the securities-dealing activity ends

(Trade Reporting and Compliance Engine), *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/7730.*

[272] *See* Joint Industry Plan; Order Approving the National Market System Plan Governing the Consolidated Audit Trail, Exchange Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT Approval Order''). *See also* See Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data, Exchange Act Release No. 77724 (Apr. 27, 2016), 81 FR 30614 (May 17, 2016) (''CAT Notice'').

[273] *See* CAT Notice, 81 FR 30712–30726 and CAT Approval Order, 81 FR 84857–84862.

[274] *See* CAT Notice, 81 FR 30725–30726 and CAT Approval Order, 81 FR 84861–84862. The Commission also estimated that small firms that previously reported to OATS would incur lower one-time implementation costs related to CAT reporting—$424,000. However, we believe that this lower estimate for related implementation costs is not applicable to firms that would be covered by the Proposed Rules, because firms that would be required to register as dealers and start reporting to CAT as a result of the Proposed Rules are unlikely to have prior experience of reporting to OATS.

[275] *See id.*

[276] The estimates are adjusted for an inflation rate of 13.66 percent based on the Bureau of Labor Statistics data on CPI–U between November 2016 and September 2021. *See supra* note 268.

[277] It is also possible that a firm would satisfy the quantitative or the qualitative standards of the Proposed Rules by transacting in asset other than those that are reported to CAT. Such a firm would still be required to register as a dealer and report any transactions it may have in NMS stocks, OTC equities, and listed options. However, such a firm could have a relatively low number of CAT-reportable order events and hence relatively low costs of CAT reporting.

[278] In the CAT Approval Order, the Commission discussed its belief that the requirement of the CAT NMS Plan to report customer information represents a significant source of CAT reporting costs. *See* CAT Approval Order, 81 FR 84868–84869. Furthermore, in the CAT Notice, the Commission estimated CAT reporting costs for 14 electronic liquidity providers (''ELPs''), which are large registered broker-dealers that do not carry customer accounts and are not FINRA members. *See* CAT Notice, 81 FR 30724–30726. The Commission estimated that for these ELPs the one-time implementation costs related to CAT reporting would be $3,876,000 and the annual ongoing costs of CAT reporting would be $3,226,000. When adjusted to inflation between November 2016 and September 2021 (*see supra* note 265), these estimates become approximately $4,405,000 for the one-time implementation costs and approximately $3,667,000 for the annual ongoing costs of CAT reporting. Because the ELPs do not carry customer accounts and operate as liquidity providers in the markets for equities and options, their estimated costs of CAT reporting may be applicable to some of the larger firms that would be required to report to CAT as a result of the Proposed Rules.

[279] *See Schedule of Registration and Exam Fees,* FINRA, *available at https://www.finra.org/registration-exams-ce/classic-crd/fee-schedule#examfees,* for the schedule of FINRA registration fees.

[280] FINRA imposes a Gross Income Assessment as follows: (1) $1,200 on a Member Firm's annual gross revenue up to $1 million; (2) a charge of 0.1215 percent on a Member Firm's annual gross revenue between $1 million and $25 million; (3) a charge of 0.2599 percent on a Member Firm's annual gross revenue between $25 million and $50 million; (4) a charge of 0.0518 percent on a Member Firm's annual gross revenue between $50 million and $100 million; (5) a charge of 0.0365 percent on a Member Firm's annual gross revenue between $100 million and $5 billion; (6) a charge of 0.0397 percent on a Member Firm's annual gross revenue between $5 and $25 billion; and (7) a charge of 0.0855 percent on a Member Firm's annual gross revenue greater than $25 billion. When a firm's annual gross revenue exceeds $25 million, the maximum of the current year's revenue and average of the last three years' revenue is used as the basis for the income assessment. *See also Regulatory Notice 09–68: SEC Approves Changes to the Personnel Assessment and Gross Income Assessment Fees,* FINRA (effective Jan. 1, 2010), *available at https://www.finra.org/rules-guidance/notices/09-68.*

up being conducted by an entity that registers with the Commission, all the benefits of Proposed Rules still apply.

In response to a related initiative in 2010,[281] at least one PTF expressed its opinion to the Commission that the costs of PTF registration are not justified because equity markets worked well during the autumn of 2008 (then the most-recent financial crisis) and because the PTF believed that PTFs in general help market integrity by providing liquidity during difficult situations.[282] However, the 2021 IAWG Joint Staff Report showed that, during the U.S. Treasury market volatility of March 2021, PTFs' share of market intermediation fell considerably more than did dealers' share.[283] These results suggest that PTFs may not, or may no longer, promote market stability in all securities markets in ways that registered dealers do not. Accordingly, we believe that the benefits of registering PTFs who are also significant market participants justify the costs.

PTFs, since they do not have clients or customers, would bear the costs of registration themselves. Private funds, however, may either bear the costs themselves or the costs may be borne by their investment adviser. If the funds bear the costs, these costs would be passed on to the funds' investors.

3. Other Effects, Including Impact on Efficiency, Competition, and Capital Formation

The Proposed Rules may produce several indirect benefits or costs, based on the extent to which they encourage or discourage participation in securities markets. The Proposed Rules could either increase or decrease market participation due to three possible effects. First, fairer and more stable markets could encourage greater market participation. Second, registration and compliance costs could lead some currently unregistered liquidity providers to decrease their activity or even exit the market. If they do so, other firms may or may not increase their own activity to compensate. Third, large-volume and small-volume market participants may choose to differentially increase or decrease their market participation, so that the Proposed Rules may affect market concentration. Changes in patterns of market participation could affect market efficiency, market competition, and capital formation.

a. Effects on Efficiency

The Proposed Rules could affect market efficiency—*i.e.,* price discovery, or the speed with which new information or developments impact the market price of a security—depending on whether the net effect on market participation is positive or negative. Other things equal, markets with greater participation are more liquid. The net effect on market efficiency is uncertain. On the one hand, improved investor confidence might lead to greater market participation that improves market efficiency for two reasons. First, new market participants may have additional information, in which case the orders they submit based on this information would aid price discovery. Second, higher trading volumes would mean that prices would react faster to changes in securities' fundamental values.

On the other hand, if important and informed market participants, such as PTFs or hedge funds, permanently reduce their market activity or their pursuit of certain investment strategies, market efficiency may decline in the markets for some securities.

b. Effects on Competition

The net effect that the Proposed Rules may have on competition is uncertain. On the one hand, the Proposed Rules would promote competition by standardizing the regulatory treatment of—*i.e.,* leveling the playing field for—all firms engaged in the activities that meet the proposed standards described above.[284] For instance, the Proposed Rules would require all firms that conduct these activities to incur the costs of complying with the same rules regarding registration, net capital requirements, books and records, and other requirements; whereas currently, only those who are registered bear these costs.

On the other hand, other effects on competition among liquidity providers [285] depend on the extent to which the rules encourage or discourage market participation by affected parties. The indirect benefits to all market participants—particularly the additional risk-mitigating provisions and the Commission's increased ability to detect manipulation or fraud—may encourage some market participants to increase their liquidity-providing activities. However, the direct costs that the Proposed Rules would impose on currently unregistered firms who currently engage in covered activities may cause them to scale back these activities.[286] For example, if a hedge fund strategy were to fall under the Proposed Rules, the fund engaged in that activity might exit the strategy altogether in order to avoid registration. Some research on high-frequency trading has shown that firms engaged in this activity improve competition across trading venues, by arbitraging cross-venue differences in security prices,[287] which suggests that their withdrawal may have a negative impact on competition. Furthermore, in response to a similar initiative in 2010, commenters stated that registering PTFs as dealers would negatively impact competition among liquidity providers by creating barriers to entry.[288]

Any net effect on competition would likely be small because, as discussed in the baseline for competition above (including Table 5 for the U.S. Treasury market), we understand that liquidity provision in securities markets is reasonably competitive even among currently registered dealers. The precise magnitude of the effect in competition is also uncertain, and would depend on whether the benefits would accrue more to currently registered dealers with large or with small volumes and on whether the costs are more burdensome to currently unregistered firms with large or with small volumes. We believe the benefits would apply to all market participants alike. The quantitative factor in proposed Rule 3a44–2 would apply only to firms with Treasury-trading volume above the threshold. However, the qualitative factors may also apply to small-volume firms, and some costs may be greater for these firms on two points. First, FINRA's Gross Income Assessment [289] generally declines as a percentage of revenue for larger firms. Second, fees associated with reporting to TRACE [290] are smaller per dollar par value for larger trades.

[281] *See* 2010 Equity Market Structure Concept Release.

[282] *See* Letter from Berkowitz, Trager & Trager, LLC (Apr. 21, 2010).

[283] *See supra* note 241 for further discussion of changes in trading activity of PTFs during the U.S. Treasury market volatility of March 2020.

[284] Although the analysis discussed in the baseline showed that registered dealers have much greater market share in the U.S. Treasury market (*see supra* Table 1 and note 217), PTFs are the largest participants in the automated interdealer Treasury market (*see supra* note 2).

[285] As previously described, the qualitative standards of the Proposed Rules apply to persons whose activities have ''the effect of providing liquidity.'' *See* Section III.B.

[286] *See also* Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers, Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23 2012).

[287] *See supra* note 216.

[288] *See* Letter from Alston Trading, LLC, RGM Advisors, LLC, Hudson River Trading, LLC, and Quantlab Financial, LLC (Apr. 23, 2010).

[289] *See supra* note 280.

[290] *See supra* note 271.

c. Effects on Capital Formation

The Proposed Rules' effect on capital formation may depend on any net change in market participation (aggregate trading volume) that results from the rules, and on any decrease or increase in competition among liquidity providers. Other things equal, higher volumes and more competition improve liquidity. In turn, greater liquidity increases asset prices, reduces borrowing costs, and promotes capital formation.

The likely effect on aggregate market participation is uncertain. On the one hand, we believe the increased regulatory burdens would fall on relatively few firms while the benefits of fairer and more stable markets would extend broadly to all market participants—since the baseline risk of an institution's failure would also propagate broadly by reducing market liquidity, increasing price volatility, or imposing losses on creditors. In the U.S. Treasury market, for example, we estimate that no more than 46 firms have dollar trading volumes that surpass the $25 billion threshold in the quantitative standard of proposed Rule 3a44–2, as discussed in the baseline. The actual number of affected firms may be lower, since some of these 46 may be exempt financial institutions,[291] and still others may be affiliated with other firms that are dealers, in which case the corporate parent could potentially avoid the costs of the rule by shifting certain activities to the registered dealer affiliate.

On the other hand, the Proposed Rules may cause some market participants to scale back or exit certain liquidity-providing strategies in order to avoid registration; or, even if they do not, compliance costs including net capital requirements might lead them to scale back some activities. If such reductions in liquidity provision occur, we cannot be certain that other market participants would arise to replace the lost liquidity. Even if other participants do eventually arise, lost liquidity can lead to mispricing in the short run.

Changes in aggregate trading volume may also affect market liquidity in other ways. If the Proposed Rules increase investors' confidence in the stability and fairness of markets, they may increase their participation. Increased trading volume theoretically enhances market liquidity because of the following two ways in which high volume benefits dealers.[292] First, dealers who trade a lot can spread their fixed costs over more trades. Second, dealers' risk is smaller when high volume makes it easier to adjust or lay off net positions. These benefits make liquidity provision more profitable, which results in narrower bid-ask spreads if dealers compete with one another for orders.

