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# Rules and Regulations

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Parts 1264 and 1271

**RIN 2700–AE63**

**[Document Number NASA–22–025: Docket Number NASA–2022–0003]**

## Implementation of the Federal Civil Penalties Inflation Adjustment Act and Adjustment of Amounts for 2022

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Final rule.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) has adopted a final rule making inflation adjustments to civil monetary penalties within its jurisdiction. This final rule represents the annual 2022 inflation adjustments of monetary penalties. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** This final rule is effective April 19, 2022.

**FOR FURTHER INFORMATION CONTACT:** Bryan R. Diederich, Office of the General Counsel, NASA Headquarters, telephone (202) 358–0216.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, required Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016. Subsequent to the 2016 adjustment, Federal agencies were required to make an annual inflation adjustment by January 15 every year thereafter.[1] Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.[2] The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

Pursuant to the Act, adjustments to the civil penalties are required to be made by January 15 of each year. The annual adjustments are based on the percent change between the U.S. Department of Labor's Consumer Price Index for All Urban Consumers (''CPI–U'') for the month of October preceding the date of the adjustment and the CPI–U for October of the prior year (28 U.S.C. 2461 note, section (5)(b)(1)). Based on that formula, the cost-of-living adjustment multiplier for 2021 is 1.06222 percent. Pursuant to the 2015 Act, adjustments are rounded to the nearest dollar.

### II. The Final Rule

This final rule makes the required adjustments to civil penalties for 2022. Applying the 2022 multiplier above, the adjustments for each penalty are summarized below.

| Law | Penalty description | 2021 Penalty | Penalty adjusted for 2022 |
|---|---|---|---|
| Program Fraud Civil Remedies Act of 1986 | Maximum Penalties for False Claims | $11,803 | $12,537 |
| Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319. | Minimum Penalty for use of appropriated funds to lobby or influence certain contracts. | 20,731 | 22,021 |
| Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319. | Maximum Penalty for use of appropriated funds to lobby or influence certain contracts. | 207,314 | 220,213 |
| Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319. | Minimum penalty for failure to report certain lobbying transactions. | 20,731 | 22,021 |
| Department of the Interior and Related Agencies Appropriations Act of 1989, Public Law 101–121, sec. 319. | Maximum penalty for failure to report certain lobbying transactions. | 207,314 | 220,213 |

This rule codifies these civil penalty amounts by amending parts 1264 and 1271 of title 14 of the CFR.

### III. Legal Authority and Effective Date

NASA issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,[3] as amended by the Debt Collection Improvement Act of 1996,[4] and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,[5] which requires NASA to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

Section 553 of title 5 of the United States Code generally requires an agency to publish a rule at least 30 days before its effective date to allow for advance notice and opportunity for public comments.[6] After the initial adjustment for 2016, however, the Civil Penalties Inflation Adjustment Act requires agencies to make subsequent annual adjustments for inflation ''notwithstanding section 553 of title 5, United States Code.'' Moreover, the 2022 adjustments are made according to a statutory formula that does not

[1] *See* 28 U.S.C. 2461 note.

[2] Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

[3] Public Law 101–410, 104 Stat. 890 (1990).

[4] Public Law 104–134, section 31001(s)(1), 110 Stat. 1321, 1321–373 (1996).

[5] Public Law 114–74, section 701, 129 Stat. 584, 599 (2015).

[6] *See* 5 U.S.C. 533(d).

provide for agency discretion. Accordingly, a delay in effectiveness of the 2022 adjustments is not required.

**IV. Regulatory Requirements**

*Executive Orders 12866 and 13563*

Executive Orders (EOs) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action under E.O. 12866 and was not reviewed by the Office of Management and Budget (OMB).

**Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.[7]

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995,[8] NASA reviewed this final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

**List of Subjects in 14 CFR Parts 1264 and 1271**

Claims, Lobbying, Penalties.

For the reasons stated in the preamble, the National Aeronautics and Space Administration is amending 14 CFR parts 1264 and 1271 as follows:

## PART 1264—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL PENALTIES ACT OF 1986

■ 1. The authority citation for part 1264 continues to read as follows:

**Authority:** 31 U.S.C. 3809, 51 U.S.C. 20113(a).

**§ 1264.102 [Amended]**

■ 2. In § 1264.102, remove the number ''$11,803 everywhere it appears and add in its place the number ''$12,537''

## PART 1271—NEW RESTRICTIONS ON LOBBYING

■ 3. The authority citation for part 1271 continues to read as follows:

**Authority:** Section 319, Pub. L. 101–121 (31 U.S.C. 1352); Pub. L. 97–258 (31 U.S.C. 6301 *et seq.*)

**§ 1271.400 [Amended]**

■ 4. In § 1271.400:
■ a. In paragraphs (a) and (b), remove the words ''not less than $20,731 and not more than $207,314'' and add in their place the words ''not less than $22,021 and not more than $220,213.''
■ b. In paragraph (e), remove ''$20,731'' wherever it appears and add in its place ''$22,021'' and remove ''$207,314'' and add in its place ''$220,213.''

**Appendix A to Part 1271 [Amended]**

■ 5. In appendix A to part 1271:
■ a. Remove the number ''$20,731'' everywhere it appears and add in its place the number ''$22,021.''
■ b. Remove the number ''$207,314'' everywhere it appears and add in its place the number ''$220,213.''

**Nanette J. Smith,**

*Team Lead for NASA Directives and Regulations.*

[FR Doc. 2022–07360 Filed 4–18–22; 8:45 am]

**BILLING CODE P**

[7] 5 U.S.C. 603(a), 604(a).

[8] 44 U.S.C. 3506.

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 232

**[Release Nos. 33–11043; 34–94479; 39–2543; IC–34536]**

## Adoption of Updated EDGAR Filer Manual

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule.

**SUMMARY:** The Securities and Exchange Commission (''Commission'') is adopting amendments to Volumes I and II of the Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') Filer Manual (''Filer Manual'') and related rules and forms. The EDGAR system was upgraded on March 21, 2022.

**DATES:** *Effective date:* April 19, 2022. The incorporation by reference of the Filer Manual is approved by the Director of the Federal Register as of April 19, 2022.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding the amendments to Volumes I and II of the Filer Manual and related rules, please contact Rosemary Filou, Deputy Director and Chief Counsel, or E. Laurita Finch, Senior Special Counsel, in the EDGAR Business Office at (202) 551–3900. For questions concerning submission form type 497VPSUB, please contact Andrea Magovern, Assistant Director, in the Division of Investment Management at (202) 551–6921. For questions concerning the payment of filing fees, please contact Luba Dinits in the Office of Financial Management at (202) 551–3839. For questions concerning the structured data requirements for Forms N–3, N–4, and N–6, please contact Heather Fernandez, Financial Analyst, in the Division of Investment Management at (202) 551–6708. For questions regarding non-broker-dealer filers that are filing pursuant to a Commission substituted compliance order, please contact Randall Roy, Deputy Associate Director, at (202) 551–5522, or Valentina Deng, Special Counsel, at (202) 551–5778 in the Division of Trading and Markets. For questions about EX–99.36 Form 7–R, please contact Pamela Carmody in the Division of Trading and Markets at (202) 551–6991. For questions regarding submission form types MA–A and MA–A/A, please contact Mark Stewart, Attorney-Advisor, in the Office of Municipal Securities, at (202) 551–4410. For questions regarding Form X–17A–5 Part III, please contact Rose Wells, Senior Counsel, in the Division of Trading and Markets, at (202) 551–5527. For questions concerning taxonomies or schemas, please contact the Office of Structured Disclosure in the Division of Economic and Risk Analysis at (202) 551–5494.

**SUPPLEMENTARY INFORMATION:** We are adopting an updated Filer Manual, Volume I: ''General Information,'' Version 40 (March 2022) and Volume II: ''EDGAR Filing,'' Version 61 (March 2022) and amendments to 17 CFR 232.301 (''Rule 301''). The updated Filer Manual volumes are incorporated by reference into the Code of Federal Regulations.

**I. Background**

The Filer Manual contains technical specifications needed for filers to make submissions on EDGAR. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[1] Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filings when preparing documents for electronic submission.

[1] *See* Rule 301 of Regulation S–T.

## II. Amendment and Functional Enhancement to Volume I of the Filer Manual

Volume I of the Filer Manual provides general information regarding electronic submissions to the Commission on EDGAR. Volume I will be amended to add a link to the Glossary of Commonly Used Terms, Acronyms, and Abbreviations. This, together with the guidance already included in Volume I encouraging users to visit the EDGAR-Information For Filers homepage on *SEC.gov,* will provide additional helpful introductory information to current and prospective EDGAR filers. As noted below, Volume II will also be revised to remove the Glossary from that volume and to add a link to the Glossary on *SEC.gov.*

## III. EDGAR System Changes and Associated Modifications to Volume II of the Filer Manual

EDGAR is being updated in Release 22.1, and was previously updated in Releases 21.3.1 and 22.0.2, and corresponding amendments to Volume II of the Filer Manual will be made to reflect these changes, as described below.[2]

On February 23, 2021, the Commission issued a Statement on Insurance Product Fund Substitution Applications (''Commission Statement'').[3] As a result, the substitution by an insurance company of registered open-end investment companies used as Investment Options (as defined in the Commission Statement) for variable life insurance policies or variable annuity contracts will not provide a basis for an enforcement action if the insurance company does not obtain an order from the Commission under section 26(c) of the Investment Company Act (and section 17(b) of the Investment Company Act for certain substitutions) so long as the terms and conditions of the proposed substitution are substantially similar to those approved by a prior order for a substitution pursuant to section 26(c) (and section 17(b)) obtained by the insurance company since January 1, 2004. Pursuant to the Commission's Statement, EDGAR Release 22.1 will introduce a new submission form type to EDGARLink Online: 497VPSUB.

On October 13, 2021, the Commission adopted rules and form amendments to modernize filing fee disclosure and payment methods.[4] As part of that rulemaking, the Commission added options for electronic fee payments, and eliminated options for fee payment via paper checks and money orders in an effort to improve filing fee payment processing. EDGAR will be updated to allow filers to pay filing fees via credit card, debit card, and Automated Clearing House (ACH) debit payment methods. EDGAR will use Treasury's *Pay.gov* service for filers to initiate payments in the system, and rely on *Pay.gov* to perform the payment processing. The lockbox for the receipt of checks will no longer be available as of May 31, 2022. Checks received on or after this date will be returned to the sender.

On March 11, 2020, the Commission adopted rule and form amendments regarding variable annuity and variable life insurance contracts to modernize disclosures by using a layered disclosure approach designed to provide investors with key information relating to the contract's terms, benefits, and risks in a concise and more reader-friendly presentation.[5] Among other things, to implement the new disclosure framework, the Commission is requiring investment companies that offer variable contracts to tag certain disclosures in Forms N–3, N–4, and N–6 in Inline eXtensible Business Reporting Language (''Inline XBRL'') beginning January 1, 2023. In conjunction with the amendments, EDGAR will be updated to support the 2022 Variable Insurance Product (VIP) Taxonomy.[6]

The Commission has issued orders granting substituted compliance with respect to the requirements of Exchange Act Rule 18a–7 which requires that security-based swap dealers file annual audited financial statements and reports.[7] These orders require a security-based swap dealer applying substituted compliance with respect to these requirements of Rule 18a–7 to, among other things, simultaneously send to the Commission a copy of the firm's annual financial statements filed pursuant to the firm's home-country requirements and the report of the independent public accountant covering the annual financial statements. In accordance with these orders, EDGAR is being updated to allow filers that are not broker-dealers to select the new ''Filing pursuant to a Commission substituted compliance order'' check box. Such firms would be permitted to make the entirety of their filing confidential.