Effects on market competition can also influence market liquidity. If the Proposed Rules enhance competition, bid-ask spreads may decrease; if the Proposed Rules weaken competition, bid-ask spreads may increase. As discussed above, the net effect that the Proposed Rules would have on competition is uncertain.

D. Reasonable Alternatives

The Commission considered several alternatives to the Proposed Rules: (1) Raise or lower the quantitative factor; (2) replace qualitative standards with quantitative standards; (3) remove the exclusion for registered investment companies; (4) remove the exclusion from aggregation for registered investment adviser client accounts where the advisers only have investment discretion; (5) exclude registered investment advisers; (6) exclude private funds; and (7) require private funds and private fund advisers to report transactions.

1. Alternative Thresholds for the Quantitative Factor

The quantitative factor would require registration of all entities with monthly trading volume above $25 billion during four out of the past six calendar months. A threshold lower than $25 billion would increase the costs of the Proposed Rules (by requiring many more entities to register as dealers), but would only somewhat increase the benefits (since additional registrants would not represent very much aggregate trading volume). A threshold higher than $25 billion would decrease both the benefits and the costs of the Proposed Rules (by requiring registration of fewer firms but failing to capture a significant portion of aggregate trading volume).

Figure 2 shows the wide range of alternative thresholds that the Commission considered in an analysis [293] of U.S. Treasury-market transactions reported to TRACE during July 2021.[294] As described in the baseline, since the subset of TRACE data where we can verify the identity of the traders (''identified TRACE'') is approximately 42 percent of all non-FINRA members' transactions in TRACE (many non-FINRA members only appear anonymously, also as described above), we believe that the thresholds in Figure 2 (based on identified TRACE) are approximately 42 percent of the equivalent threshold in the overall U.S. Treasury market. Therefore, the threshold of $10 billion in Figure 2 corresponds with the Proposed Rules' quantitative threshold of $25 billion.[295] Within identified TRACE, this figure shows the percentage of firms (dashed line) and the percentage of volume that would be captured by various quantitative thresholds. A threshold of $10 billion would capture 26 percent of the firms and 96 percent of the volume in the identified TRACE data. Larger thresholds include many fewer firms but also considerably less trading volume—*e.g.,* moving from a threshold of $10 billion to $50 billion would capture 32 fewer firms (18 percent of the 174 firms in the analysis) but also 15 percent less of the aggregate non-FINRA member trading volume in TRACE. Smaller thresholds include more firms but not very much additional volume—moving from a threshold of $10 billion to $5 billion would capture 8 more firms (5 percent of the 174 firms in the analysis) but only 1 percent more of the aggregate non-FINRA member trading volume in TRACE. The threshold that maximizes the Proposed Rule's benefits (by including firms responsible for a large percentage of trading volume) while minimizing costs (by limiting the number of firms that will be required to register) appears to be somewhere around $10 billion.

[291] *See supra* notes 9 and 29.

[292] *See* Larry Harris, ''Trading and Exchanges: Market Microstructure for Practitioners,'' Oxford University Press, 2003.

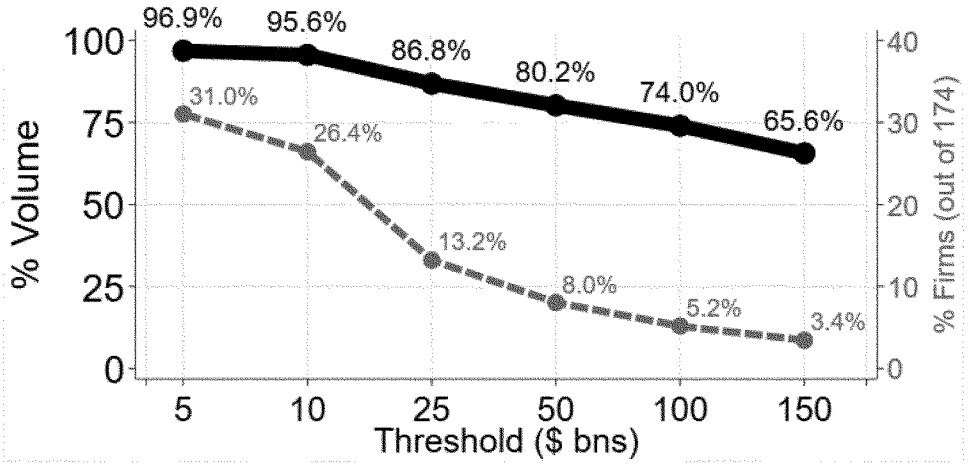
[293] *See supra* note 217 and accompanying text.

[294] The analysis also back-tested the thresholds to July 2019 and found that the results based on July 2021 data are qualitatively representative.

[295] We assume that all entities in identified TRACE are proportionally represented in the anonymous TRACE data. If firms engaging in dealer activities are overrepresented in identified TRACE, then the Proposed Rules' quantitative threshold of $25 billion would correspond to a threshold in Figure 2 of higher than $10 billion.

Figure 2. Percent of Non-FINRA Member Volume and Non-FINRA Member Firms Captured by Various Volume Thresholds, July 2021

For several potential monthly volume thresholds, this figure shows what percentage of identified non-FINRA member TRACE volume and what percentage of identified non-FINRA member firms would have crossed the threshold and so would have been required to register as dealers. "Identified" refers to the subset of TRACE data where regulators can observe the identities of non-FINRA member counterparties. This figure excludes all trading volumes and any firms that only appear in TRACE anonymously.



2. Provide Only Quantitative Factors

The Proposed Rules list several factors that will guide the Commission in determining whether securities market participants are dealers. With the exception of paragraph (a)(4) in proposed Rule 3a44–2—dollar volume of cash Treasury trading—all factors are qualitative. Alternatively, the Commission could replace the qualitative factors with quantitative ''bright-line'' thresholds, above or below which firms would be required to register as dealers. Particularly, the first qualitative factor (''routinely mak[es] roughly comparable purchases and sales of the same or substantially similar securities in a day'') could express a range of buy-sell balance, and firms could be required to register if their securities-trading activity features a buy-sell balance within that range.

The alternative rule could define buy-sell balance as the absolute value of (buy − sell)/(buy + sell), so that the measure would always fall between 0 (as when buy = sell) and 1 (as when a firm only buys or only sells). The buy-sell balance could then be calculated each day for each individual security (CUSIP), for each market participant. Any market participant with a buy-sell balance for a security that is below a quantitative threshold for a certain number of days per month could be required to register as a government securities dealer or as a dealer. For example, a firm whose buy-sell balance for CUSIP 78462F103 (SPDR S&P 500 ETF) that is below 0.2 for 13 days in a month could be required to register as a dealer, regardless of its buy-sell balance in other securities. The Proposed Rules could also have a *de minimis* cutoff, so that no market participant that trades less than, say, $1 million per month could be required to register. The *de minimis* could help ensure that small, individual investors would not be required to register.

Table 6 below shows the number of market participants who would be required to register under a few iterations of this alternative rule, based on the buy-sell balance of the highest-volume securities in the U.S. Treasury market (10-yr on-the-run note) and the equity market (SPDR S&P 00 ETF). The first row of data show that, if the rule were based on having a buy-sell balance of less than 0.2 (a 60–40 split or more even) for at least 14 days in a month, with a daily *de minimis* threshold of $10,000, then the firms behind 61 CAT FDID institutional customer accounts would have to register as dealers based on their trading of SPY, and 20 firms (not necessarily the same ones) would have to register as government securities dealers based on their trading of the 10-yr on-the-run Treasury note. It is possible that additional firms would meet the proposed dealer definition based on their trading of other securities, but the securities in Table 6 are by far the largest in their respective classes (equities and Treasuries).

TABLE 6—NUMBER OF MARKET PARTICIPANTS SATISFYING QUANTITATIVE BUY-SELL BALANCE

De minimis volume (applied daily)	(buy − sell)/(buy + sell)	SPY	10-yr note (on-the-run)
$10,000	<0.2	61	20
	<0.1	44	15
$100,000	<0.2	57	20

TABLE 6—NUMBER OF MARKET PARTICIPANTS SATISFYING QUANTITATIVE BUY-SELL BALANCE—Continued

De minimis volume (applied daily)	(buy − sell)/(buy + sell)	SPY	10-yr note (on-the-run)
	<0.1	41	15

This table shows the number of firms that would be required to register based on the buy-sell balance of their trades of SPY (SPDR S&P 500 ETF, the highest-volume equity security) or the 10-yr on-the-run Treasury note (the highest-volume Treasury security). Specifically, the rule would require registration of firms with a buy-sell balance below a certain threshold for either of these securities, for 14 days in a month. The firms that satisfy the buy-sell balance factor based on SPY (column 1) are not necessarily the same as those that satisfy the factor based on the 10-yr note (column 2). Equity data is for October 2021, and market participants are identified by CAT FDID institutional customer accounts. CAT FDID institutional customer account is not synonymous with firm; a firm may have multiple CAT FDIDs, and multiple firms may also share a single CAT FDID. Furthermore, some of the CAT FDID customer accounts may represent investment companies registered under the Investment Company Act, which are not covered by the Proposed Rules. Treasury data is for July 2021.

We considered including ''similar securities'' in rule text and interpreting ''similar securities'' as including different CUSIPs that share similar characteristics—*e.g.,* same issuer or same maturity. However, such an approach may be too broad, and may include a wide variety of arbitrage strategies or relative value strategies. For example, firms may trade securities with the same issuer and similar maturity when they arbitrage between on-the-run Treasuries against off-the-run Treasuries, or they may trade securities of similar issuers and similar characteristics when they take a long position in one company's equity offset by a short position in a close competitor. Since we do not view such strategies as descriptive of being a dealer, this alternative to the Proposed Rules defines the buy-sell balance within CUSIP only.

Using quantitative factors instead of qualitative factors could provide firms with additional certainty as to whether they should register as dealers. However, we believe that a rule that relies solely on quantitative factors would be less capable of distinguishing firms that are liquidity providers from those that are not because at present we do not have a reliable quantitative framework for defining liquidity provision. Therefore, this alternative would likely require registration of some firms that are not liquidity providers or market-makers, thus burdening these firms with all of the registration costs described above without doing much to enhance market stability or improve regulators' insight into market activity (since such firms do not play central market roles); and the alternative may also miss some firms that do provide liquidity, thus allowing them to continue operating without registering, as in the baseline.

3. Remove Exclusion for Registered Investment Companies

The Proposed Rules explicitly exclude registered investment companies. An alternative would be to remove this exclusion, as it is possible that these entities might satisfy the criteria and, collectively or individually, might be important liquidity providers in securities markets. Requiring them to register as dealers might further standardize the books and records practices of market liquidity providers and, to the extent that registered investment companies were to choose FINRA as their SRO, their registration might contribute toward the completeness of fixed-income transaction reporting in TRACE. For non-municipal securities, additional TRACE reporting would enhance market stability by supporting regulators' ability to research, understand, and respond to market events; for non-government and non-municipal securities, additional TRACE reporting would also better inform investors. If, instead of registering as dealer, registered investment companies were to cease the activities that satisfy the Proposed Rules' standards, these benefits would not materialize.