EDGAR Release 22.1 will also make general functional enhancements to EDGAR and require changes to Volume II of the Filer Manual as follows:

- New exhibit ''EX–99.36 Form 7–R'' (Firm Application) is being added to the drop down exhibit list for submission form types SBSE–A and SBSE–A/A. This gives SBSE–A filers, who file Form 7–R with the Commodity Futures Trading Commission (or its designee), and who are required to file that form with the Commission, a designated location to place it when filing on EDGAR. Filers can attach ''EX–99.36 Form 7–R'' in official HTML, ASCII, or PDF format.
- Appendix B ''Frequently Asked Questions'' (FAQs) has been modified, and Appendix F ''Glossary of Commonly Used Terms, Acronyms and Abbreviations'' has been removed. Appendix B is now titled, ''EDGAR—Information for Filers,'' and links to the ''*EDGAR Information for Filers*'' web page on *SEC.gov,* containing a revised Glossary and updated FAQs, including a ''*How Do I?*'' guide with step-by-step instructions concerning filing on EDGAR (available at: *https://www.sec.gov/edgar/filer-information/how-do-i*).
- Appendix D ''Paper Forms'' has been revised to remove screen shots of the paper forms. A notice that current and prospective EDGAR filers can download electronic copies of EDGAR-related forms from *https://www.sec.gov/forms* remains.

The Filer Manual Volume II also has been revised to address software changes previously made in EDGAR:

- On February 22, 2022, EDGAR Release 22.0.2 introduced the following change:
- Submission form types MA–A and MA–A/A will be validated to prevent filers from submitting a form with the incorrect fiscal year. Filers will not be able to submit their annual amendment in EDGAR for a fiscal year that has not yet been completed in the ''Fiscal Year

[2] Release 22.1 will be deployed on or about March 21, 2022.

[3] *See* Commission Statement on Insurance Product Fund Substitution Applications, Release IC–34199 (Feb. 23, 2021) [86 FR 11813 (Feb. 26, 2021)].

[4] *See* Filing Fee Disclosure and Payment Methods Modernization, Release 33–10997 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

[5] *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Release 33–10765 (March 11, 2020) [85 FR 25964 (May 1, 2020)].

[6] *See* Draft Taxonomies *available at https://www.sec.gov/structureddata/dera_taxonomies.*

[7] *See, e.g.,* Order Granting Conditional Substituted Compliance in Connection with Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers and Major Security-Based Swap Participants Subject to Regulation in the United Kingdom, Release 34–92529 (July 30, 2021), 86 FR 43318 (Aug. 6, 2021); Order Granting Conditional Substituted Compliance in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation, Release 24–93284 (Oct. 8, 2021), 86 FR 57455 (Oct. 15, 2021).

End Information'' field on Item 1, Part I of the form.

• On September 20, 2021, EDGAR Release 21.3 introduced the following change:

• In Rule 34–87005, Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers, the Commission adopted a revised version of Form X–17A–5 Part III. In accordance with these rules, EDGAR was updated to allow Form X–17A–5 Part III to be filed by two new classes of registrants (security-based swap dealers and major security-based swap participants). These changes were deployed in Release 21.3.1 on October 6, 2021.

## IV. Amendments to Rule 301 of Regulation S–T

Along with the adoption of the updated Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of the current revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

The updated EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* Typically, the EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room.

## V. Administrative Law Matters

Because the Filer Manual, and rule amendments, relate solely to agency procedures or practice and do not substantially alter the rights and obligations of non-agency parties, publication for notice and comment is not required under the Administrative Procedure Act (''APA'').[8] It follows that the amendments do not require analysis under requirements of the Regulatory Flexibility Act[9] or a report to Congress under the Small Business Regulatory Enforcement Fairness Act of 1996.[10]

The effective date for the updated Filer Manual and related rule amendments is April 19, 2022. In accordance with the APA,[11] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the related system upgrades.

## VI. Statutory Basis

We are adopting the amendments to Regulation S–T under the authority in Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[12] Sections 3, 12, 13, 14, 15, 15B, 23, and 35A of the Securities Exchange Act of 1934,[13] Section 319 of the Trust Indenture Act of 1939,[14] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[15]

## List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

## Text of the Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

## PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The general authority citation for part 232 continues to read as follows:

**Authority:** 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

### § 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets forth the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the EDGAR Filer Manual, Volume I: ''General Information,'' Version 40 (March 2022). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 61 (March 2022). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You must comply with these requirements in order for documents to be timely received and accepted. The EDGAR Filer Manual is available at *https://www.sec.gov/edgar/filer-information/current-edgar-filer-manual.* Typically, the EDGAR Filer Manual is also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's Public Reference Room. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

By the Commission.

Dated: March 21, 2022.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2022–08232 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

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

[9] 5 U.S.C. 601 through 612.

[10] 5 U.S.C. 804(3)(C).

[11] 5 U.S.C. 553(d)(3).

[12] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[13] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78*o,* 78o–4, 78w, and 78*ll.*

[14] 15 U.S.C. 77sss.

[15] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 586

**[Docket No. NHTSA–2021–0006]**

**RIN 2127–AL77**

## Vehicle Identification Number (VIN) Requirements; Manufacturer Identification; Certification; Replica Motor Vehicles; Importation of Vehicles and Equipment Subject to Federal Safety, Bumper, and Theft Prevention Standards

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Correcting amendment.

**SUMMARY:** On March 9, 2022, the NHTSA issued regulations implementing the Replica Motor Vehicle program. That document included an incorrectly designated paragraph in the final regulatory text for the section titled ''Temporary labels.'' This document corrects the final regulatory text.

**DATES:** Effective April 19, 2022.

**FOR FURTHER INFORMATION CONTACT:** For further information you may contact Ms. Callie Roach, telephone 202–597–1312, *Callie.Roach@dot.gov;* Mr. Daniel Koblenz, telephone 202–366–5329, *Daniel.Koblenz@dot.gov;* Office of the Chief Counsel. The mailing address of these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:** This document makes a correction to final regulatory text that was published in the **Federal Register** on March 9, 2022 (87 FR 13209).

**List of Subjects in 49 CFR Part 586**

Labeling, Motor vehicle safety, Replica motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA corrects 49 CFR part 586 as follows:

## PART 586—REPLICA MOTOR VEHICLES

■ 1. The authority citation for part 586 continues to read as follows:

**Authority:** 49 U.S.C. 30112 and 30114; delegation of authority at 49 CFR 1.95.

**§ 586.11 [Amended]**

■ 2. In § 586.11, redesignate paragraph (b)(3) as paragraph (c).

Issued under authority delegated in 49 CFR part 1.95 and 49 CFR 501.8.

**Raymond R. Posten,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 217

**[Docket No. 220413–0096]**

**RIN 0648–BK97**

## Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Russian River Estuary Management Activities

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

**ACTION:** Final rule; notification of issuance of Letter of Authorization.

**SUMMARY:** NMFS, upon request from the Sonoma County Water Agency (SCWA), hereby issues regulations to govern the unintentional taking of marine mammals incidental to Russian River estuary management activities in Sonoma County, California, over the course of five years (2022–2027). These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from April 21, 2022, through April 20, 2027.

**ADDRESSES:** A copy of SCWA's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/action/sonoma-county-water-agencys-estuary-management-activities-sonoma-county-california-2022.* In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Purpose and Need for Regulatory Action

We received an application from SCWA requesting 5-year regulations and authorization to take multiple species of marine mammals. This rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take by Level B harassment of marine mammals incidental to SCWA's estuary management activities at the mouth of the Russian River in Sonoma County, CA. Please see ''Background'' below for definitions of harassment.

*Legal Authority for the Proposed Action*

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the Mitigation section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, this rule contains mitigation, monitoring, and reporting requirements.

*Summary of Major Provisions Within the Regulations*

Following is a summary of the major provisions of this rule regarding SCWA's estuary management activities. These measures include:

- Measures to minimize the number and intensity of incidental takes during sensitive times of year and to minimize the duration of disturbances.
- Measures designed to eliminate startling reactions.
- Eliminating or altering management activities on the beach when pups are present, and by setting limits on the frequency and duration of events during pupping season.

### Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions

of all applicable MMPA statutory terms cited above are included in the relevant sections below.

**Summary of Request**

On September 2, 2021, we received an adequate and complete request from SCWA for authorization to take marine mammals incidental to estuary management activities. SCWA provided a final version of the application incorporating minor corrections on September 22, 2021. On September 29, 2021 (86 FR 53950), we published a notice of receipt of SCWA's application in the **Federal Register**, requesting comments and information related to the request for 30 days. We received one supportive comment from a private citizen. We published a notice of proposed rulemaking in the **Federal Register** on January 21, 2022 (87 FR 3262) and requested comments and information from the public. Please see Comments and Responses, below.

SCWA manages the naturally-formed barrier beach at the mouth of the Russian River in order to minimize potential for flooding adjacent to the estuary and to enhance habitat for juvenile salmonids, as well as to conduct biological and physical monitoring of the barrier beach and estuary. Flood control-related breaching of the barrier beach at the mouth of the river may include artificial breaches, as well as construction and maintenance of a lagoon outlet channel. The latter activity, an alternative management technique conducted to mitigate impacts of flood control on rearing habitat for Endangered Species Act (ESA)-listed salmonids, occurs only from May 15 through October 15 (hereafter, the ''lagoon management period''). Artificial breaching and monitoring activities may occur at any time during the period of validity of the regulations. The regulations are valid for 5 years, from April 21, 2022, through April 20, 2027.

Breaching of the naturally-formed barrier beach at the mouth of the Russian River requires the use of heavy equipment (*e.g.,* bulldozer, excavator) and increased human presence, and monitoring in the estuary requires the use of small boats. As a result, pinnipeds hauled out on the beach or at peripheral haul-outs in the estuary may exhibit behavioral responses that indicate incidental take by Level B harassment under the MMPA. Species known from the haul-out at the mouth of the Russian River or from peripheral haul-outs, and therefore anticipated to be taken incidental to the specified activity, include the harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), and northern elephant seal (*Mirounga angustirostris*).

These regulations are the second consecutive five-year incidental take regulations issued in response to a petition from SCWA, following the previous ITR (2017–2022) (82 FR 13765; March 15, 2017). Prior to issuance of that initial ITR, NMFS issued seven consecutive incidental harassment authorizations (IHA) to SCWA for incidental take associated with the same ongoing activities, between 2010–2016.

**Description of the Specified Activity**

*Overview*

The action involves management of the estuary to prevent flooding while preventing adverse modification to critical habitat for ESA-listed salmonids. During the lagoon management period, this involves construction and maintenance of a lagoon outlet channel that would facilitate formation of a perched lagoon. A perched lagoon, which is an estuary closed to tidal influence in which water surface elevation is above mean high tide, would reduce flooding while maintaining beneficial conditions for juvenile salmonids. Additional breaches of the barrier beach may be conducted for the sole purpose of reducing flood risk. Additional detail was provided in the notice of proposed rulemaking (87 FR 3262; January 21, 2022), as well as in Table 2 of this notice. There have been no changes to the specified activity, and full discussion is not repeated here.