This alternative would also lead to significant costs and uncertainty. Registered investment companies have different business models and serve different market purposes than PTFs or hedge funds, and the regulatory regime that has evolved around liquidity providers might be inadequate or inappropriate for registered investment companies. As one example, it is unclear how registered investment companies would comply with net capital requirements, or how they would define net capital. Moreover, the benefits of the proposals as applied to registered investment companies would be significantly lower than for PTFs because registered investment companies are subject to an extensive regulatory framework based on the Investment Company Act and associated rules.[296]

We believe that affected parties will not have sufficient incentives to evade the proposal by registering as a registered investment company, because the requirements to be a registered investment company are sufficiently similar to the proposal. For example, registered investment companies must be securities issuers, they are significantly constrained in their ability to borrow, and they are subject to limitations on their derivatives positions. We understand that leverage and derivatives are integral parts of the types of trading strategies that would satisfy the Proposed Rules' standards. Moreover, registered investment companies are required to disclose details regarding their portfolio holdings. We acknowledge that the costs and benefits of applying the Proposed Rules to registered investment companies may differ from applying them to other market participants, and we request comment on the costs and benefits of excluding registered investment companies.

4. Remove the Exclusion From Aggregation for Registered Investment Adviser Client Accounts Where the Advisers Only Have Investment Discretion

A registered investment adviser may have client accounts (including private funds and separately managed accounts) that are not registered as dealers but whose activity individually or collectively satisfies the Proposed Rules' activity standards. The Proposed Rules would not attribute the activities of those accounts to the registered investment adviser if the adviser's control over the accounts simply involves investment discretion. The Proposed Rules would require the registered investment adviser to aggregate client accounts if it exercises certain control rights over the accounts (voting rights, capital contributions, or rights to amounts upon dissolution).[297] Alternatively, the rule could require registered investment advisers to

[296] *See supra* notes 104–114 and accompanying text.

[297] *See* text in proposed Rules 3a5–4(b)(2)(ii)(B) and 3a44–2(b)(2)(ii)(B).

aggregate client accounts over which the adviser only has investment discretion, so that all advisers would need to aggregate all of their (non-dealer) discretionary accounts in order to determine whether their activities fall under the Proposed Rules.

This alternative would strengthen the benefits described above by applying more broadly the leverage constraints and transaction reporting requirements of the dealer regulations. If advisers or their funds were to avoid registration by reducing or ceasing certain trading activities, the marginal benefits of this alternative could still materialize if registered dealers then increased their own activities to compensate. This alternative would further promote market stability by ensuring that liquidity-providing activities are conducted by entities that maintain minimum levels of net capital. The alternative would result in a greater number of liquidity-providing transactions being directly reported to TRACE (to the extent that new dealer registrants choose FINRA as their SRO) or to CAT, which would enhance market stability by supporting regulators' ability to research, understand, and respond to market events. For non-government and non-municipal fixed-income securities, additional TRACE reporting would also better inform investors since FINRA disseminates those data publicly. The benefits of TRACE reporting would not appear for new dealer registrants choosing another SRO, such as a stock exchange.

However, this alternative would also carry disadvantages, including greater regulatory costs and possible negative effects on market liquidity, efficiency, and competition. Regulatory costs, including those associated with registration, reporting, and maintaining net capital, would increase for any new dealer registrants, but self-assessment costs would also increase for advisers that must continually determine their obligations under the Proposed Rules. If advisers or their accounts were to avoid registration by reducing or ceasing certain trading activities, and if registered dealers did not then increase their own activities to compensate, then market efficiency and liquidity may decline. Also, aggregating all discretionary accounts for the purposes of determining an adviser's obligations under the Proposed Rules may reduce efficiency by creating incentives against economies of scale associated with large advisers. Finally, competition among liquidity providers may decline, but we believe that liquidity provision in U.S. security markets would remain reasonably competitive.

Relative to the Proposed Rules, this alternative would primarily apply dealer regulations to smaller private funds or separately managed accounts (via their advisers), since larger funds and their advisers are more likely to be covered under the Proposed Rules. These benefits of new leverage constraints and additional transaction reporting would be small for such funds, while the funds would still bear all the registration and compliance costs described above. Therefore, we believe the additional benefits of this alternative would not justify the additional costs.

5. Exclude Registered Investment Advisers

The Proposed Rules do not aggregate registered investment advisers' client accounts (including private funds or separately managed accounts) and attribute their activity to the adviser, as long as the adviser's control over the accounts is limited to investment discretion. Accounts over which the adviser's control rights include voting rights, capital contributions, or the rights to amounts upon dissolution would be aggregated and attributed to the adviser in determining whether the Proposed Rules would require the adviser to register as a dealer.[298] Registered investment advisers can also trigger application of the Proposed Rules due to their own proprietary trading. Alternatively, the Commission could propose an exclusion for all registered investment advisers.

The additional exclusion would reduce the benefits described above, since it would limit the Proposed Rules' ability to raise the share of liquidity provision conducted by firms that are subject to the dealer rule. The Proposed Rule would do so by: (i) Inducing additional liquidity providers to register as dealers; or (ii) inducing liquidity providers who do not wish to register as dealers to cease their liquidity-providing strategies. If registered investment advisers categorically were excluded, it is likely that fewer of them would register and that fewer of them would register client accounts in order to avoid aggregating those accounts' activities. Although registered advisers would still be subject to the existing regulations described above, including conduct rules, books and records requirements, reporting requirements, and examinations, their exclusion would undermine the Proposed Rules' benefits related to net capital requirements and to transaction reporting.

This alternative would also reduce the costs, since fewer entities would be subject to the dealer regime and fewer entities would be induced to exit certain trading strategies in order to avoid the dealer regime. The potential negative effects on market liquidity, efficiency, and competition would therefore be smaller under this alternative.

However, a blanket exclusion may exclude, now or in the future, a large adviser whose client accounts, if aggregated, would meet the standards of the Proposed Rules and provide significant liquidity in the securities markets. Also, we are concerned that this alternative rule might lead a PTF to seek to register as an investment adviser rather than as a dealer, in order to escape the requirements to report transactions and maintain net capital. The regulations that apply to registered investment companies place greater restrictions on leverage and derivatives positions than do the regulations that apply to registered investment advisers, so it would be unlikely that PTFs would seek to register as investment companies. Due to the way in which this alternative compromises the Proposed Rules' benefits related to net capital requirements and transaction reporting, and due also to the possibility for regulatory arbitrage, we believe the benefits of this alternative do not justify the costs.

6. Exclude Private Funds

The Proposed Rules do not exclude private funds, since we believe some private funds—particularly some hedge funds—engage in activities that have the effect of providing liquidity in securities market. The Commission could explicitly exclude private funds in order to avoid deterring certain fund strategies that may not be indicative of securities dealing. This exclusion would potentially reduce some of the benefits that would accrue if the Proposed Rules were to capture liquidity-providing activities—either because funds who satisfy the qualitative or quantitative standards register, or else because funds who satisfy the standards exit certain strategies to avoid registration and other (registered) dealers then arise to replace the lost activity. Excluding private funds would also reduce the costs of lost liquidity and reduced market efficiency that could materialize if affected private funds exit certain strategies without being replaced.

However, the Commission believes that some private funds effectively provide liquidity in securities markets, and the Proposed Rules' intent is to

[298] *See* text in proposed Rules 3a5–4(b)(2)(ii)(B) and 3a44–2(b)(2)(ii)(B).

apply dealer regulation to these activities. Excluding these funds would guarantee that the dealer regime would fail to capture this type of securities dealing activity. Furthermore, a blanket exclusion for hedge funds may provide an opportunity for regulatory arbitrage. For example, PTFs may seek to restructure themselves as private funds, thus preempting the intended benefits of the Proposed Rules. This may be particularly true given the similarity in incentive structures mentioned above.

Despite the high degree of uncertainty around private funds and the possible negative effects of requiring some private funds to register as dealers, the Commission believes that not excluding them is more likely to meet the Proposed Rules' objectives than excluding them. We therefore believe the costs of excluding private funds are justified by the potential benefits.

7. Transaction Reporting Regime for Private Funds and Private Fund Advisers

As described above, private funds and private fund advisers not registered as dealers are not subject to the requirement to report transactions to TRACE. Alternatively, the Commission could require private funds or private fund advisers who meet the rule's activity standards to report to TRACE, without requiring them to comply with the other aspects of dealer regulations. However, this alternative would not require private funds or private fund advisers to comply with net capital requirements, or with the operational risk-management provisions of the dealer regime. Therefore, this alternative would fail to address all of the potential for negative externalities that may stem from market participants' financial stress, as discussed in the baseline. It would also entail greater complexity in the need to specify how alternative entities would become subject to TRACE reporting.

This alternative would reduce key benefits of the proposal, but it would also reduce some of the costs related to registration, compliance with requirements other than transaction reporting to TRACE, and self-evaluation. We do not believe the reduced costs justify the reduced benefits.

E. Requests for Comment

The Commission requests comment on all aspects of this initial economic analysis, including whether the analysis has: (1) Identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed new rules and rule amendments. We request and encourage any interested person to submit comments regarding the Proposed Rules, our analysis of the potential effects of the Proposed Rules and proposed amendments, and other matters that may have an effect on the Proposed Rules. We request that commenters identify sources of data and information as well as provide data and information to assist us in analyzing the economic consequences of the Proposed Rules and proposed amendments. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. In addition to our general request for comments on the economic analysis associated with the Proposed Rules and proposed amendments, we request specific comment on certain aspects of the proposal:

Baseline

57. Are firms that are not registered as dealers or as government securities dealers important participants in securities market? If so, in which markets and in what ways? Do commenters agree that such firms have emerged as *de facto* liquidity providers?

58. The quantitative factor in proposed Rule 3a44–2 would identify as government securities dealers persons that trade more than $25 billion of Treasury securities monthly, during four out of the past six calendar months. Do you agree that approximately 46 firms would be government securities dealers based on this standard? Responses should provide empirical support, if possible.

59. One of the rules' qualitative factors would identify as dealers and government securities dealers persons that ''routinely [make] roughly comparable purchases and sales of the same or substantially similar securities in a day.'' Approximately how many firms would be dealers or government securities dealers based on this factor? Responses should provide empirical support, if possible.

60. Do you agree that PTFs have emerged as de facto liquidity providers in the market for U.S. Treasury securities? To what extent do PTFs also provide liquidity in other securities markets?

61. Do you agree with the Commission's description of the potential market disruptions that may follow the failure of one or more market participants that are not registered as dealers—*i.e.,* the potential negative effects on creditors, counterparties, market liquidity, and market volatility? Why or why not?

62. Do you agree with the Commission's description of the externality that arises due to the possibility of manipulative or fraudulent behavior? Why or why not?

63. Do you agree with the Commission's statement that the lack of regulatory insight into the practices and transactions of unregistered market participants negatively impacts markets by constraining regulators' ability to understand and respond to significant market events? Why or why not?

Economic Effects, Including Impact of Efficiency, Competition, and Capital Formation

64. Do you agree that the Proposed Rules would promote investor protection and orderly markets by increasing the financial stability and resiliency of individual liquidity providers in securities markets, particularly those liquidity providers that are not registered with the Commission? Why or why not?

65. Do you agree that the Proposed Rules would promote investor protection and orderly markets by better informing regulators through more comprehensive transaction reporting, annual filings by newly registered dealers, and examinations?

66. Do you agree that the Proposed Rules would deter manipulation or fraud behavior, by improving the Commission's ability to detect it? Why or why not?

67. Do you agree with the Commission's description of the direct costs incurred by new registrants—*e.g.,* costs of registering, costs of SRO membership, costs of reporting, etc.? Why or why not?

68. Do you agree that the Proposed Rules would have offsetting positive and negative effects on market participation, market liquidity, price efficiency, competition among liquidity providers, and capital formation? Are the overall effects on each of these likely to be positive or negative? Please explain.

69. How will firms that register as dealers in response to the Proposed Rules bring themselves into compliance with the net capital requirements? Please provide details regarding how the new dealers will implement and manage their compliance.

70. Do you expect market participants, especially those captured by the Proposed Rules, to alter their legal structures? What changes are they

likely to make and what effects will those changes have?

71. Do you expect some market participants, whom the Proposed Rules would otherwise require to register as dealers, to reduce or exit certain activities in order to avoid the requirement to register? What types of entities would do so, and which activities would be affected?

Reasonable Alternatives

72. What benefits or costs would result from setting the threshold on the quantitative factor higher or lower than $25 billion monthly volume during four out of the past six calendar months?

73. What benefits or costs would result from limiting the quantitative threshold by incorporating other characteristics of trading activity, such as turnover or balance of buys and sells? For instance, an alternative quantitative standard could require firms to register as dealers if they met BOTH a dollar volume threshold and a turnover threshold; another alternative standard could require firms to register if they meet BOTH a buy-volume threshold and a sell-volume threshold.

74. What benefits or costs would result from replacing the qualitative factors with quantitative ''bright-line'' thresholds?

75. What benefits and costs would result from removing the exclusion for registered investment companies? How would these benefits and costs differ from the benefits and costs described above?

76. What benefits or costs would result from removing the exclusion for registered investment advisers that only have investment discretion over client funds?

77. What benefits or costs would result from excluding private funds?

78. Are there other reasonable alternatives to the Proposed Rules that the Commission has not addressed? Commenters should describe any additional alternatives, along with the benefits and costs relative to the Proposed Rules.

VI. Paperwork Reduction Act

The Proposed Rules would define terms and do not in and of themselves contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[299] However, the new definitions may affect the number of respondents that meet the ''collection of information'' requirements in other Commission rules. The Commission believes the Proposed Rules may affect the number of respondents for 14 Commission rules with existing collections of information. The potential changes in burden under the Office of Management and Budget (''OMB'') Control Numbers corresponding to the existing collections of information are explained in more detail below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid control number. If the new definitions in the Proposed Rules are adopted, the Commission will submit change requests to OMB to update the number of respondents for these 14 other rules. The titles of these existing collections of information are:

Rule	Rule title	OMB control No.
17 CFR 240.15b1–1 (Rule 15b1–1) and Form BD	Application for registration of brokers or dealers	3235–0012
17 CFR 240.15Ca1–1 (Rule 15Ca1–1) and Form BD.	Notice of government securities broker-dealer activities.	
17 CFR 240.15Ca2–1 (Rule 15Ca2–1) and Form BD.	Application for registration of government securities brokers or government securities dealers.	
17 CFR 240.15b3–1 (Rule 15b3–1)	Amendments to application.	
17 CFR 240.15b6–1 (Rule 15b6–1) and Form BDW.	Withdrawal from registration	3235–0018
17 CFR 240.15Cc1–1 (Rule 15Cc1–1) and Form BDW.	Withdrawal from registration of government securities brokers or government securities dealers.	
17 CFR 240.15c2–7 (Rule 15c2–7)	Identification of quotations	3235–0479
Rule 15c3–1	Net capital requirements for brokers and dealers	3235–0200
Rule 15c3–5	Risk management controls for brokers or dealers with market access	3235–0673
Rule 17a–3	Records to be made by certain exchange members, brokers, and dealers	3235–0033
Rule 17a–4	Records to be preserved by certain members, brokers, and dealers	3235–0279
Rule 17a–5	Reports to be made by certain exchange members, brokers and dealers	3235–0123
17 CFR 240.17a–11 (Rule 17a–11)	Notification provisions for brokers and dealers	3235–0085
17 CFR 242.613 (Rule 613)	Consolidated audit trail	3235–0671

A. Summary of Collection of Information

The Proposed Rules create burdens under the PRA by adding additional respondents to some of the 10 existing collections of information noted above. The Proposed Rules would not create any new collections of information. The collections of information applicable to the additional respondents[300] are summarized in the table below.

Collection of information	Burden
Rule 15b1–1 and Form BD	Register as a dealer (required by Section 15 of the Exchange Act).
Rule 15Ca1–1 and Form BD	Notification requirement that a dealer is acting as a government securities dealer.
Rule 15Ca2–1 and Form BD[301]	Register as a government securities dealer (required by Section 15C of the Exchange Act).
Rule 15b3–1	Comply with requirements to amend Form BD.
Rule 15b6–1 and Form BDW	File a notice of withdrawal using Form BDW.
Rule 15Cc1–1 and Form BDW[302]	File a notice of withdrawal using Form BDW.
Rule 15c2–7	Enumerates certain criteria that broker-dealers must meet to furnish a quotation for a security to an inter-dealer quotation system.

[299] 44 U.S.C. 3501 *et seq.*

[300] *See* Section VI.C for a description of the categories of respondents.

Collection of information	Burden
Rule 15c3–1	Comply with notification and record-keeping obligations concerning capital requirements set for brokers-dealers.
Rule 15c3–5	Comply with requirements to establish and maintain risk management and supervisory procedures.
Rule 17a–3	Comply with requirements to make and keep certain business records.
Rule 17a–4	Comply with requirements to keep certain records.
Rule 17a–5	Comply with requirements to make, keep, and report certain records.
Rule 17a–11	Comply with notification requirements concerning broker-dealers that are experiencing certain financial or operational difficulties.
Rule 613	Comply with requirements to report certain information.

B. Proposed Use of Information

The existing information collections affected by the Proposed Rules are used as described below:

1. Rules 15b1–1, 15Ca–1, 15Ca2–1, and 15b3–1 and Form BD

Section 15(a)(1) of the Exchange Act provides that it is unlawful for broker-dealers to solicit or effect transactions in most securities unless they are registered as broker-dealers with the Commission pursuant to Section 15(b) of the Exchange Act. In addition, Section 15C(a)(1) of the Exchange Act provides that it is unlawful for government securities broker-dealers, other than registered broker-dealers and certain financial institutions, to solicit or effect transactions in government securities unless they are registered as government securities broker-dealers with the Commission pursuant to Section 15C(a)(2) of the Exchange Act. To implement these provisions, the Commission adopted Rules 15b1–1, 15Ca–1, and 15Ca2–1 and Form BD. In addition, Rule 15b3–1 requires a broker-dealer to file amendments to Form BD only when information originally reported in Form BD changes or becomes inaccurate.

The Commission uses the information disclosed by applicants in Form BD: (1) To determine whether the applicant meets the standards for registration set forth in the provisions of the Exchange Act; (2) to develop a central information resource where members of the public may obtain relevant, up-to-date information about broker-dealers and government securities broker-dealers, and where the Commission, other regulators, and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers and government securities broker-dealers. Without the information disclosed in Form BD, the Commission could not effectively implement policy objectives of the Exchange Act with respect to its investor protection function.

2. Rules 15b6–1 and 15Cc–1 and Form BDW

Section 15(b)(5) of the Exchange Act provides that any broker-dealer may, upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. In addition, Section 15C(c)(1)(B) of the Exchange Act provides that any government securities broker or government securities dealer may, upon such terms and conditions as the Commission may deem necessary in the public interest or for the protection of investors, withdraw from registration by filing a written notice of withdrawal with the Commission. To implement the foregoing statutory provisions of the Exchange Act, the Commission has promulgated Rules 15b6–1 and 15Cc1–1, as well as Form BDW, the uniform request for broker-dealer withdrawal.

The Commission uses the information disclosed by applicants in Form BDW, as required by Rules 15b6–1 and 15Cc1–1 to: (1) Determine whether it is in the public interest to permit broker-dealers and notice-registered broker-dealers to withdraw from registration; (2) develop central information resources where the Commission and other government agencies and SROs may obtain information for investigatory purposes in connection with securities litigation; and (3) to develop statistical information about broker-dealers, notice-registered broker-dealers, and government securities broker-dealers. Without Form BDW, the Commission, SROs, state regulators, the Commodity Futures Trading Commission, and the public would be without an important source of information regarding broker-dealers and notice-registered broker-dealers that are seeking to withdraw from registration.

3. Rule 15c2–7

The information required by Rule 15c2–7 is necessary for the Commission's mandate under the Exchange Act to prevent fraud, manipulation and deceptive acts and practices. When Rule 15c2–7 was adopted, the information it required was critical to the Commission's role in monitoring broker-dealers and protecting the integrity of over the counter markets. It was through the disclosures required by Rule 15c2–7 that inter-dealer quotation systems would reflect the demand for and market activity related to the securities quoted on these systems.

4. Rule 15c3–1

Rule 15c3–1 is intended to help ensure that broker-dealers maintain at all times sufficient liquid resources to meet all liabilities by requiring that broker-dealers maintain a minimum amount of net capital. A broker-dealer's minimum net capital requirement is the greater of: (1) A fixed minimum amount set forth in Rule 15c3–1 based on the types of business that the broker-dealer conducts; or (2) a financial ratio. Exchange Act Section 15(c)(3) and Rule 15c3–1 promulgated thereunder prohibit a broker-dealer from effecting transactions in securities while not in compliance with its minimum net capital requirement.

Various provisions of Rule 15c3–1 require that broker-dealers provide written notification to the Commission and/or their designated examining authority (''DEA'') under certain circumstances. For example, a broker-dealer must send notice to the Commission if it withdraws more than 10 percent or 20 percent of its excess net capital. In addition, a broker-dealer electing to compute its net capital using the alternative method under paragraph (a)(1)(ii) of Rule 15c3–1 must notify its DEA of the election in writing, and thereafter must continue to compute its net capital in this manner unless a change is approved upon application to

[301] Financial institutions that are government securities dealers not exempt under 17 CFR part 401 must use Form G–FIN to notify their appropriate regulatory agency of their status as a government securities dealer. *See* 17 CFR 449.1.

[302] Financial institutions that are government securities dealers must use Form G–FINW to notify their appropriate regulatory agency that they have ceased to function as a government securities broker or dealer. *See* 17 CFR 449.2.

the Commission. Further, there are special notification requirements for broker-dealers that carry the accounts of options market makers to identify when the activities of those options market makers may impact the financial stability of the carrying broker-dealer.