*Dates and Duration*

The specified activity may occur at any time during the five-year period of validity for these regulations (2022–2027), although construction and maintenance of a lagoon outlet channel will occur only during the lagoon management period. In addition, there are certain restrictions placed on SCWA during the harbor seal pupping season. These, as well as periodicity and frequency of the specified activities, are described in further detail in the notice of proposed rulemaking.

*Specified Geographical Region*

The estuary is located about 97 kilometers (km) (60 miles (mi)) northwest of San Francisco in Sonoma County, near Jenner, California (see Figure 1 of SCWA's application). The Russian River watershed encompasses 3,847 $km^2$ (1,485 $mi^2$) in Sonoma, Mendocino, and Lake Counties. The mouth of the Russian River is located at Goat Rock State Beach (see Figure 2 of SCWA's application); the estuary extends from the mouth upstream approximately 10 to 11 km (6–7 mi) between Austin Creek and the community of Duncans Mills (Heckel and McIver, 1994).

**Comments and Responses**

We published a notice of proposed rulemaking in the **Federal Register** on January 21, 2022 (87 FR 3262) and requested comments and information from the public. During the 30-day comment period, we received comments from 4 private citizens. Of these, one comment expressed general opposition and two expressed general support. The remaining comments and our responses are provided here, and the comments are available online at: *www.regulations.gov.*

*Comment:* The commenter expresses general opposition on the basis that the intended beneficial effects of the lagoon management activities on salmonid populations are uncertain, whereas the deleterious impacts of the activities on the affected marine mammals are guaranteed. The commenter goes on to describe the importance of marine mammals to the ecosystem as a whole and asserts that the specified activity would permanently alter the ecosystem, recommending that alternative options to the specified activity be considered. The commenter also poses several questions related to the specified activity, *e.g.,* whether there are preferable alternatives to benefit salmonids. These questions are not relevant to NMFS' action under the MMPA and are outside the scope of NMFS' authority here.

*Response:* As described in the notice of proposed rulemaking, SCWA is required to conduct lagoon management activities as a result of a 2008 Endangered Species Act Biological Opinion for Water Supply, Flood Control Operations, and Channel Maintenance in the Russian River watershed. In addition, SCWA conducts flood control activities outside the lagoon management period. Regardless, the MMPA mandates that incidental take of small numbers of marine mammals be authorized when, among other things, a finding is made that the effects of the taking represent no greater than a negligible impact on the affected marine mammal species or stocks. NMFS has made the necessary findings and, accordingly, issued the regulations and associated take authorization requested by SCWA. In addition, NMFS has appropriately considered the effects of the specified activity on marine mammal habitat. It is outside the scope of NMFS' responsibility under the MMPA to consider unspecified

alternatives to SCWA's specified activity.

*Comment:* The commenter questions the adequacy of SCWA's monitoring plan, with specific reference to SCWA's ability to detect changing occurrence patterns or issues related to impacts to pups, and to SCWA's ability to monitor for species for which take is not authorized.

*Response:* SCWA has successfully implemented a robust monitoring program at the barrier beach, within the estuary, and at peripheral areas for over 10 years, as described in annual monitoring reports available online. The current plan was determined sufficient by NMFS and described in detail in the notice of proposed rulemaking, and was provided for public review online. The commenter offers neither analysis to support concerns regarding the plan's efficacy nor specific recommendations.

*Comment:* The commenter states that ''. . . *sonomawater.org* considers [fur seals] to be abundant near the Russian River Estuary,'' asking what the affects to this species would be. The commenter does not provide a more specific reference for this alleged statement.

*Response:* Available scientific evidence does not support the idea that fur seals are ''abundant'' near the estuary, and no species of fur seal is expected to be impacted by the specified activity.

**Description of Marine Mammals in the Area of the Specified Activity**

Harbor seals are the most common species inhabiting the haul-out at the mouth of the Russian River (Jenner haul-out) and fine-scale local abundance data for harbor seals have been recorded extensively since 1972. California sea lions and northern elephant seals have also been observed infrequently in the project area. In addition to the primary Jenner haul-out, there are eight peripheral haul-outs nearby (see Figure 1 of SCWA's application). These include North Jenner and Odin Cove to the north; Pocked Rock, Kabemali, and Rock Point to the south; and Penny Logs, Patty's Rock, and Chalanchawi upstream within the estuary. Additional detail regarding the affected species was provided in the notice of proposed rulemaking (87 FR 3262; January 21, 2022). No new information is available, and full discussion is not repeated here.

**Potential Effects of the Specified Activity on Marine Mammals and Their Habitat**

This section in the notice of proposed rulemaking (87 FR 3262; January 21, 2022) included a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat, which is not repeated here. Please refer to that document for additional information. The Estimated Take section later in this document will include a quantitative analysis of the number of incidents of take expected to occur incidental to this activity. The Negligible Impact Analysis and Determination section will include an analysis of how this specific activity will impact marine mammals and will consider the content of this section, the Estimated Take section, and the Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and from that on the affected marine mammal populations or stocks.

**Estimated Take**

This section provides an estimate of the number of incidental takes authorized under the rule, which will inform both NMFS' consideration of whether the number of takes is ''small'' and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

SCWA has requested, and NMFS has authorized, take of harbor seals, California sea lions, and northern elephant seals, by Level B harassment only, incidental to estuary management activities. These activities, involving increased human presence and the use of heavy equipment and support vehicles, are expected to harass pinnipeds present at the haul-out through disturbance only. In addition, monitoring activities prescribed in the BiOp may harass additional animals at the Jenner haul-out and at the three haul-outs located in the estuary (Penny Logs, Patty's Rock, and Chalanchawi). Estimates of the number of harbor seals that may be harassed by the management activities are based upon the number of potential take events associated with lagoon outlet channel and artificial breaching activities (Table 2) and the average number of harbor seals that are present at the Jenner haul-out during bar-closed conditions (Table 1). Table 2 details the total number of estimated takes for harbor seals.

Events associated with lagoon outlet channel management would occur only during the lagoon management period and are split into two categories: (1) Initial channel implementation, which would likely occur between May and September; and (2) maintenance and monitoring of the outlet channel, which would continue until October 15. In addition, it is possible that the initial outlet channel could close through natural processes, requiring additional channel implementation events. Based on past experience, SCWA estimates that a maximum of three outlet channel implementation events could be required, with each event lasting up to two days. Outlet channel implementation events would only occur when the bar is closed. Therefore, it is appropriate to use data from bar-closed monitoring events in estimating take (Table 1). Construction of the outlet channel is designed to produce a perched outflow, resulting in conditions that more closely resemble bar-closed than bar-open with regard to pinniped haul-out usage. As such, bar-closed data is appropriate for estimating take during all lagoon management period maintenance and monitoring activity. As dates of outlet channel implementation cannot be known in advance, the highest daily average of seals per month during the lagoon management period—the May average for 2010–20—is used in estimating take. For maintenance and monitoring activities associated with the lagoon outlet channel, which would occur on a weekly basis following implementation of the outlet channel, the average number of harbor seals for each month during bar-closed conditions was used.

Artificial breaching activities would also occur during bar-closed conditions, and the average number of harbor seals for each month during bar-closed conditions was used (Table 1). The number of estimated artificial breaching events is informed by experience. For those months with more frequent historical bar closure events, we assume that two such events could occur in any given year. For other months, we assume that only one such event would occur in a given year. The average total number of events from 2000–2020 is 5 per year, meaning that the estimated take numbers for artificial breaching are conservative. Please see Table 1 in SCWA's application for more information.

For monthly topographic surveys on the barrier beach, potential incidental take of harbor seals is typically

calculated as one hundred percent of the seals expected to be encountered. The exception is during the month of April, when surveyors would avoid seals to reduce harassment of pups and/or mothers with neonates. For the monthly topographic survey during April, surveyors would not approach or retreat slowly away from the haul-out when neonates are present, typically resulting in no disturbance. For that survey, the assumption is therefore that only ten percent of seals present would be harassed. The number of seals expected to be encountered is based on the overall average monthly number of seals hauled out as recorded during baseline surveys conducted by SCWA in 2010–20 (Table 1).

TABLE 1—AVERAGE NUMBER OF HARBOR SEALS OBSERVED BY MONTH AND RIVER MOUTH CONDITION, 2010–2020

| | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sep | Oct | Nov | Dec |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Closed | 57 | 88 | 133 | 99 | 118 | 113 | 105 | 44 | 24 | 25 | 26 | 54 |
| Open | 121 | 148 | 138 | 165 | 151 | 197 | 260 | 107 | 56 | 59 | 88 | 90 |
| Overall | 106 | 143 | 138 | 159 | 149 | 178 | 227 | 100 | 49 | 38 | 62 | 79 |

For biological and physical habitat monitoring activities in the estuary, it was assumed that pinnipeds may be encountered once per event and flush from a river haul-out. The potential for harassment associated with these events is limited to the peripheral haul-outs located in the estuary. In past experience, SCWA typically sees no more than a single harbor seal at these haul-outs, which consist of scattered logs and rocks that often submerge at high tide.

As described previously, California sea lions and northern elephant seals are occasional visitors to the estuary. Based on limited information regarding occurrence of these species at the mouth of the Russian River estuary, we assume there is the potential to encounter one animal of each species per month throughout the year. Lagoon outlet channel activities could potentially occur over six months of the year, artificial breaching activities over eight months, topographic surveys year-round, and biological and physical monitoring in the estuary over eight months. Therefore, we assume that up to 34 incidents of take could occur per year for both the California sea lion and northern elephant seal. Based on past occurrence records, the take authorization for these two species is likely a precautionary overestimate.

TABLE 2—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES

| Number of animals expected to occur[a] | Number of events[b c d] | Potential total number of individual animals that may be taken |
|---|---|---|
| **Lagoon Outlet Channel Management (May 15 to October 15)** | | |
| Implementation: 118[e] | Implementation: 3 | Implementation: 708. |
| Maintenance and Monitoring:<br>May: 118<br>June: 113<br>July: 105 | Maintenance:<br>May: 1<br>June–Sept: 4/month<br>Oct: 1 | Maintenance: 1,287. |
| Aug: 44<br>Sept: 24<br>Oct: 25 | Monitoring:<br>June–Sept: 2/month<br>Oct: 1 | Monitoring: 597. |
| | | Total: 2,592. |
| **Artificial Breaching** | | |
| Oct: 25 | Oct: 2 | Oct: 50. |
| Nov: 26 | Nov: 2 | Nov: 52. |
| Dec: 54 | Dec: 1 | Dec: 54. |
| Jan: 57 | Jan: 1 | Jan: 57. |
| Feb: 88 | Feb: 1 | Feb: 88. |
| Mar: 133 | Mar: 1 | Mar: 133. |
| Apr: 99 | Apr: 1 | Apr: 99. |
| May: 118 | May: 1 | May: 118. |
| | 10 events maximum | Total: 651. |
| **Topographic Beach Surveys** | | |
| Jan: 106 | | Jan: 106. |
| Feb: 143 | | Feb: 143. |
| Mar: 138 | | Mar: 138. |
| Apr: 159 | | Apr: 16[g]. |
| May: 149 | | May: 298. |

TABLE 2—ESTIMATED NUMBER OF HARBOR SEAL TAKES RESULTING FROM RUSSIAN RIVER ESTUARY MANAGEMENT ACTIVITIES—Continued

| Number of animals expected to occur[a] | Number of events[b c d] | Potential total number of individual animals that may be taken |
|---|---|---|
| | 1 survey/month | |
| Jun: 178 | | Jun: 356. |
| Jul: 227 | | Jul: 454. |
| Aug: 100 | | Aug: 200. |
| Sep: 49 | | Sep: 98. |
| Oct: 38 | | Oct: 76. |
| Nov: 62 | | Nov: 124. |
| Dec: 79 | | Dec: 158. |
| | | Total: 2,167. |
| **Biological and Physical Habitat Monitoring in the Estuary** | | |
| 1[f] | 107 | 107. |
| Total | | 5,517. |

[a] For lagoon outlet channel management and artificial breaching events, average daily number of animals corresponds with data from bar-closed conditions. For topographic beach surveys, average daily number of animals corresponds with overall monthly average data, as river mouth condition cannot be predicted. See Table 1.