There are also certain recordkeeping requirements under Rule 15c3–1. For example, a broker-dealer must keep a record of who is acting as an agent in a securities loan transaction and records with respect to obtaining DEA approval prior to withdrawing capital within one year of a contribution. These records help the Commission and its staff, as well as DEAs, facilitate the monitoring of the financial condition of broker-dealers.

The provision at 17 CFR 240.15c3–1c (appendix C to Rule 15c3–1) requires broker-dealers that consolidate their financial statements with a subsidiary or affiliate, under certain circumstances, to submit to their DEA an opinion of counsel. The opinion of counsel must state, among other things, that the broker-dealer may cause that portion of the net assets of a subsidiary or affiliate related to its ownership interest in the entity to be distributed to the broker-dealer within 30 calendar days.

5. Rule 15c3–5

Rule 15c3–5 seeks to ensure that broker-dealers with market access appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, and the stability of the financial system.[303]

6. Rule 17a–3

The purpose of requiring broker-dealers to create the records specified in Rule 17a–3 is to enhance regulators' ability to protect investors. These records and the information contained therein will be and are used by examiners and other representatives of the Commission, State securities regulatory authorities, and the self-regulatory organizations (*e.g.,* FINRA, CBOE, etc.) (''SROs'') to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations. If broker-dealers were not required to create these records, Commission, SRO, and state examiners would be unable to conduct effective and efficient examinations to determine whether broker-dealers were complying with relevant laws, rules, and regulations.

7. Rule 17a–4

The purpose of requiring broker-dealers to maintain the records specified in Rule 17a–4 is to help ensure that examiners and other representatives of the Commission, State securities regulatory authorities, and SROs have access to the information and documents necessary to determine whether broker-dealers are in compliance with the Commission's antifraud and anti-manipulation rules, financial responsibility program, and other Commission, SRO, and State laws, rules, and regulations. Without Rule 17a–4, it would be impossible for the Commission to determine whether a dealer that chose not to preserve records was in compliance with these rules. Such a situation would not be in the public interest and would be detrimental to investors and the financial community as a whole.

8. Rule 17a–5

Reports required to be made under Rule 17a–5 are used, among other things, to monitor the financial and operational condition of a broker-dealer by Commission staff and by the dealer's DEA. The reports required under Rule 17a–5 are one of the primary means of ensuring compliance with the financial responsibility rules. A firm's failure to comply with these rules would severely impair the ability of the Commission and the firm's DEA to protect customers. The reported data is used in preparation for broker-dealer examinations and inspections. The completed forms also are used to determine which firms are engaged in various securities-related activities, the extent to which they are engaged in those activities, and how economic events and government policies might affect various segments of the securities industry.

9. Rule 17a–11

The information obtained under Rule 17a–11 is used to monitor the financial and operational condition of a broker-dealer by the Commission staff, by the broker-dealer's DEA and, if applicable, by the Commodity Futures Trading Commission (''CFTC''). This information alerts the Commission, the DEA, and the CFTC of the need to increase surveillance of the broker-dealer's financial and operational condition and to assist the broker-dealer to comply with the Commission's rules. No similar information is already available to use or modify for purposes of complying with Rule 17a–11 because the disclosures required by the rule are unobtainable until the early warning mechanisms are triggered. Only the most up-to-date information will help the Commission, DEAs, and the CFTC to monitor broker-dealers experiencing financial or operational difficulties.

10. Rule 613

Rule 613 creates a comprehensive CAT that allows regulators to efficiently and accurately track all activity throughout the U.S. markets in certain securities.[304] The rule specifies the type of data to be collected and when the data is to be reported to a central repository. The information collected and reported to the central repository improves the quality of the data available to regulators and could be used by regulators to monitor and surveil the securities markets and detect and investigate activity, whether on one market or across markets. The data collected and reported to the central repository could also be used by regulators for the evaluation of tips and complaints and for complex enforcement inquiries or investigations, as well as inspections and examinations. Further, regulators could use the data collected and reported to conduct more timely and accurate analysis of market activity for reconstruction of broad-based market events in support of regulatory decisions.

C. Respondents

As discussed above, proposed Rules 3a5–4 and 3a44–2 would further define activities that would cause a person engaged in the regular business of buying and selling securities for its own account within the meaning of the Exchange Act. A person who satisfies any one of the factors set forth in either of the Proposed Rules would be a dealer or government securities dealer and so required to register, absent an exception or exemption.

1. Dealers

The qualitative factors identified in proposed Rule 3a5–4 would further define dealer activity. The Commission estimates that for proposed Rule 3a5–4 the total number of respondents that would register as a dealer would be approximately 51 persons.[305] The

[303] *See* 17 CFR 240.15c3–5(a)(1).

[304] *See* 17 CFR 242.613.

[305] This estimate is based on the analysis described in Section V.B.2. As identified in Table 4, the analysis indicates that between 41 and 61 CAT FDID institutional customer accounts (depending on the thresholds used) had both low buy-sell dollar volume imbalance in SPY and above *de minimis* total dollar volume in SPY in at least 14 of 21 trading days in October 2021. *See* Section V.B.2. Although there is currently no simple one-

Continued

Commission estimates that respondents will be subject to some or all of the following collections of information as estimated below.

2. Government Securities Dealers

The Commission estimates that, as a result, for proposed Rule 3a44–2 the total number of respondents that would register as a government securities dealer with the Commission would be approximately 46 persons [306] and that some of the respondents may elect to register as a dealer under Section 15(a), rather than as a government securities dealer under Section 15C.[307] The Commission estimates that respondents will be subject to some or all of the following collections of information as estimated below.

D. Total PRA Burdens

1. Burden of Rules 15b1–1, 15Ca–1, 15Ca2–1, and 15b3–1 and Form BD

As discussed above, Section 15C of the Exchange Act requires government securities dealers to register with the Commission.[308] A government securities dealer has the flexibility to either register as a dealer pursuant to Rule 15b1–1 and file notice as a government securities dealer under Rule 15Ca–1, or register as a government securities dealer under Rule 15Ca2–1.[309] In either case, the respondent is required to complete a Form BD.[310] The Commission believes that Proposed Rules would impose the same burden to the respondents irrespective of whether the respondent registers as a dealer or a government securities dealer. Once registered, a broker-dealer must file an amended Form BD when information it originally reported on Form BD changes or becomes inaccurate.[311] The Commission estimates an initial burden of 2.75 hours [312] for completing a Form BD and an annual burden of .95 hour [313] per respondent for amending Form BD, resulting in a total initial burden of 266.75 hours [314] and a total annual burden of 76.95 hours.[315]

In addition, the Commission believes that a respondent's compliance manager would complete and file the application and amendments on Form BD at $314/hour.[316] Consequently, the Commission estimates that the internal cost of compliance associated with these burden hours for the respondents is approximately an initial burden of $83,759.50 [317] and an annual burden of $28,935.10.[318] It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs, to comply with the collection of information.[319]

2. Burden of Rules 15b6–1 and 15Cc–1 and Form BDW

The time necessary to complete and file Form BDW will vary depending on the nature and complexity of the applicant's securities business. On average, the Commission estimates that it would take a broker-dealer approximately one hour [320] per respondent to complete and file a Form BDW to withdraw from Commission registration. The Commission estimates that at least one of the 97 respondents will withdraw as a dealer, resulting in a total annual burden of one hour.[321] The Commission believes that a respondent would have a compliance officer, at $536 per hour, complete and file the Form BDW to withdraw from Commission registration.[322] Accordingly, the Commission estimates an internal compliance cost associated with the burden hours for the respondents is approximately $536.[323] It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs, to comply with the collection of information.[324]

3. Burden of Rule 15c2–7

Any broker-dealer could be a potential respondent for Rule 15c2–7. Only quotations entered into an inter-dealer quotation system such as OTC Link, OTC Bulletin Board (OTCBB), and Global OTC, are covered by Rule 15c2–7. According to representatives of OTC Link, Global OTC, and the OTCBB, none of those entities has recently received, nor anticipates receiving, any Rule 15c2–7 notices.[325] However, because

to-one correspondence between the number of CAT FDID customer accounts that satisfy various thresholds in Table 4 and the number of unregistered market participants in the market (*e.g.,* some unregistered market participants may have several CAT FDID accounts, and some CAT FDID accounts may represent more than one customer), the Commission believes that the analysis in Table 4 provides a useful indication about the scope of a potential impact of proposed Rule 3a5–4 and has used the median of the results at Table 4 to determine the number of approximate market participants that would register as a dealer as a result of proposed Rule 3a5–4. Additionally, the Commission recognizes that some of the 41 to 61 CAT FDID institutional customer accounts may be held by registered investment companies that are excluded from the Proposed Rules.

[306] This estimate is based on the analysis descried in Section V.B.2. That analysis found that 46 non-FINRA member firms would likely meet the proposed quantitative standard. The Commission recognizes that some of these firms may be exempted from registration (*e.g.,* banks) or affiliated with other entities that are registered dealers, in which case a parent entity could avoid the costs of registration by shifting the activities covered by the Proposed Rules to the registered dealer affiliate.

[307] *See* Section VI.D.1. Respondents that register with the Commission as a dealer or government securities dealer file a Form BD. Respondents that are government securities dealer are subject to the rules governing government securities dealers promulgated by the U.S. Treasury at 17 CFR parts 400 through 499. *See* 15 U.S.C. 78o–5(b); *see also* 17 CFR parts 400 through 499. The Treasury Rules, for the most part, incorporate with some modifications the Commission's rules for government securities dealers that are not financial institutions. *See supra* note 81.

[308] *See* 15 U.S.C. 78o–5(a).

[309] *Compare* 15 U.S.C. 78o(a) *with* 15 U.S.C. 78o–5(a). A government securities dealer that registers under Section 15C(a)(l)(A) will be limited to conducting a government securities business only.

[310] *Compare* 17 CFR 240.15b1–1(a) (''An application for registration of a broker or dealer that is filed pursuant to section 15(b) of the Act (15 U.S.C. 78o(b)) shall be filed on Form BD (249.501 of this chapter) in accordance with the instructions to the form'') and 17 CFR 240.15Ca1–1(a) (''Every government securities broker or government securities dealer that is a broker or dealer registered pursuant to section 15 or 15B of the Act (other than a financial institution as defined in section 3(a)(46) of the Act) shall file with the Commission written notice on Form BD (249.501 of this chapter) in accordance with the instructions contained therein that it is a government securities broker or government securities dealer.'') *with* 17 CFR 240.15Ca2–1(a) (''An application for registration pursuant to Section 15C(a)(1)(A) of the Act, of a government securities broker or government securities dealer that is filed on or after January 25, 1993, shall be filed with the Central Registration Depository (operated by the Financial Industry Regulatory Authority, Inc.) on Form BD in accordance with the instructions contained therein.'').

[311] *See* 17 CFR 240.15b3–1.

[312] *See* Extension Without Change of a Currently Approved Collection: Form BD and Rule 15b1–1; Application for Registration as a Broker-Dealer; ICR Reference No. 201905–3235–016; OMB Control No. 3235–0012 (Aug. 7, 2019), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201905-3235-016* (''Form BD PRA Supporting Statement'').

[313] The Commission's currently approved burden for the average ongoing compliance burden for each respondent amending Form BD is .95 hours (Compliance Manager at 0.33 hours × 2.87 amendments per year). *See* Form BD PRA Supporting Statement at 5.

[314] 97 respondents multiplied by 2.75 hours per respondent.

[315] 97 respondents multiplied by .95 hours per respondent.

[316] Form BD PRA Supporting Statement at 5.

[317] 97 respondents multiplied by (2.75 initial hours per respondent multiplied by $314 per hour).

[318] 97 respondents multiplied by (.95 annual hours per respondent multiplied by $314 per hour).

[319] Form BD PRA Supporting Statement at 6.

[320] *See* Extension Without Change of a Currently Approved Collection: Rule 15b6–1 and Form BDW; ICR Reference No: 202005–3235–003; OMB Control No: 3235–0018 (May 5, 2020), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=202005-3235-003* (''Form BDW Supporting Statement'').

[321] One respondent multiplied by 1 hour per respondent.

[322] Form BDW Supporting Statement at 5.

[323] One respondent multiplied by (1 hour per respondent multiplied by $536 per hour).

[324] Form BDW Supporting Statement at 5.

[325] *See* Extension without change of a currently approved collection: Rule 15c2–7, Identification of Quotations (17 CFR 240.15c2–7); ICR Reference No:

such notices could be made, the Commission estimates that one filing, in the aggregate, by only one broker-dealer, is made annually pursuant to Rule 15c2–7.[326] Based on prior industry estimates, the time required to enter a notice pursuant to Rule 15c2–7 is 45 seconds, or .75 minutes.[327] The Commission believes that there will not be any respondents that are required to register as a result of the Proposed Rules that must file a Rule 15c2–7 notice as a result of the Proposed Rules. Accordingly, the Commission estimates that there will be no internal compliance cost associated with the burden hours for Rule 15c2–7.

4. Burden of Rule 15c3–1

Some of the respondents that would register with the Commission as a result of the Proposed Rules would likely incur a collection of information burden to comply with Rule 15c3–1. The Commission estimates the hour burdens of the requirements associated with Rule 15c3–1 as follows.

Notices: Based on the number of notices filed under Rule 15c3–1 in 2019, the Commission estimates that broker-dealers annually file approximately 844 notices under Rule 15c3–1 and that a broker-dealer will spend approximately 30 minutes preparing and filing these notices.[328] The Commission estimates that at least approximately 23 of the 97 respondents would likely each file one notice under Rule 15c3–1, for a total of 23 notices.[329] Accordingly the Commission estimates a total additional annual burden of approximately 11.5 hours.[330]

Capital Withdrawal Liability: Paragraph (c)(2)(i)(G)(*2*) of Rule 15c3–1 requires that a broker-dealer treat as a liability any capital contribution that is intended to be withdrawn within one year of its contribution. The amendment also includes the presumption that capital withdrawn within one year of contribution is presumed to have been intended to be withdrawn within one year, unless the broker-dealer receives permission in writing for the withdrawal from its DEA. The Commission estimates it will take a broker-dealer approximately one hour to prepare and submit the request to its DEA to withdraw capital,[331] and that at least approximately two respondents would likely seek permission in writing one occasion for the capital withdrawal.[332] Accordingly, the Commission estimates that the total annual reporting burden will be approximately two hours.[333]

Some broker-dealers that file consolidated financial reports obtain an opinion of counsel under appendix C of Rule 15c3–1.[334] The Commission believes that there will not be any respondents that are required to register as a result of the Proposed Rules that will obtain an opinion of counsel to file the consolidated financial reports as required under appendix C of Rule 15c3–1. It is not anticipated that respondents will have to incur any capital and start-up costs, nor any additional operational or maintenance costs, to comply with the collection of information.

5. Burden of Rule 15c3–5

To comply with Rule 15c3–5, a respondent must maintain its risk management system by monitoring its effectiveness and updating its systems to address any issues detected.[335] In addition, a respondent is required to preserve a copy of its written description of its risk management controls as part of its books and records in a manner consistent with Rule 17a–4(e)(7) under the Exchange Act.[336] The Commission estimates that the ongoing annualized burden for a respondent to maintain its risk management system will be approximately 115 burden hours.[337] The Commission estimates the related internal compliance cost for this hour burden per respondent at approximately $31,717 per year.[338] The Commission believes the ongoing burden of complying with the rule's collection of information will include, among other things, updating systems to address any issues detected, updating risk management controls to reflect any change in its business model, and documenting and preserving a broker-dealer's written description of its risk management controls.[339] In addition, the Commission estimates that a broker-dealer's legal and compliance burden of complying with Rule 15c3–5 will require approximately 45 hours per year.[340] The Commission estimates the related internal compliance cost for this hour burden per respondent at approximately $25,645 per year.[341]

Accordingly, the Commission estimates the annual aggregate information burden per respondent would be 160 hours,[342] for a total annual burden of 15,520 hours.[343] The Commission estimates the related total internal compliance cost for the respondents required to register as a result of the Proposed Rules for this hour burden at approximately $5,564,114 per year.[344] In addition, the Commission estimates that for hardware and software expenses, the average ongoing external cost would be approximately $20,500 per respondent,[345] for a total annualized external cost for all respondents of $1,988,500.[346]

6. Burden of Rule 17a–3

As discussed above, the respondents that would register as dealers or

202008–3235–005; OMB Control No: 3235–0479 (Sep. 16, 2020), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=202008-3235-005* (''Rule 15c2–7 PRA Supporting Statement'').

[326] Rule 15c2–7 PRA Supporting Statement at 3.

[327] *Id.*

[328] Extension Without Change of a Currently Approved Collection: Rule 15c3–1: Net Capital Requirements for Brokers and Dealers; ICR Reference No: 201912–3235–005; OMB Control No: 3235–0200 (Jan. 16, 2020), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201912-3235-005* (''Rule 15c3–1 PRA Supporting Statement'').

[329] The Commission estimated that as of June 2019 broker-dealers submitted approximately 844 notices annually. Rule 15c3–1 PRA Supporting Statement at 4. The number of active broker-dealers on June 30, 2019 was 3,710. Thus, approximately 23 percent of the active broker-dealers submitted a notice annually as of June 2019. Based on this, the Commission estimates that the 97 respondents that would need to register with the Commission under the Proposed Rules would file approximately 23 notices annually.

[330] 23 respondents multiplied by .5 hours per respondent.

[331] Rule 15c3–1 PRA Supporting Statement at 5.

[332] The Commission estimated that as of June 2019 broker-dealers submitted approximately 84 notices annually. Rule 15c3–1 PRA Supporting Statement at 5. The number of active broker-dealers on June 30, 2019 was 3,710. Thus, approximately .02 percent of the active broker-dealers submitted a notice annually as of June 2019. Based on this, the Commission estimates that the 97 respondents that would need to register with the Commission under the Proposed Rules would file approximately two notices annually.

[333] Two respondents multiplied by 1 hour per respondent.

[334] Rule 15c3–1 PRA Supporting Statement at 11.

[335] *See* 17 CFR 240.15c3–5.

[336] *Id.*

[337] *See* Extension Without Change of a Currently Approved Collection: Rule 15c3–5—Risk Management Controls for Brokers or Dealers with Market Access; ICR Reference No: 201907–3235–022; OMB Control No: 3235–0673 (July 23, 2019) *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201907-3235-022* (''Rule 15c3–5 Supporting Statement'').

[338] Rule 15c3–5 Supporting Statement at 4.

[339] *Id.*

[340] *Id.* at 5. Specifically, compliance attorneys who review, document, and update written compliance policies and procedures are expected to require an estimated 20 hours per year; a compliance manager who reviews, documents, and updates written compliance policies and procedures is expected to require 20 hours per year; and the Chief Executive Officer, who certifies the policies and procedures, is expected to require another 5 hours per year. *Id.*

[341] *Id.*

[342] 115 hours for technology + 45 hours for legal and compliance.

[343] 97 respondents multiplied by 160 hours.

[344] 97 respondents multiplied by ($31,717 for technology + $25,645 for legal and compliance).

[345] Rule 15c3–5 Supporting Statement at 6.

[346] 97 respondents multiplied by $20,500 per respondent.

government securities as a result of the Proposed Rules would incur a burden of collection of information necessary to comply with Rule 17a–3. While recordkeeping requirements will vary based on the size and complexity of the broker-dealer, the Commission estimates that one hour a day [347] is the average amount of time needed by a broker-dealer to comply with the overall requirements of Rule 17a–3, in addition to the separate burdens described below. The number of working days per year is 249, and as a result the total annual estimated burden for respondents with respect to Rule 17a–3 generally is 24,153 hours.[348]

(i) Rule 17a–3(a)(12) and (19)

In addition to the hour burden estimate for Rule 17a–3 generally, the Commission also believes that paragraphs (a)(12) and (19) of Rule 17a–3 will impose specific burdens on respondents. Paragraphs (a)(12) and (19) of Rule 17a–3 require that a broker-dealer create certain records regarding its associated persons.[349] The Commission estimates that each broker-dealer spends, on average, approximately 30 minutes each year [350] to ensure that it is in compliance with these requirements, resulting in a total annual compliance burden of approximately 48.5 hours for the respondents.[351]

(ii) Rule 17a–3(a)(20) Through (22)

Paragraphs (a)(20) through (22) of Rule 17a–3 require broker-dealers to make, among other things, records documenting the broker-dealer's compliance, or that the broker-dealer has adopted policies and procedures reasonably designed to establish compliance, with applicable Federal regulations and SRO rules that require approval by a principal of the broker-dealer of any advertisements, sales literature or other communications with the public.[352] Moreover, these rules require broker-dealers to create a record of the personnel responsible for establishing compliance policies and procedures and of the personnel capable of explaining the types of records the broker-dealer.[353] The Commission estimates that, on average, each broker-dealer will spend 10 minutes each year [354] to ensure compliance with these requirements, resulting in a total annual burden for the respondents of about approximately 16 hours.[355]

7. Burden of Rule 17a–4

The respondents that registered as dealers or government securities would incur a collection of information burden to comply with Rule 17a–4. Rule 17a–4 establishes the records that must be preserved by broker-dealers.[356] The Commission estimates that, on average, each broker-dealer spends 254 hours each year [357] to ensure that it preserves the records Rule 17a–4 requires all broker-dealers to preserve. Accordingly, the Commission estimates that there will be a total annual burden of 24,638 hours to comply with the Rule 17a–4 requirements applicable to the respondents.[358] The Commission estimates that the average broker-dealer spends approximately $5,000 each year to store documents required to be retained under Rule 17a–4.[359] Accordingly, the Commission estimates the annual reporting and recordkeeping cost burden for the respondents to be $485,000.[360]

8. Burden of Rule 17a–5 [361]

This section summarizes the burdens associated with Rule 17a–5.