[b] For implementation of the lagoon outlet channel, an event is defined as a single, two-day episode. For the remaining activities, an event is defined as a single day on which an activity occurs. Some events may include multiple activities.

[c] Number of events for artificial breaching assumed based on historical data. See Table 1 of SCWA's application.

[d] See Table 3 of SCWA's application for total number of estuary monitoring events; note that multiple activities may occur during a single event.

[e] Although implementation could occur at any time during the lagoon management period, the highest daily average per month from the lagoon management period was used.

[f] Based on past experience, SCWA expects that no more than one seal may be present, and thus have the potential to be disturbed, at river haul-outs.

[g] Ten percent of animals present during April surveys are assumed to be taken as a result of enhanced mitigation during period when neonates are most likely to be present.

The take numbers described in the preceding text are annual estimates. Therefore, over the course of the 5-year period of validity of the regulations, we have authorized through Letter of Authorization a total of 27,585 incidents of take for harbor seals and 170 such incidents each for the California sea lion and northern elephant seal.

## Mitigation

Under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' However, NMFS' implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses. This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measure for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

SCWA will continue the following mitigation measures, as implemented during the previous ITAs, designed to minimize impact to affected species and stocks:

- SCWA crews would cautiously approach (*e.g.,* slowly and with minimal sound) the haul-out ahead of heavy equipment to minimize the potential for sudden flushes, which may result in a stampede.
- SCWA staff would avoid walking or driving equipment through the seal haul-out.
- Crews on foot would make an effort to be seen by seals from a distance, if possible, rather than appearing suddenly, again preventing sudden flushes.
- Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach to reduce disturbance of seals from loud noises following a relatively quiet period.

In addition, SCWA will continue mitigation measures specific to pupping season (March 15–June 30), as implemented in the previous ITAs:

- SCWA will maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach.
- A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

• If a pup less than one week old is on the beach where heavy machinery would be used or on the path used to access the work location, the management action will be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA would consult with NMFS to determine the appropriate course of action. SCWA will coordinate with the locally established seal monitoring program (Stewards' Seal Watch) to determine if pups less than one week old are on the beach prior to a breaching event.

• Physical and biological monitoring will not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

For all activities, personnel on the beach would include equipment operators and safety team members. Occasionally, there would be additional people (SCWA staff or regulatory agency staff) on the beach to observe the activities. SCWA staff would be followed by the equipment, which would then be followed by an SCWA vehicle (typically a small pickup truck, the vehicle would be parked at the previously posted signs and barriers on the south side of the excavation location). Equipment would be driven slowly on the beach and care would be taken to minimize the number of shut-downs and start-ups when the equipment is on the beach. All work would be completed as efficiently as possible, with the smallest amount of heavy equipment possible, to minimize disturbance of seals at the haul-out. Boats operating near river haul-outs during monitoring would be kept within posted speed limits and driven as far from the haul-outs as safely possible to minimize flushing seals.

We have carefully evaluated SCWA's planned mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

**Monitoring and Reporting**

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS's MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of significant interactions with marine mammal species in action area (*e.g.,* animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

SCWA submitted a marine mammal monitoring plan as part of the ITA application. It can be found online at *www.fisheries.noaa.gov/action/sonoma-county-water-agencys-estuary-management-activities-sonoma-county-california-2022.* The plan has been successfully implemented (in slightly different form from the current plan) by SCWA under previous ITAs. The purpose of this monitoring plan, which is carried out collaboratively with the Stewards of the Coasts and Redwoods (Stewards) organization, is to detect the response of pinnipeds to estuary management activities at the Russian River estuary. SCWA will continue to collect data on annual abundance of harbor seals at the Jenner haul-out to monitor trends in population size and annual pup production. Observations of seal behavior will be recorded and reported to monitor any impacts resulting from estuary management and monitoring activities.

Proposed Monitoring Measures

*Baseline Monitoring*—Baseline data on conditions associated with seal presence at the Jenner haul-out would be collected each year from March 15 through October 15. Generally, monitoring associated with implementation and maintenance of the lagoon outlet channel would occur between May 15 and October 15. Monitoring of artificial breaching activities would occur with each event, generally outside the lagoon management period. Should the mouth remain open during the lagoon management period, monitoring of the Jenner haul-out would continue as described below.

Baseline monitoring will occur at the Jenner overlook from March 15 to October 15. This schedule would capture the pupping and molting seasons, and extend to the end of the beach management period, when management activities are more likely to occur. Surveys would be conducted twice monthly, except for the pupping season (April–May) when surveys would be conducted weekly in order to record the presence of neonate harbor seals. The haul-out will be monitored for 4 hours, scheduled for any consecutive block between the hours of 0800 and 1600. An effort will be made to avoid periods of high tide when scheduling baseline surveys.

All seals hauled out on the beach will be counted every 30 minutes from the overlook on the bluff along Highway 1 adjacent to the haul-out using a high powered spotting scope. Monitoring may conclude for the day if weather conditions affect visibility (*e.g.,* heavy fog in the afternoon). Depending on how the sandbar is formed, seals may haul out in multiple groups at the mouth. At each thirty minute count, the observer indicates where groups of seals are hauled out on the sandbar and provides a total count for each group. When possible, adults and pups will be counted separately. The observer will

provide a sketch of where the seals are hauled out on the back of the data sheet.

In addition to the count data, disturbances of the haul-out will be recorded. The methods for recording disturbances would follow a three-point scale adopted by NMFS that represents an increasing seal response to the disturbance (Table 3). For each disturbance event the disturbance source and seal response will be recorded and tallied. Disturbance events corresponding with Levels 2–3 are considered to be harassment. Weather conditions will also be recorded at the beginning of each survey.

TABLE 3—SEAL RESPONSE TO DISTURBANCE

| Level | Type of response | Definition |
|---|---|---|
| 1 | Alert | Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. |
| 2 | Movement | Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees. |
| 3 | Flight | All retreats (flushes) to the water. |

*Estuary Management Event Monitoring, Lagoon Outlet Channel*—Should the mouth close during the lagoon management period, SCWA would construct a lagoon outlet channel as required by the BiOp. Activities associated with the initial construction of the outlet channel, as well as the maintenance of the channel that may be required, would be monitored for disturbances to the seals at the Jenner haul-out.

A 1-day pre-outlet channel survey would be made within 1 to 3 days prior to constructing the outlet channel. The haul-out would be monitored on the day the outlet channel is constructed and daily for up to 2 days during channel excavation activities. Monitoring would also occur on each day that the outlet channel is maintained using heavy equipment for the duration of the lagoon management period.

Monitoring of outlet channel maintenance would correspond with the monitoring described under the ''Baseline Monitoring'' section above. Methods would follow the count and disturbance monitoring protocols described in the ''Baseline Monitoring'' section.

*Estuary Management Event Monitoring, Artificial Breaching Events*—In accordance with the BiOp, SCWA may artificially breach the barrier beach outside of the summer lagoon management period, and may conduct a maximum of two such breachings during the lagoon management period, when estuary water surface elevations rise above seven feet. In that case, NMFS may be consulted regarding potential scheduling of an artificial breaching event to open the barrier beach and reduce flooding risk.

Pinniped response to artificial breaching will be monitored at each such event during the period of validity of these proposed regulations. Methods would follow the census and disturbance monitoring protocols described in the ''Baseline Monitoring'' section, which were also used for the 1996 to 2000 monitoring events and since 2009. The exception, as for lagoon management events, is that duration of monitoring is dependent upon duration of the event. On the day of the management event, pinniped monitoring begins at least one hour prior to the crew and equipment accessing the beach work area and continues through the duration of the event, until at least one hour after the crew and equipment leave the beach.

For all counts, the following information would be recorded in 30-minute intervals: (1) Pinniped counts, by species; (2) behavior; (3) time, source and duration of any disturbance; (4) estimated distances between source of disturbance and pinnipeds; (5) weather conditions (*e.g.,* temperature, wind); and (5) tide levels and estuary water surface elevation.

*Monitoring During Pupping Season*—The pupping season is defined as March 15 to June 30. Baseline, lagoon outlet channel, and artificial breaching monitoring during the pupping season will include records of neonate (pups less than one week old) observations. Characteristics of a neonate pup include: Body weight less than 15 kg; thin for their body length; an umbilicus or natal pelage present; wrinkled skin; and awkward or jerky movements on land. SCWA will coordinate with the Seal Watch monitoring program to determine if pups less than one week old are on the beach prior to a water level management event.

If, during monitoring, observers sight any pup that might be abandoned, SCWA would contact the NMFS stranding response network immediately and also report the incident to NMFS' West Coast Regional Office and Office of Protected Resources within 48 hours. Observers will not approach or move the pup. Potential indications that a pup may be abandoned are no observed contact with adult seals, no movement of the pup, and the pup's attempts to nurse are rebuffed.

*Staffing*—Monitoring would be conducted by qualified individuals. Generally, these individuals would include professional biologists employed by SCWA or volunteers trained by the Stewards and SCWA. All volunteer monitors would be required to attend a classroom-style training and on site mentoring by an experienced observer. Training would cover the MMPA and conditions of the LOA, SCWA's Pinniped Monitoring Program, pinniped species identification, age class identification (including a specific discussion regarding neonates), recording of count and disturbance observations (including completion of datasheets), and use of equipment. Pinniped identification would include harbor seal, California sea lion, and northern elephant seal, as well as other pinniped species with potential to occur in the area (*i.e.,* northern fur seals, Guadalupe fur seals, Steller sea lions).

Generally, volunteers would collect baseline data on Jenner haul-out use during the bi-weekly monitoring events. A schedule for this monitoring would be established with Stewards once volunteers are available for the monitoring effort. SCWA staff would monitor lagoon outlet channel excavation, maintenance activities, artificial breaching events, and biological or physical monitoring activities at the Jenner haul-out.

*Reporting*

SCWA is required to submit an annual report on all activities and

marine mammal monitoring results to NMFS within 90 days following the end of the monitoring period. These reports would contain the following information:

- The number of pinnipeds taken, by species and age class (if possible);
- Behavior prior to and during water level management events;
- Start and end time of activity;
- Estimated distances between source and pinnipeds when disturbance occurs;
- Weather conditions (*e.g.,* temperature, wind, etc.);
- Haul-out reoccupation time of any pinnipeds based on post-activity monitoring;
- Tide levels and estuary water surface elevation; and
- Pinniped census from bi-monthly and nearby haul-out monitoring.

The annual report includes descriptions of monitoring methodology, tabulation of estuary management events, summary of monitoring results, and discussion of problems noted and proposed remedial measures.