FOCUS Report for Broker-Dealers that do not Clear Transactions or Carry Customer Accounts: Rule 17a–5(a)(2)(iii) requires that broker-dealers that do not clear transactions or carry customer accounts and do not use ANC models to calculate net capital are required to file FOCUS Report Part IIA on a quarterly basis.[362] The Commission believes that the 97 respondents that would be required to register with the Commission would need to comply with this provision of Rule 17a–5. The Commission estimates that each FOCUS Report Part IIA takes approximately 12 hours to prepare and file.[363] As a result, each respondent is estimated to have an annual reporting burden of 48 hours,[364] resulting in an annual burden of 4,656 hours.[365]

Annual Reports: Rule 17a–5(d)(1)(i)(A) requires broker-dealers, subject to limited exception, to file annual reports, including financial statements and supporting schedules that generally must be audited by a PCAOB-registered independent public accountant in accordance with PCAOB standards. The Commission believes that the 97 respondents that would be required to register with the Commission would be need to file an annual report. The Commission estimates that each respondent is estimated to have an annual reporting burden of 12 hours under Rule 17a–5(d),[366] resulting in an annual burden of 1,164 hours for the respondents.[367]

Exemption Report: Rule 17a–5(d)(1)(i)(B) requires a broker-dealer that claims it was exempt from 17 CFR 240.15c3–3 (Rule 15c3–3) throughout the most recent fiscal year must file an exemption report with the Commission on an annual basis.[368] As of December 31, 2019, 3,689 broker-dealers filed FOCUS Reports with the Commission and, of these, 3,001 broker-dealers

[347] *See* Revision of a Currently Approved Collection: Rule 17a–3; Records to be Made by Certain Exchange Members, Brokers and Dealers; ICR Reference No: 202107–3235–019; OMB Control No: 3235–0033 (July 29, 2021), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=202107-3235-019* (''Rule 17a–3 PRA Supporting Statement'').

[348] 97 respondents multiplied by 249 hours per respondent a year.

[349] These records that a broker-dealer is required to make regarding the broker-dealer's associated persons include: (1) All agreements pertaining to the associated person's relationship with the broker-dealer and a summary of each associated person's compensation arrangement (17 CFR 240.17a–3(a)(19)(ii)), (2) a record delineating all identification numbers relating to each associated person (17 CFR 240.17a–3(a)(12)(ii)), (3) a record of the office at which each associated person regularly conducts business (17 CFR 240.17a–3(a)(12)(iii)), and (4) a record as to each associated person listing transactions for which that person will be compensated (17 CFR 240.17a3(a)(19)(i)).

[350] Rule 17a–3 PRA Supporting Statement at 6.

[351] 97 respondents multiplied by .5 hours per respondent.

[352] *See* 17 CFR 240.17a–3(a)(20); 17 CFR 240.17a–3(a)(21); 17 CFR 240.17a–3(a)(22).

[353] *Id.*

[354] Rule 17a–3 PRA Supporting Statement at 6.

[355] (97 respondents multiplied by 10 minutes per respondent) divided by 60 minutes.

[356] *See* 17 CFR 240.17a–4.

[357] *See* Revision of a currently approved collection: Rule 17a–4; Records to be Preserved by Certain Exchange Members, Brokers and Dealers; ICR Reference No: 202107–3235–021; OMB Control No: 3235–0279 (Sep. 23. 2021), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=202107-3235-021* (''Rule 17a–4 Supporting Statement'').

[358] 97 respondents multiplied by 254 hours per respondent.

[359] Rule 17a–4 Supporting Statement at 13. Costs include the cost of physical space, computer hardware. and software, etc., which vary widely depending on the size of the broker-dealer and the type of storage media employed. *Id.*

[360] 97 respondents multiplied by $5,000 per respondent.

[361] Registered government securities dealers are required to comply with Rule 17a–11, subject to the enumerated modifications in 17 U.S.C. 405.3. *See* 17 U.S.C. 405.3.

[362] *See* 17 CFR 240.17a–5(a)(2)(iii).

[363] *See* Revision of a Currently Approved Collection: Rule 17a–5, Form X–17A–5 (FOCUS REPORT); ICR Reference No: 202107–3235–022; OMB Control No: 3235–0123 (July 29, 2021), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202107-3235-022* (''Rule 17a–5 PRA Supporting Statement'').

[364] Rule 17a–5 PRA Supporting Statement at 6.

[365] 97 respondents multiplied by 48 hours per respondent.

[366] Rule 17a–5 PRA Supporting Statement at 7.

[367] 97 respondents multiplied by 12 hours per respondent.

[368] *See* 17 CFR 240.17a–5(d)(1)(i)(B).

claimed exemptions from Rule 15c3–3.[369] The Commission estimates that it takes a broker-dealer claiming an exemption from Rule 15c3–3 approximately 7 hours to complete the exemption report.[370] The Commission also estimates that approximately 78 of the 97 respondents [371] would also claim exemptions from Rule 15c3–3 and be required to file an exemption report, resulting in an annual burden of 546 hours.[372]

SIPC Annual Reports: Paragraph (d)(6) of Rule 17a–5 requires a Securities Investor Protection Corporation (''SIPC'') member broker-dealers to file a copy of the annual reports with SIPC.[373] The Commission estimates that it takes a broker-dealer approximately 30 minutes to file the annual reports with SIPC.[374] As a result, each firm is estimated to have an annual burden of .5 hour, resulting in an annual burden of 48.5 hours for the respondents.[375]

SIPC Annual General Assessment Reconciliation Report or Exclusion from Membership Forms: Paragraph (e)(4) of Rule 17a–5 requires broker-dealers to file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms.[376] The Commission estimates that it takes a broker-dealer approximately 5 hours to file SIPC's annual assessment reconciliation form or certification of exclusion from membership forms,[377] resulting in an estimated annual burden of about 485 hours for the respondents.[378]

Statement Regarding Independent Public Accountant: Paragraph (f)(2) of Rule 17a–5 requires broker-dealers to prepare a statement providing information regarding the broker-dealer's independent public accountant and to file it each year with the Commission and its DEA (except that if the engagement is of a continuing nature, no further filing is required).[379] The Commission estimates that it takes a broker-dealer that neither carries customer accounts nor clears transactions approximately 2 hours to file the Statement Regarding Independent Public Accountant with the Commission.[380] As a result, each broker-dealer that neither carries nor clears transactions is estimated to have an annual burden of 2 hours, resulting in an annual burden of 194 hours for the respondents.[381]

The Commission estimates that Rule 17a–5 causes a broker-dealer to incur an annual dollar cost to meet its reporting obligations. Those requirements that are anticipated to impose an annual cost are discussed below.

Annual Reports: The Commission estimates that postage costs to comply with paragraph (d) of Rule 17a–5 impose on broker-dealers an annual dollar cost of $7.75 per firm,[382] resulting in a total annual cost for the respondents of approximately $751.75.[383]

Exemption Report: A broker-dealer that claims it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file an exemption report with the Commission on an annual basis.[384] The cost associated with an independent public accountant's review of the exemption report is estimated to create an ongoing cost of $3,000 per non-carrying broker-dealer per year,[385] for a total annual reporting cost of approximately $234,000.[386]

SIPC Annual Reports: The Commission estimates that postage costs to comply with paragraph (d)(6) of Rule 17a–5 impose an annual dollar cost of 50 cents per firm registered with SIPC as a SIPC member broker-dealer,[387] totaling for the 97 respondents an estimated cost burden for the response of $48.50.[388]

SIPC Annual General Assessment Reconciliation Report or Exclusion from Membership Forms: The Commission estimates that postage costs to comply with paragraph (e)(4) of Rule 17a–5, impose an annual dollar cost of 50 cents per firm.[389] The Commission estimates that each year the 97 respondents will file with SIPC a report on the SIPC annual general assessment reconciliation or exclusion from membership forms, such that the estimated cost burden totals $48.50 per year.[390]

Statement Regarding Independent Public Accountant: The Commission estimates that postage costs to comply with paragraphs (f)(2) and (3) of Rule 17a–5, impose an annual dollar cost of 50 cents per firm.[391] Accordingly, the Commission estimates a total cost of $48.50 per year for the 97 respondents.[392]

9. Burden of Rule 17a–11

In 2019, the Commission received 343 Rule 17a–11 notices from broker-dealers.[393] The Commission previously estimated that it would receive a similar number of notices from broker-dealers each year over the next three years and that it will take approximately one hour to prepare and transmit each notice.[394] The Commission believes that the Proposed Rules would not cause any change to the Commission's estimated number of 17a–11 notices received from broker-dealers.

10. Burden of Rule 613

Rule 613(c) provides that certain requirements are placed upon broker-dealers to record and report CAT information to the central repository in accordance with specified timelines.[395] The Commission recognizes that broker-dealers may insource or outsource CAT data reporting obligations.[396] The Commission believes all 97 respondents would likely have reporting obligations under Rule 613 and strategically decide to insource their data reporting functions as a result of their high level

[369] Rule 17a–5 PRA Supporting Statement at 8.

[370] *Id.*

[371] The Commission believes that the same percentage of broker-dealers that claimed exemptions from Rule 15c3–3 as of December 31, 2019 applies to the 97 respondents that would register with the Commission as a result of the Proposed Rules. Accordingly, the Commission estimates that 80 percent of the 97 respondents would file an exemption report under Rule 17a–5(d)(1)(i)(A).

[372] 78 respondents multiplied by 7 hours per respondent.

[373] *See* 17 CFR 240.17a–5(d)(6).

[374] Rule 17a–5 PRA Supporting Statement at 8.

[375] 97 respondents multiplied by .5 hour per respondent.

[376] *See* 17 CFR 240.17a–5(e)(4).

[377] Rule 17a–5 PRA Supporting Statement at 9.

[378] 97 respondents multiplied by 5 hours per respondent.

[379] 17 CFR 240.17a–5(f)(2).

[380] Rule 17a–5 PRA Supporting Statement at 9.

[381] 97 respondents multiplied by 2 hours per respondent.

[382] Rule 17a–5 PRA Supporting Statement at 15.

[383] 97 respondents multiplied by $7.75 per respondent.

[384] *See* 17 CFR 240.17a–5(d)(1)(i)(B).

[385] Rule 17a–5 PRA Supporting Statement at 16.

[386] 78 respondents multiplied by $3,000 per respondent. As discussed above, the Commission also estimates that approximately 78 of the 97 respondents would also claim exemptions from Rule 15c3–3.

[387] Rule 17a–5 PRA Supporting Statement at 16.

[388] 97 respondents multiplied by $0.50 per respondent.

[389] Rule 17a–5 PRA Supporting Statement at 16.

[390] 97 respondents multiplied by $0.50 per respondent.

[391] Rule 17a–5 PRA Supporting Statement at 17.

[392] 97 respondents multiplied by $0.50 per respondent.

[393] Revision of a Currently Approved Collection: Rule 17a–11 (17 CFR 240.17a–11) Notification provisions for Brokers and Dealers; ICR Reference No: 202107–3235–023; OMB Control No: 3235–0085 (Sep. 14, 2021), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=202107-3235-023* (''17a–11 PRA Supporting Statement'').

[394] 17a–11 PRA Supporting Statement at 4.

[395] 17 CFR 242.613(c).

[396] Revision of a currently approved collection: Consolidated Audit Trail NMS Plan (NMS Plan Required to be Filed under Commission Rule 613); ICR Reference No: 201911–3235–003; OMB Control No: 3235–0671 (Apr. 1, 2020), *available at https://www.reginfo.gov/public/do/PRAView Document?ref_nbr=201911-3235-003* (''CAT Supporting Statement'').

of trading activity.[397] The Commission estimates that the average initial burden associated with implementing regulatory data reporting to capture the required information and transmit it to the central repository in compliance with Rule 613 for each respondent to be approximately 14,490 initial burden hours,[398] totaling an initial burden of 1,405,530 hours for the respondents.[399] After a respondent establishes the appropriate systems and processes required for collection and transmission of the required information, the Commission estimates that Rule 613 imposes ongoing annual burdens associated with, among other things, personnel time to monitor each respondent's reporting of the required data and the maintenance of the systems to report the required data; and implementing changes to trading systems that might result in additional reports.[400] The Commission believes that it would take each respondent approximately 13,338 burden hours per year[401] to continue to comply with Rule 613, totaling an annual ongoing burden of 1,293,786 hours for the respondents.[402]

Additionally, the Commission estimates that each respondent, on average, incurs approximately $450,000 in initial costs for hardware and software to implement the systems changes needed to capture the required information and transmit it to the central repository, an additional $9,500 in initial third party costs, and an additional $250,000 in costs to implement the modified allocation timestamp requirement,[403] totaling an initial cost of $68,821,500 for the respondents.[404] After each respondent has established the appropriate systems and processes, the Commission believes that Rule 613 imposes ongoing annual burdens associated with, among other things, personnel time to monitor each respondent's reporting of the required data and the maintenance of the systems to report the required data; and implementing changes to trading systems that might result in additional reports to the central repository.[405] The Commission estimates costs for each respondent, on average, of approximately $80,000 per year to maintain systems connectivity to the central repository and purchase any necessary hardware, software, and other materials, an additional $1,300 per year in third party costs, and an additional $29,166.67 per year to maintain the modified allocation timestamp requirement,[406] totaling an estimated annual ongoing cost of $10,715,268 for the respondents.[407]

E. Request for Comments

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

79. Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information shall have practical utility;

80. Evaluate whether the Commission is adequately capturing the number of respondents that would be subject to the burdens under the Proposed Rules;

81. Evaluate the accuracy of the Commission's estimates of the burden of the proposed collection of information;

82. Evaluate the accuracy of the Commission's estimates of the costs associated with the proposed collection of information, including but not limited to any start-up, technology, personnel, legal services, operational, or maintenance costs, to comply with the collection of information;

83. Evaluate whether the Proposed Rules would have any effects on any other collection of information not previously identified in this section; and

84. Determine whether any aspects of the Proposed Rules that are not discussed in this PRA analysis impact the burden or costs associated with the collection of information.

Persons submitting comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File Number S7–12–22. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File Number S7–12–22 and be submitted to the Securities and Exchange Commission, Office of FOIA/PA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VII. Regulatory Flexibility Certification

The Regulatory Flexibility Act (''RFA'') requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[408] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of the rulemaking on ''small entities.''[409] Section 605(b) of the RFA[410] states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.[411]

The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.''[412] The Commission's rules define ''small business'' and ''small organization'' for purpose of the RFA for each of the types of entities regulated by the Commission.[413] A ''small business'' and ''small organization,'' when used in reference to a person other than an investment company, generally means a person with total assets of $5 million or less on the last day of its most recent fiscal year.[414]

The Proposed Rules would not apply to persons that have or control total assets of less than $50 million.[415]

[397] *See* CAT Supporting Statement at 37.

[398] *Id.* at 39.

[399] 97 respondents multiplied by 14,490 hours.

[400] *See* CAT Supporting Statement at 39–40.

[401] *Id.* at 40.

[402] 97 respondents multiplied by 13,338 hours.

[403] *See* CAT Supporting Statement at 63–64.

[404] 97 respondents multiplied by (($450,000 in external hardware and software costs) + ($250,000 to implement the modified allocation timestamp requirement) + ($9,500 initial third party/outsourcing costs) = $709,500).

[405] *See* CAT Supporting Statement at 66.

[406] *Id.*

[407] 97 respondents multiplied by (($80,000 in external hardware and software costs) + ($29,166.67 to maintain the modified allocation timestamp requirement) + ($1,300 ongoing external third party/outsourcing costs) = $110,466.68).

[408] 5 U.S.C. 603(a).

[409] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in 17 CFR 240.0–10 (Rule 0–10 under the Exchange Act). *See also* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982) (File No. AS–305).

[410] 5 U.S.C. 605(b).

[411] 5 U.S.C. 605(b).

[412] 5 U.S.C. 601(6).

[413] Exchange Act Rule 0–10 (17 CFR 240.0–10) contains applicable definitions.

[414] *Id.*

[415] *See* proposed Rule 3a5–4(a)(2)(i) and proposed Rule 3a44–2(a)(3)(i). *See also* Section V.B.2.c.

Therefore, because small businesses and small organizations with total assets of $5 million or less would not meet the requirements of the Proposed Rules, the Commission believes the Proposed Rules would not, if adopted, have a significant economic impact on a substantial number of small entities.

For the foregoing reasons, the Commission certifies, pursuant to 5 U.S.C. 605(b), that the Proposed Rules, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission encourages written comments regarding this certification. Specifically, the Commission solicits comment as to whether the proposed Rules 3a5–4 and 3a44–2 could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact. These comments will be considered in the preparation of the Final Regulatory Flexibility Certification, if the Proposed Rules are adopted, and will be placed in the same public file as comments on the Proposed Rules. Persons wishing to submit written comments should refer to the instructions for submitting comments in the front of this release.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[416] the Commission requests comment on the potential effect of the Proposed Rules on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation.

Statutory Basis and Text of the Proposed Rules

The Commission is proposing Rules 3a5–4 and 3a44–2 pursuant to authority set forth in Sections 3 and 23 of the Exchange Act (15 U.S.C. 78c and 78w).

Text of Proposed Rule

List of Subjects in 17 CFR Part 240

Government securities dealers, Securities dealers.

For the reasons set out in the preamble, the Commission proposes to amend title 17, chapter II, of the Code of Federal Regulations as follows:

[416] 5 U.S.C. 603.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Add § 240.3a5–4 to read as follows:

§ 240.3a5–4 Further definition of ''as a part of a regular business''.

(a) A person that is engaged in buying and selling securities for its own account is engaged in such activity ''as a part of a regular business'' as the phrase is used in Section 3(a)(5)(B) (15 U.S.C. 78c(a)(5)(B)) of the Act if that person:

(1) Engages in a routine pattern of buying and selling securities that has the effect of providing liquidity to other market participants by:

(i) Routinely making roughly comparable purchases and sales of the same or substantially similar securities in a day; or

(ii) Routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants; or

(iii) Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests; and

(2) Is not:

(i) A person that has or controls total assets of less than $50 million; or

(ii) An investment company registered under the Investment Company Act of 1940.

(b) For purposes of this section:

(1) The term ''person'' has the same meaning as prescribed in Section 3(a)(9) (15 U.S.C. 78c(a)(9)) of the Act.

(2) A person's ''own account'' means any account:

(i) Held in the name of that person; or

(ii) Held in the name of a person over whom that person exercises control or with whom that person is under common control, provided that this paragraph (b)(2)(ii) does not include:

(A) An account in the name of a registered broker, dealer, or government securities dealer, or an investment company registered under the Investment Company Act of 1940; or

(B) With respect to an investment adviser registered under the Investment Advisers Act of 1940, an account held in the name of a client of the adviser unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client; or

(C) With respect to any person, an account in the name of another person that is under common control with that person solely because both persons are clients of an investment adviser registered under the Investment Advisers Act of 1940 unless those accounts constitute a parallel account structure; or

(iii) Held for the benefit of those persons identified in paragraphs (b)(2)(i) and (ii) of this section.

(3) The term ''control'' has the same meaning as prescribed in § 240.13h–l (Rule 13h–l), under the Act.

(4) The term ''parallel account structure'' means a structure in which one or more private funds (each a ''parallel fund''), accounts, or other pools of assets (each a ''parallel managed account'') managed by the same investment adviser pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another parallel fund or parallel managed account.

(c) No presumption shall arise that a person is not a dealer within the meaning of Section 3(a)(5) (15 U.S.C. 78c(a)(5)) of the Act solely because that person does not satisfy paragraph (a) of this section.

■ 3. Add § 240.3a44–2 to read as follows:

§ 240.3a44–2 Further definition of ''as a part of a regular business''.

(a) A person that is engaged in buying and selling government securities for its own account is engaged in such activity ''as a part of a regular business'' as the phrase is used in Section 3(a)(44)(A) (15 U.S.C. 78c(a)(44)(A)) of the Act if that person:

(1) Engages in a routine pattern of buying and selling government securities that has the effect of providing liquidity to other market participants by:

(i) Routinely making roughly comparable purchases and sales of the

same or substantially similar government securities in a day; or

(ii) Routinely expressing trading interests that are at or near the best available prices on both sides of the market and that are communicated and represented in a way that makes them accessible to other market participants; or

(iii) Earning revenue primarily from capturing bid-ask spreads, by buying at the bid and selling at the offer, or from capturing any incentives offered by trading venues to liquidity-supplying trading interests; or

(2) In each of four out of the last six calendar months, engaged in buying and selling more than $25 billion of trading volume in government securities as defined in Section 3(a)(42)(A) (15 U.S.C. 78c(a)(42)(A)) of the Act; and

(3) Is not:

(i) A person that has or controls total assets of less than $50 million; or

(ii) An investment company registered under the Investment Company Act of 1940.

(b) For purposes of this section:

(1) The term ''person'' has the same meaning as prescribed in Section 3(a)(9) (15 U.S.C. 78c(a)(9)) of the Act.

(2) A person's ''own account'' means any account:

(i) Held in the name of that person; or

(ii) Held in the name of a person over whom that person exercises control or with whom that person is under common control, provided that this paragraph (b)(2)(ii) does not include:

(A) An account in the name of a registered broker, dealer, or government securities dealer, or an investment company registered under the Investment Company Act of 1940; or

(B) With respect to an investment adviser registered under the Investment Advisers Act of 1940, an account held in the name of a client of the adviser unless the adviser controls the client as a result of the adviser's right to vote or direct the vote of voting securities of the client, the adviser's right to sell or direct the sale of voting securities of the client, or the adviser's capital contributions to or rights to amounts upon dissolution of the client; or

(C) With respect to any person, an account in the name of another person that is under common control with that person solely because both persons are clients of an investment adviser registered under the Investment Advisers Act of 1940 unless those accounts constitute a parallel account structure; or

(iii) Held for the benefit of those persons identified in paragraphs (b)(2)(i) and (ii) of this section.

(3) The term ''control'' has the same meaning as prescribed in § 240.13h–l (Rule 13h–l), under the Act.

(4) The term ''parallel account structure'' means a structure in which one or more private funds (each a ''parallel fund''), accounts, or other pools of assets (each a ''parallel managed account'') managed by the same investment adviser pursue substantially the same investment objective and strategy and invest side by side in substantially the same positions as another parallel fund or parallel managed account.

(c) No presumption shall arise that a person is not a government securities dealer within the meaning of Section 3(a)(44) (15 U.S.C. 78c(a)(44)) of the Act solely because that person does not satisfy paragraph (a) of this section.

By the Commission.

Dated: March 28, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

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Last List April 15, 2022

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