*Summary of Previous Monitoring*

SCWA complied with the mitigation and monitoring required under previous authorizations. Previous monitoring reports are available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities.*

While the observed take in all years was significantly lower than the level authorized, it is possible that incidental take in future years could approach the level authorized. Actual take is dependent largely upon the number of water level management events that occur, which is unpredictable. Take of species other than harbor seals depends upon whether those species, which do not consistently utilize the Jenner haul-out, are present. The authorized take, though much higher than the actual take, is justified based on conservative estimated scenarios for animal presence and necessity of water level management. No significant departure from the method of estimation is used for these proposed regulations (see Estimated Take) for the same activities in 2022–27.

Since 2009 SCWA has been conducting baseline monitoring of the Jenner haul-out and several nearby coastal and estuary sites (as described in the 2016 Monitoring Plan, available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities*). The purpose of baseline monitoring was to describe the conditions under which harbor seals haul out and how seals respond to implementation of the estuary management program. Monitoring data illustrate a strong seasonal pattern in most years where seals are most abundant during the spring and summer months (see Figure 2 of SCWA's 2021 Monitoring Plan). Seasonal variation in the abundance of harbor seals is commonly observed throughout their range. Seal abundance at the Jenner haul-out was shown to increase throughout the day, but only during the spring and winter months (see Figure 3 of SCWA's 2021 Monitoring Plan). Seal abundance was weakly affected by tide height with higher tides shown to reduce seal abundance (see Figure 4 of SCWA's 2021 Monitoring Plan), based on direct observations, this is likely due to waves washing over the haul-out during these high tides. Seal abundance was also greater when the river mouth was open to the ocean (see Figure 5 of SCWA's 2021 Monitoring Plan).

In addition to baseline monitoring, monitoring during water level management activities (breaching and lagoon outlet implementation) has been ongoing since 2009. Recent observations of seals during breaching activities indicate that seals leave the Jenner haul-out as safety crews approach their haul-out ahead of equipment. Depending on the location of their haul-out seals have also remained on the beach during breaching activities. The number of harbor seals hauled out at the mouth of the estuary declined when the barrier beach was closed and increased soon after it was breached. Seals that left the haul-out just prior to breaching have returned to the beach within hours of completion of activities and typically return prior to the next morning (see prior SCWA monitoring reports, available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-sonoma-county-water-agencys-estuary-management-activities*).

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality).

Although SCWA's estuary management activities may disturb pinnipeds hauled out at the mouth of the Russian River, as well as those hauled out at several locations in the estuary during recurring monitoring activities, impacts are occurring to a small, localized group of animals. While these impacts can occur year-round, they occur sporadically and for limited duration (*e.g.,* a maximum of two consecutive days for water level management events). Seals will likely become alert or, at most, flush into the water in reaction to the presence of crews and equipment on the beach. While disturbance may occur during a sensitive time (during the March 15–June 30 pupping season), mitigation measures have been specifically designed to further minimize harm during this period and eliminate the possibility of pup injury or mother-pup separation.

No injury, serious injury, or mortality is anticipated, nor is the action likely to result in long-term impacts such as permanent abandonment of the haul-out. Injury, serious injury, or mortality to pinnipeds would likely result from startling animals inhabiting the haul-out into a stampede reaction, or from extended mother-pup separation as a result of such a stampede. Long-term impacts to pinniped usage of the haul-out were previously considered to be a potential result of increased presence of humans and equipment on the beach. However, 10 years of monitoring has not shown any such impacts to seal usage of the beach. Nevertheless, SCWA will

continue to implement the previously described mitigation measures. These are designed to reduce the possibility of startling pinnipeds, by gradually apprising them of the presence of humans and equipment on the beach, and to reduce the possibility of impacts to pups by eliminating or altering management activities on the beach when pups are present and by setting limits on the frequency and duration of events during pupping season. During the past 20 years of flood control management, implementation of similar mitigation measures has resulted in no known stampede events and no known injury, serious injury, or mortality. Over the course of that time period, management events have generally been infrequent and of limited duration.

No pinniped stocks for which incidental take authorization is proposed are listed as threatened or endangered under the ESA or determined to be strategic or depleted under the MMPA. Existing data suggest that harbor seal populations have reached carrying capacity; populations of California sea lions and northern elephant seals in California are also considered healthy.

In summary, and based on extensive monitoring data, we believe that impacts to hauled-out pinnipeds during estuary management activities would be behavioral harassment of limited duration (*i.e.,* less than one day) and limited intensity (*i.e.,* temporary flushing at most). Stampeding, and therefore injury or mortality, is not expected—nor been documented—in the years since appropriate protocols were established (see Mitigation for more details). Further, the continued, and increasingly heavy (see figures in SCWA documents), use of the haul-out despite decades of breaching events indicates that abandonment of the haul-out is unlikely.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, we find that the total marine mammal take from SCWA's construction activities will have a negligible impact on the affected marine mammal species or stocks.

**Small Numbers**

As noted above, only small numbers of incidental take may be authorized under section 101(a)(5)(A) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The annual amount of take NMFS proposes to authorize is below one-third of the estimated stock abundance for all species (see Table 2). However, this represents an overestimate of the number of individuals harassed annually over the duration of the proposed regulations, because these totals represent much smaller numbers of individuals that may be harassed multiple times. Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

There are no relevant subsistence uses of marine mammals implicated by the specified activity. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

**Adaptive Management**

The regulations governing the take of marine mammals incidental to SCWA estuary management activities contain an adaptive management component.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from SCWA regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

SCWA's monitoring program (see Monitoring and Reporting) will be managed adaptively. Changes to the monitoring program may be adopted if they are reasonably likely to better accomplish the MMPA monitoring goals described previously or may better answer the specific questions associated with SCWA's monitoring plan.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the action qualifies to be categorically excluded from further NEPA review.

**Endangered Species Act (ESA)**

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that section 7 consultation under the ESA is not required.

**Classification**

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this action will

not have a significant economic impact on a substantial number of small entities. SCWA is the sole entity that would be subject to the requirements in these regulations, and the Sonoma County Water Agency is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. Under the RFA, governmental jurisdictions are considered to be small if they are ''. . . governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000 . . . .'' As of the 2020 census, Sonoma County, CA had a population of nearly 500,000 people. No comments were received regarding this certification or on the economic impacts of the rule more generally. As a result, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. These requirements have been approved by OMB under control number 0648–0151 and include applications for regulations, subsequent LOAs, and reports.

**Waiver of Delay in Effective Date**

NMFS has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in the effective date of this final rule. No individual or entity other than the SCWA is affected by the provisions of these regulations. The SCWA has requested that this final rule take effect on April 21, 2022, to accommodate the SCWA's LOA expiring on April 20, 2022, so as to not cause a disruption in estuary management activities. The waiver of the 30-day delay of the effective date of the final rule will ensure that the MMPA final rule and LOA are in place by the time the previous authorization expires. Any delay in finalizing the rule would result in either: (1) A suspension of planned estuary management activities, which could result in flood control issues and/or SCWA's failure to comply with the mandatory lagoon management activities required under the 2008 BiOp; or (2) the SCWA's procedural non-compliance with the MMPA (should the SCWA conduct the specified activities without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals. Moreover, the SCWA is ready to implement the regulations immediately and requested the waiver. For these reasons, NMFS finds good cause to waive the 30-day delay in the effective date. In addition, the rule authorizes incidental take of marine mammals that would otherwise be prohibited under the statute. Therefore, by granting an exception to the SCWA, the rule will relieve restrictions under the MMPA, which provides a separate basis for waiving the 30-day effective date for the rule.

**List of Subjects in 50 CFR Part 217**

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: April 14, 2022.

**Samuel D. Rauch III,**

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

For reasons set forth in the preamble, 50 CFR part 217 is amended as follows:

## PART 217—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 217 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. Revise subpart A to part 217 to read as follows:

### Subpart A—Taking Marine Mammals Incidental to Russian River Estuary Management Activities

Sec.



#### § 217.1 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the Sonoma County Water Agency (SCWA) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to estuary management activities.

(b) The taking of marine mammals by SCWA may be authorized in a Letter of Authorization (LOA) only if it occurs at Goat Rock State Beach or in the Russian River estuary in California.

#### § 217.2 Effective dates.

Regulations in this subpart are effective from April 21, 2022, through April 20, 2027.

#### § 217.3 Permissible methods of taking.

(a) Under LOAs issued pursuant to §§ 216.106 of this chapter and 217.7, the Holder of the LOA (hereinafter ''SCWA'') may incidentally, but not intentionally, take marine mammals within the area described in § 217.1(b) of this chapter by Level B harassment associated with estuary management activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

(b) [Reserved]

#### § 217.4 Prohibitions.

Except for the takings contemplated in § 217.3 and authorized by an LOA issued under §§ 216.106 of this chapter and 217.7, it is unlawful for any person to do any of the following in connection with the activities described in § 217.1 of this chapter:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 217.7;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

#### § 217.5 Mitigation requirements.

When conducting the activities identified in § 217.1(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 217.7 must be implemented. These mitigation measures shall include but are not limited to:

(a) General conditions:

(1) A copy of any issued LOA must be in the possession of SCWA, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) If SCWA observes a pup that may be abandoned, it shall contact the National Marine Fisheries Service (NMFS) West Coast Regional Stranding Coordinator immediately and also report the incident to NMFS Office of

Protected Resources within 48 hours. Observers shall not approach or move the pup.

(b) SCWA crews shall cautiously approach the haul-out ahead of heavy equipment.

(c) SCWA staff shall avoid walking or driving equipment through the seal haul-out.

(d) Crews on foot shall make an effort to be seen by seals from a distance.

(e) All work shall be completed as efficiently as possible and with the smallest amount of heavy equipment possible.

(f) Boats operating near river haul-outs during monitoring shall be kept within posted speed limits and driven as far from the haul-outs as safely possible.

(g) SCWA shall implement the following mitigation measures during pupping season (March 15–June 30):

(1) SCWA shall maintain a one week no-work period between water level management events (unless flooding is an immediate threat) to allow for an adequate disturbance recovery period. During the no-work period, equipment must be removed from the beach;

(2) A water level management event may not occur for more than two consecutive days unless flooding threats cannot be controlled.

(3) If a pup less than one week old is on the beach where heavy machinery will be used or on the path used to access the work location, the management action shall be delayed until the pup has left the site or the latest day possible to prevent flooding while still maintaining suitable fish rearing habitat. In the event that a pup remains present on the beach in the presence of flood risk, SCWA shall consult with NMFS and the California Department of Fish and Wildlife to determine the appropriate course of action. SCWA shall determine if pups less than one week old are on the beach prior to a breaching event.

(4) Physical and biological monitoring shall not be conducted if a pup less than one week old is present at the monitoring site or on a path to the site.

### § 217.6 Requirements for monitoring and reporting.

(a) Monitoring and reporting shall be conducted in accordance with the approved Pinniped Monitoring Plan.

(b) Reporting:

(1) Annual reporting:

(i) SCWA shall submit an annual summary report to NMFS not later than ninety days following the end of a given calendar year. SCWA shall provide a final report within thirty days following resolution of comments on the draft report.

(ii) These reports shall contain, at minimum, the following:

(A) The number of seals taken, by species and age class (if possible);

(B) Behavior prior to and during water level management events;

(C) Start and end time of activity;

(D) Estimated distances between source and seals when disturbance occurs;

(E) Weather conditions (*e.g.,* temperature, wind, etc.);

(F) Haul-out reoccupation time of any seals based on post-activity monitoring;

(G) Tide levels and estuary water surface elevation; and

(H) Seal census from haul-out monitoring.

(2) [Reserved]

(c) Reporting of injured or dead marine mammals:

(1) In the unanticipated event that the activity defined in § 217.1(a) clearly causes the take of a marine mammal in a prohibited manner, SCWA shall immediately cease such activity and report the incident to the Office of Protected Resources (OPR), NMFS and the West Coast Regional Stranding Coordinator, NMFS. Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with SCWA to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. SCWA may not resume their activities until notified by NMFS. The report must include the following information:

(i) Time and date of the incident;

(ii) Description of the incident;

(iii) Environmental conditions;

(iv) Description of all marine mammal observations in the 24 hours preceding the incident;

(v) Species identification or description of the animal(s) involved;

(vi) Fate of the animal(s); and

(vii) Photographs or video footage of the animal(s).

(2) In the event that SCWA discovers an injured or dead marine mammal and determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), SCWA shall immediately report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS. The report must include the information identified in paragraph (c)(1) of this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with SCWA to determine whether additional mitigation measures or modifications to the activities are appropriate.

(3) In the event that SCWA discovers an injured or dead marine mammal and determines that the injury or death is not associated with or related to the activities defined in § 217.1(a) (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, scavenger damage), SCWA shall report the incident to OPR and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. SCWA shall provide photographs or video footage or other documentation of the stranded animal sighting to NMFS.

(4) Pursuant to paragraphs (c)(2–3) of this section, SCWA may use discretion in determining what injuries (*i.e.,* nature and severity) are appropriate for reporting. At minimum, SCWA must report those injuries considered to be serious (*i.e.,* will likely result in death) or that are likely caused by human interaction (*e.g.,* entanglement, gunshot). Also pursuant to sections paragraphs (c)(2–3) of this section, SCWA may use discretion in determining the appropriate vantage point for obtaining photographs of injured/dead marine mammals.

### § 217.7 Letters of Authorization.

(a) To incidentally take marine mammals pursuant to these regulations, SCWA must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, SCWA may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, SCWA must apply for and obtain a modification of the LOA as described in § 217.8.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within 30 days of a determination.

**§ 217.8 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§ 216.106 of this chapter and 217.7 for the activity identified in § 217.1(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For an LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 217.7 for the activity identified in § 217.1(a) may be modified by NMFS under the following circumstances:

(1) Adaptive Management—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with SCWA regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from SCWA's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) Emergencies—If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 217.7, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

**§ 217.9 [Reserved]**

**§ 217.10 [Reserved]**

[FR Doc. 2022–08346 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 229

**[Docket No. 220412–0093]**

**RIN 0648–BK40**

## List of Fisheries for 2022

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

**ACTION:** Final rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2022, as required by the Marine Mammal Protection Act (MMPA). The LOF for 2022 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of mortality and serious injury of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

**DATES:** The effective date of this final rule is May 19, 2022.

**ADDRESSES:** Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Allison Rosner, Greater Atlantic Region, 978–281–9328; Jessica Powell, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 206–526–4740; Suzie Teerlink, Alaska Region, 907–586–7240; Diana Kramer, Pacific Islands Region, 808–725–5167. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### What is the List of Fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental mortality and serious injury of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SARs) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(1)(C)).

### How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

### Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This

definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

*Tier 1:* Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock. If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock will be placed in Category III (unless those fisheries interact with other stock(s) for which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

*Tier 2:* Tier 2 considers fishery-specific mortality and serious injury for a particular stock.

*Category I:* Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injury of marine mammals).

*Category II:* Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injury of marine mammals).

*Category III:* Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood of or no known incidental mortality and serious injury of marine mammals).

Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086; August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one category for one marine mammal stock and another category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II). Stocks driving a fishery's classification are denoted with a superscript ''1'' in Tables 1 and 2.

**Other Criteria That May Be Considered**

The tier analysis requires a minimum amount of data, and NMFS does not have sufficient data to perform a tier analysis on certain fisheries. Therefore, NMFS has classified certain fisheries by analogy to other fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, or according to factors discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995) and listed in the regulatory definition of a Category II fishery. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental mortality or serious injury is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

**How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?**

The LOF includes a list of marine mammal species and/or stocks incidentally killed or injured in each commercial fishery. The list of species and/or stocks incidentally killed or injured includes ''serious'' and ''non-serious'' documented injuries as described later in the *List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean* and *List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean* sections. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs and injury determination reports. SARs are brief reports summarizing the status of each stock of marine mammals occurring in waters under U.S. jurisdiction, including information on the identity and geographic range of the stock, population statistics related to abundance, trend, and annual productivity, notable habitat concerns, and estimates of human-caused mortality and serious injury (M/SI) by source. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. The best available scientific information used in the SARs and reviewed for the 2022 LOF generally summarizes data from 2014–2018. NMFS also reviews other sources of new information, including injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMPA mortality/injury reports), and anecdotal reports from that time period. In some cases, more recent information may be available and used in the LOF.

For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no interactions are documented in the 5-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than 5 years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.

**Where does NMFS obtain information on the level of observer coverage in a fishery on the LOF?**

The best available information on the level of observer coverage and the spatial and temporal distribution of observed marine mammal interactions is presented in the SARs. Data obtained from the observer program and observer coverage levels are important tools in estimating the level of marine mammal mortality and serious injury in commercial fishing operations. Starting with the 2005 SARs, each Pacific and Alaska SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including the observer coverage in those fisheries. For Atlantic fisheries, this information can be found in the LOF Fishery Fact Sheets. The SARs do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices and other resources referenced during the tier analysis may include: Level of observer coverage; target species; levels

of fishing effort; spatial and temporal distribution of fishing effort; characteristics of fishing gear and operations; management and regulations; and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources website at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* Information on observer coverage levels in Category I, II, and III fisheries can be found in the fishery fact sheets on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's website: *https://www.fisheries.noaa.gov/national/fisheries-observers/national-observer-program.*

**How do I find out if a specific fishery is in Category I, II, or III?**

The LOF includes three tables that list all U.S. commercial fisheries by Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S. authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

**Are high seas fisheries included on the LOF?**

Beginning with the 2009 LOF, NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, etc.) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 with an asterisk (*) after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for 5 years, during which time Fishery Management Plans (FMPs) can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008). Additional information about HSFCA permits can be found at *https://www.fisheries.noaa.gov/permit/high-seas-fishing-permits.*

**Where can I find specific information on fisheries listed on the LOF?**

Starting with the 2010 LOF, NMFS developed summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: When the fishery was added to the LOF; the basis for the fishery's initial classification; classification changes to the fishery; changes to the list of species and/or stocks incidentally killed or injured in the fishery; fishery gear and methods used; observer coverage levels; fishery management and regulation; and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' website: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* linked to the ''List of Fisheries Summary'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets is taking significant time to complete. NMFS began posting Category III fishery fact sheets online with the LOF for 2016.

**Am I required to register under the MMPA?**

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

**How do I register, renew and receive my Marine Mammal Authorization Program authorization certificate?**

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials.

In the Pacific Islands, West Coast, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail or with their state or Federal license or permit at the time of issuance or renewal. In the Greater Atlantic and Southeast Regions, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year.

Vessel or gear owners who participate in fisheries in these regions and have not received authorization certificates by the beginning of the calendar year, or with renewed fishing licenses, must contact the appropriate NMFS Regional Office (see **FOR FURTHER INFORMATION CONTACT**). Authorization certificates may also be obtained by visiting the MMAP website *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#obtaining-a-marine-mammal-authorization-certificate.*

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to

limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal license or permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries.

Individuals fishing in Category I and II fisheries for which no state or Federal license or permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

In recognition of logistical challenges with certificate issuance related to the ongoing COVID–19 pandemic, the MMAP certificate issued in 2020 remains in effect, valid through December 31, 2022, for vessel or gear owners participating in all Category I and II fisheries as of the final 2022 LOF. 2020 certificates may be retained or replacements downloaded from *https://go.usa.gov/xArUW.*

**Am I required to submit reports when I kill or injure a marine mammal during the course of commercial fishing operations?**

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental mortalities and injuries of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II, or III) within 48 hours of the end of the fishing trip or, in the case of non-vessel fisheries, fishing activity. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported.

Mortality/injury reporting forms and instructions for submitting forms to NMFS can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-authorization-program#reporting-a-death-or-injury-of-a-marine-mammal-during-commercial-fishing-operations* or by contacting the appropriate regional office (see **FOR FURTHER INFORMATION CONTACT**). Forms may be submitted via any of the following means: (1) Online using the electronic form; (2) emailed as an attachment to *nmfs.mireport@noaa.gov;* (3) faxed to the NMFS Office of Protected Resources at 301–713–0376; or (4) mailed to the NMFS Office of Protected Resources (mailing address is provided on the postage-paid form that can be printed from the web address listed above). Reporting requirements and procedures are found in 50 CFR 229.6.

**Am I required to take an observer aboard my vessel?**

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 states that the Secretary is not required to place an observer on a vessel if the facilities for quartering an observer or performing observer functions are so inadequate or unsafe that the health or safety of the observer or the safe operation of the vessel would be jeopardized; thereby authorizing the exemption of vessels too small to safely accommodate an observer from this requirement. However, U.S. Atlantic Ocean, Caribbean, or Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)) will not be exempted from observer requirements, regardless of their size. Observer requirements are found in 50 CFR 229.7.

**Am I required to comply with any marine mammal TRP regulations?**

Table 4 provides a list of fisheries affected by TRPs and TRTs. TRP regulations are found at 50 CFR 229.30 through 229.37. A description of each TRT and copies of each TRP can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams.* It is the responsibility of fishery participants to comply with applicable take reduction regulations.

**Where can I find more information about the LOF and the MMAP?**

Information regarding the LOF and the MMAP, including registration procedures and forms; current and past LOFs; descriptions of each Category I and II fishery and some Category III fisheries; observer requirements; and marine mammal mortality/injury reporting forms and submittal procedures; may be obtained at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-protection-act-list-fisheries,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Jessica Powell;

NMFS, West Coast Region, Long Beach Office, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Dan Lawson;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Suzie Teerlink; or

NMFS, Pacific Islands Regional Office, Protected Resources Division, 1845 Wasp Blvd., Building 176, Honolulu, HI 96818, Attn: Diana Kramer.

**Sources of Information Reviewed for the 2022 LOF**

NMFS reviewed the marine mammal incidental mortality and serious injury information presented in the SARs for all fisheries to determine whether changes in fishery classification are warranted. The SARs are based on the best scientific information available at the time of preparation, including the level of mortality and serious injury of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were established by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding and entanglement data, observer program data, fishermen self-reports, reports to the SRGs, conference papers, FMPs, and ESA documents.

The LOF for 2022 was based on, among other things, stranding data; fishermen self-reports; and SARs, primarily the 2020 SARs, which are based on data from 2014–2018. The SARs referenced in this LOF include: 2018 (84 FR 28489; June 19, 2019), 2019 (84 FR 65353; November 27, 2019), and 2020 (86 FR 38991; July 23, 2021). The SARs are available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-*

*mammal-stock-assessment-reports-region.*

**Comments and Responses**

NMFS received eight comment letters on the proposed LOF for 2022 (86 FR 43491; August 9, 2021). Comments were received from a member of the public; Center for Biological Diversity (CBD); Maine Department of Marine Resources (ME DMR), Maine Lobstermen's Association (MLA); Marine Mammal Commission (Commission); Massachusetts Lobstermen's Association; New England Aquarium; and a joint letter from Conservation Law Foundation, CBD, Defenders of Wildlife, and Whale and Dolphin Conservation (CLF et al.). Responses to substantive comments are below. Comments on actions not related to the LOF are not included.

*General Comments*

*Comment 1:* The New England Aquarium recommends NMFS classify aquaculture operations on the LOF by gear, similar to how capture fisheries are included on the LOF. They note that shellfish aquaculture includes a range of operations from seed collection lines to grow-out systems. All aquaculture operations and their associated gear have varying degrees of risk to marine mammals and should be considered separately on the LOF.

*Response:* NMFS thanks the commenter for providing this information on various aquaculture operations. NMFS will review the information provided and consider it in future LOFs. For fishery classification changes related to aquaculture on the LOF, NMFS would provide notice and the opportunity for public comment.

*Comment 2:* The New England Aquarium recommends that NMFS classify by analogy aquaculture operations that use gear with static lines in the water. They state that these operations are similar to gear used in fixed-gear fisheries known to result in the M/SI of North Atlantic right whales. They also note that NMFS has classified several fisheries as Category II by analogy that have no documented marine mammal M/SI. Therefore, the New England Aquarium requests NMFS classify aquaculture operations with static lines that are analogous to Category I and II fixed-gear fisheries as Category II fisheries on the LOF.

*Response:* NMFS has classified fisheries by analogy on the LOF that use similar fishing techniques or gear that are known to cause M/SI of marine mammals. Fishery classification by analogy was discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and the factors for classifying by analogy are listed in the regulatory definition of a ''Category II fishery'' in 50 CFR 229.2. NMFS will review the information provided by the New England Aquarium and consider it in a future LOF. For fishery classification changes related to aquaculture on the LOF, NMFS would provide notice and the opportunity for public comment.

*Comments on Commercial Fisheries in the Pacific Ocean*

*Comment 3:* CBD recommends NMFS reclassify the Category III AK Bering Sea, Aleutian Islands (BSAI) sablefish pot fishery as Category II fishery. They note that NMFS proposed to add the North Pacific stock of sperm whale to the list of species/stocks incidentally killed or injured based on the 2018 observed mortality. PBR for this stock is 0.5, and the annual estimated M/SI for the AK BSAI sablefish pot fishery is 0.2. This fishery should be reclassified as a Category II fishery.

*Response:* NMFS evaluated the 2018 sperm whale mortality in the Category III AK BSAI sablefish pot fishery and retains the Category III classification for this fishery. The Nmin is for only a small portion of the stock's range and does not account for females and juveniles in tropical and subtropical waters, so the calculated PBR is not a reliable index for the entire stock.

Furthermore, incidental take of sperm whales in fisheries is generally associated with sperm whales depredating from fishing gear. Depredation occurs less often with pot gear, which has been a major factor in sablefish fishers switching from longline to pot fishing. NMFS will continue to closely monitor the M/SI of this stock in the Category III AK BSAI sablefish pot fishery and other fisheries.

*Comment 4:* The Commission recommends that NMFS retain several species/stocks on the LOF that were proposed to be removed from the list of species/stocks incidentally killed or injured in fisheries in Tables 1, 2 and 3. They state that list of species/stocks is intended to identify all species and stocks that are known to have been incidentally killed or injured in a fishery, and data from more than the most recent 5-year time period should be used. The Commission continues to note that the list should not just be limited to species or stocks with observed M/SI, since observers are unable to detect all marine mammal mortalities and injuries. The Commissions recommends NMFS retain on the following species and stocks LOF:

- Five stocks in the Category I HI deep-set longline fishery: (1) Pelagic stock of bottlenose dolphin, (2) Hawaii stock of Kogia spp., (3) Hawaii stock of pygmy killer whale, (4) Hawaii stock of Risso's dolphin and (5) Hawaii stock of striped dolphin.
- Six stocks in the Category II HI shallow-set longline fishery: (1) Hawaii stock of Blainville's beaked whale, (2) Hawaii pelagic stock of bottlenose dolphin, (3) Central North Pacific stock of humpback whale, (4) Hawaii stock of Risso's dolphin, (5) Hawaii stock of rough-toothed dolphin and (6) Hawaii stock of striped dolphin.
- Six stocks in the Category II AK Bering Sea, Aleutian Islands pollock trawl fishery: (1) Alaska stock of bearded seal, (2), Bristol Bay stock of beluga whale, (3) Eastern Bering Sea stock of beluga whale, (4) Eastern Chukchi Sea stock of beluga whale, (5) Eastern Pacific stock of Northern fur seal and (6) Alaska stock of spotted seal.
- Alaska resident stock of killer whale in the Category III AK Bering Sea, Aleutian Islands Greenland turbot longline fishery.
- Alaska stock of spotted seal in the Category III AK Bering Sea, Aleutian Islands Pacific cod longline fishery.
- Alaska stock of bearded seal in the Category III AK Bering Sea, Aleutian Islands Atka mackerel trawl fishery.
- Both the Gulf of Alaska, Aleutian Islands, Bering Sea transient stock and Eastern North Pacific Alaska resident stock of killer in the Category III AK Bering Sea, Aleutian Islands rockfish trawl fishery.
- North Pacific stock of Northern elephant in the Category III AK Gulf of Alaska flatfish trawl fishery.
- Alaska stock of harbor seal in the Category III AK Gulf of Alaska Pacific cod trawl fishery.
- Three stocks in the Category III AK Gulf of Alaska pollock trawl fishery: (1) Alaska stock of Dall's porpoise, (2) Northeast Pacific stock of fin whale and (3) North Pacific stock of Northern elephant seal.
- Gulf of Alaska stock of harbor seal in the Category III AK Gulf of Alaska Pacific cod pot fishery.
- Northeast Pacific stock of fin whale in the Category III AK Gulf of Alaska groundfish jig fishery.
- Central North Pacific stock of humpback whale and Hawaii stock of pygmy killer whale in the Category I Western Pacific Pelagic longline fishery (HI deep-set component).
- Three stocks in the Category II Western Pacific Pelagic longline fishery (HI shallow-set component): (1) Hawaii stock of Blainville's beaked whale, (2) unknown stock of Mesoplodon species,

and (3) Hawaii stock of rough-toothed dolphin.

*Response:* For fisheries with observer coverage, species or stocks are generally removed from the list of marine mammal species and/or stocks incidentally killed or injured if no mortalities or injuries are documented in the 5-year timeframe summarized in that year's LOF. For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented mortalities or injuries may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than 5 years. For these fisheries, NMFS reviews the other sources of information to determine when it is appropriate to remove a species or stock.

NMFS disagrees with the Commission's recommendation to retain species/stocks in the Alaska fisheries noted above. All the named Alaska fisheries except for the AK Gulf of Alaska groundfish jig fishery are observed. As proposed in the 2022 LOF (86 FR 43491; August 9, 2021), NMFS removes the species/stocks from the list of species/stocks incidentally killed or injured in each Alaska fishery noted in the above comment by the Commission.

The Hawaii shallow-set and deep-set longline fisheries are observed with 100 percent and 20 percent observer coverage, respectively. Therefore, unless evidence suggested additional M/SI, NMFS removes species with no documented mortality or injuries in the 5-year timeframe considered for the 2022 LOF.

NMFS disagrees with the Commission and removes the following species/stocks from the list of species/stocks incidentally killed or injured in fisheries noted below.

NMFS removes the Hawaii stock of pygmy killer whale from the list of species/stocks incidentally killed or injured in the Category I HI deep-set longline fishery and Category I Western Pacific Pelagic (HI deep-set component) fishery, as no reported or observed mortalities or injuries have occurred since 2013.

NMFS removes the Hawaii stocks of Blainville's beaked whale and rough-toothed dolphin from the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery and Category II Western Pacific Pelagic (HI shallow-set component) fishery. The shallow-set longline fishery is observed at 100 percent, and there have been no observed M/SI either species since 2011 (Blainville's beaked whale) and 2013 (rough-toothed dolphin).

NMFS also removes the unknown stock of Mesoplodon species from the list of species/stocks incidentally killed or injured in the Category II Western Pacific Pelagic (HI shallow-set component) fishery. There have been no observed M/SI of this stock since 2013.

NMFS agrees with the Commission's recommendations and retains the following the species/stocks on the list of species/stocks incidentally killed or injured in fisheries noted below.

NMFS retains the following four stocks on the list of species/stocks incidentally killed or injured in the Category I HI deep-set longline fishery: (1) Pelagic stock of bottlenose dolphin, (2) Hawaii stock of Kogia spp., (3) Hawaii stock of Risso's dolphin and (4) Hawaii stock of striped dolphin. These stocks are included on the list of species and/or stocks killed or injured in the high seas component (Category I Western Pacific Pelagic (HI deep-set component) fishery) and are retained on Category I HI deep-set longline fishery.

NMFS also retains the Central North Pacific stock of humpback whale on the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic (HI deep-set component) fishery. This stock is included on the list of species and/or stocks killed or injured Category I HI deep-set longline fishery and therefore retained in the high seas component (Category I Western Pacific Pelagic (HI deep-set component) fishery).

NMFS retains four stocks on the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery: (1) Hawaii pelagic stock of bottlenose dolphin, (2) Central North Pacific stock of humpback whale, (3) Hawaii stock of Risso's dolphin and (4) Hawaii stock of striped dolphin. These stocks are included on the list of species and/or stocks killed or injured in the high seas component (Category II Western Pacific Pelagic (HI shallow-set component)) fishery and therefore retained on Category II HI shallow-set longline fishery.

*Comment 5:* The New England Aquarium states that the LOF does not include any marine mammal species/stocks in the list of species/stocks incidentally killed or injured in the Category III Hawaii offshore pen culture fishery. They note the 2020 Hawaiian monk seal SAR reports a mortality in an offshore net pen in 2017. The New England Aquarium recommends NMFS add Hawaiian monk seal to the list of species/stocks incidentally killed or injured in the Category III Hawaii offshore pen culture fishery based on this mortality.

*Response:* NMFS agrees with the New England Aquarium's comment. The 2020 SAR includes a Hawaiian monk seal mortality in an offshore net pen in 2017 (Carretta *et al.,* 2021). NMFS adds Hawaiian monk seal to the list of species/stocks incidentally killed or injured in the Category III HI offshore pen culture fishery.

*Comment 6:* CBD recommends that Hawaiian monk seals be added to the list of species/stocks incidentally killed or injured in the following Category III Hawaii nearshore gillnet and hook and line fisheries: (1) HI inshore gillnet, (2) HI lift net, (3) HI inshore purse seine, (4) HI throw net/cast net, (5) HI troll, (6) HI rod and reel, (7) HI kaka line, (8) HI vertical line, (9) HI aku boat, pole and line, (10) HI inshore handline and (11) HI pelagic handline. They note that the 2020 SAR includes an annual estimated average M/SI of 7.2 in Hawaii nearshore fisheries and PBR is 4.8 seals. However, the LOF does not include documented Hawaiian monk seal M/SI in the Hawaii nearshore fisheries.

*Response:* In the 2020 SAR, although monk seals M/SI are identified from nearshore fishing gear, including hook and line and net fishing gear, this gear has not been identified as commercial fisheries gear. It is unknown as to whether the gear is commercial, recreational, or illegally set gear. In some cases of M/SI from entanglement in fishing nets, the nets were identified or suspected to be illegally set nets, and none have been specifically identified as commercial fishing nets. Because cases of monk seal M/SI from hookings and entanglements in nearshore fishing gear cannot be attributed to specific commercial nearshore fisheries, Hawaiian monk seals are not included as species incidentally killed or injured in these nearshore fisheries. Hawaiian monk seals have been added to the list of species/stocks incidentally killed or injured in the Category III HI offshore pen culture fishery.

*Comment 7:* The Commission restates a previous comment, recommending NMFS reclassify the Category III Hawaii troll fishery as a Category II fishery based on documented spotted dolphin hooking and entanglement serious injuries. They note they disagree with NMFS' conclusion to not reclassify the Category III Hawaii troll fishery on the 2021 LOF (86 FR 3028; January 14, 2021). The Commission considers the information presented in Baird and Webster (2020), coupled with anecdotal reports of dolphins being entangled or hooked in gear used in this fishery, to be sufficient to reclassify the fishery.

The Commission recommends NMFS reclassify the Category III Hawaii troll fishery as a Category II fishery, based on observations that troll fishermen are intentionally setting hook and line gear in and around groups of spotted dolphins as a means for targeting tuna, resulting in, M/SI occurring at an occasional level. They continue to recommend that if NMFS determines reclassification is not warranted, that NMFS quantify the marine mammal M/SI in the Hawaii troll fishery through a dedicated observer program or alternative monitoring such as electronic monitoring or remote observers.

*Response:* This comment has been addressed previously (see 86 FR 3028; January 14, 2021). A fishery is classified as Category II when the annual M/SI of a stock in the fishery is greater than 1 percent and less than 50 percent of PBR. For the Hawaii stock complex of pantropical spotted dolphins, as the Commission notes, Baird and Webster 2020 documents troll fishing occurring in and around groups of spotted dolphins, particularly around Hawaii Island. However, there are no reliable estimates of how frequently this type of troll fishing results in M/SI of spotted dolphins. Baird and Webster 2020 itself notes major data gaps, including abundance estimates of the stocks, and frequency of hookings and entanglements, which need to be addressed to understand whether hooking and/or entanglements occur to the level that warrant reclassification of the fishery.

The most recent SAR (2020) for the Hawaii stock complex of pantropical spotted dolphins notes two cases of observed entanglements of spotted dolphins in fishing line, but the responsible fishery is not known in either case (Carretta *et al.,* 2021). No M/SI estimates are available for pantropical spotted dolphins.

In addition to the SAR, NMFS also considered other sources of data in evaluating the Hawaii troll fishery on the annual LOF. Regardless of classification of a particular fishery, all commercial fishers are required to submit reports of any marine mammal mortality or injury incidental to fishing operations through the marine mammal authorization program mortality/injury reporting form. NMFS has received no reports through this program of pantropical spotted dolphins injured or killed in the Hawaii troll fishery. However, recognizing that self-reporting may be limited, NMFS also considered other sources of information. Baird 2016 discusses propeller injuries of spotted dolphins, but the level and type of vessel causing such injuries are not known. Baird 2016 also presents photos of at least one spotted dolphin hooked with trailing fishing line, but the fishery and frequency of such hookings and/or entanglements are unknown.

The Hawaii troll fishery is a state-managed fishery, and NMFS has encouraged the State of Hawaii to implement additional commercial fishing reporting and monitoring mechanisms for state-managed fisheries. In addition, NMFS will consider the Commission's recommendation to pursue quantitative means to evaluate mortality and serious injury of pantropical spotted dolphins.

The information does not provide sufficient evidence to conclude that spotted dolphins are being seriously injured or killed on an ''occasional basis'' as necessary for a Category II fishery classification. Therefore, NMFS retains the Category III classification of the Hawaii troll fishery.

*Comment 8:* CBD recommends that the newly proposed Category III WA/OR/CA other groundfish pot fishery be classified as a Category II fishery. CBD states that the fishing gear used by the newly proposed fishery is known to entangle humpback whales in Alaska, Washington, Oregon and California. CBD notes the proposed 2022 LOF states there has been no marine mammal M/SI incidental to the newly proposed fishery. However, there have been humpback whales entangled in the West Coast groundfish fishery from 2002 to 2019. CBD recommends NMFS classify the newly proposed WA/OR/CA other groundfish pot fishery as a Category II fishery based on the same frequency of M/SI as the Category II WA/OR/CA sablefish pot fishery.

*Response:* NMFS thanks CBD for the comment and does not finalize adding the proposed Category III WA/OR/CA other groundfish pot fishery on the 2022 LOF. In the 2022 LOF (86 FR 43491; August 9, 2021), NMFS proposed adding the WA/OR/CA other groundfish pot fishery as a new Category III fishery. As proposed, the new Category III fishery would include pot fishing effort from the previously named Category III CA nearshore finfish live trap/hook-and-line fishery (state fisheries) and other groundfish pot fishing effort (federal fisheries separate from the sablefish pot fishery). NMFS retains the previously named Category III CA nearshore finfish trap fishery.

For the 2022 LOF, NMFS reviewed fishery data for all West Coast fisheries including data from PacFIN. The data used in the analysis for proposing the new WA/OR/CA other groundfish pot fishery included the total landings of groundfish species in pot gear along the West Coast. These data indicated that there were landings of groundfish species other than sablefish with pot gear that were not associated with landings of sablefish. However, the data did not identify the fishing effort that led to these landings (*e.g.,* whether the effort was occurring within State nearshore fisheries, within federal fisheries, or what species were targeted versus which species are incidentally caught). Because the Pacific Coast Groundfish Fishery Management Plan and associated regulations allow the targeting and landing of species other than sablefish, in drafting the proposed 2022 LOF, NMFS conservatively assumed at least some of the non-sablefish landings could be effort occurring outside the state nearshore fisheries and could be effort directly targeted groundfish species other than sablefish.

Following publication of the proposed 2022 LOF, NMFS further analyzed the data that were used to support the proposed WA/OR/CA other groundfish pot fishery. After discussions with federal fishery managers and scientists, NMFS identified that the analysis in the proposed 2022 LOF incorrectly stated that there are federal pot gear fisheries targeting groundfish species other than sablefish. All pot gear fishing effort in the West Coast federal groundfish fisheries is targeting sablefish, and any landings of other groundfish species occurs incidental to the fishing effort targeted at sablefish. There is no fishing effort in the state nearshore fisheries directly targeting sablefish with pot gear.

Therefore, there is no separate federal groundfish pot gear fishery targeting species other than sablefish and the proposed WA/OR/CA other groundfish pot fishery is duplicative of the fishing effort already captured in the Category II WA/OR/CA sablefish pot fishery. Based on this information, NMFS does not finalize adding the proposed Category III WA/OR/CA other groundfish pot fishery on the 2022 LOF. NMFS will continue to evaluate the existing data and consider all relevant information for the West Coast groundfish pot gear fisheries in future LOFs.

*Comment 9:* CBD recommends that the newly proposed Category III CA other crab/shellfish pot fishery be classified as a Category II fishery because of its similarity to the Dungeness crab and spiny lobster pot fisheries. They note that even with partial observer coverage for the fishery, most marine mammal entanglements on the West Coast cannot be identified to

a specific fishery. The absence of a confirmed entanglement in this pot gear is not sufficient to classify the CA other crab/shellfish pot fishery as a Category III fishery.

*Response:* In the 2022 LOF (86 FR 43491; August 9, 2021), NMFS proposed adding the CA other crab/shellfish pot fishery as a new Category III fishery. Following publication of the proposed 2022 LOF, NMFS re-examined the available data surrounding pot fishing effort for crabs and other shellfish in California. NMFS identified that the only pot fishery targeting crab/shellfish that was not included on the 2021 LOF was the Tanner crab fishery. As a result, NMFS modifies the name of the new Category III fishery from the CA other crab/shellfish fishery to the CA Tanner crab fishery in the final 2022 LOF.

NMFS recognizes that any line in the water presents a risk of marine mammal entanglement. When classifying fisheries, in addition to the general consideration of the risk of entanglements that could be associated with almost any fishery that uses line, NMFS also relies upon information gathered and confirmed through rigorous evaluation of entanglement reports to identify the origins of entanglements as the basis of classification of fixed gear fisheries on the LOF.

To date, the CA Tanner crab fishery has not been associated with or implicated as being involved in the M/SI of any marine mammal species. Although the permit and associated regulations outlined in the fishery description (86 FR 43491; August 9, 2021) have been in place since 2006, the CA Tanner crab fishery is small, with very few participants over its history. As described in the fishery description, the gear is different and fished differently than other Category II CA/West Coast pot fisheries. Unlike many other Category II state-managed fixed gear fisheries, CA state fishery observers monitor this fishery. The gear is also marked in ways that can help facilitate identification, if involved in future entanglements. As a result, the available information is sufficient to support classification of the CA Tanner crab pot fishery as Category III fishery.

*Comments on Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean*

*Comment 9:* The Massachusetts Lobstermen's Association and Maine Lobstermen's Association support removing the Massachusetts state waters trap/pot fisheries from the broader Category I Northeast/Mid-Atlantic American lobster trap/pot and Category II Atlantic mixed species trap/pot fisheries and adding the new Category II MA mixed species trap/pot fishery.

*Response:* NMFS thanks the Massachusetts Lobstermen's Association and Maine Lobstermen's Association for their comments and has added the new Category II MA mixed species trap/pot fishery.

*Comment 10:* Both the Commission and CLF et al. oppose both separating out the Massachusetts state waters trap/pot fishery from the broader Category I Northeast/Mid-Atlantic American lobster trap/pot and the Category II Atlantic mixed species trap/pot fisheries and adding the new Category II MA mixed species trap/pot fishery on the LOF. They note that trap/pot fisheries in New England, including Massachusetts, have documented M/SI of North Atlantic right whales, humpback whales and minke whales. Both commenters cite that there is a lack of available data to adequately determine if the state of Massachusetts new fishery regulations will sufficiently reduce entanglement risk to North Atlantic right whales. The Commission and CLF et al. recommend NMFS retain the Massachusetts mixed species trap/pot fishery as part of the broader Category I Northeast/Mid-Atlantic American lobster trap/pot and the Category II Atlantic mixed species trap/pot fisheries until the new management measures are determined to be effective in reducing M/SI.

*Response:* As stated in the proposed rule (86 FR 43491; August 9, 2021), the state of Massachusetts has made significant changes to their trap/pot regulations including gear modifications and changes to seasonal closures that differentiate the Massachusetts state waters trap/pot fishery from the Category I Northeast/Mid-Atlantic American lobster trap/pot and Category II Atlantic mixed species trap/pot fisheries. The new fishery determination is based on considering several characteristics of the Massachusetts mixed species trap/pot fishery as modified by these new state regulations, which will be implemented for the 2022 fishing season including: (1) All commercial trap fishermen in Massachusetts state waters will be required to fish buoy lines that break when exposed to 1,700 pounds (771kg) of tension through the use of weak rope or weak insertions at 60 ft (18 m) intervals along the top 75 percent of the buoy line; (2) all commercial trap fishermen will be required to fish buoy lines with a maximum diameter of ⅜ inch (9.5 mm); and (3) state-specific gear marks will be required to be no more than 60 feet (18 m) apart on all vertical lines, distinguishing the gear from other states that will use different colors and fewer marks. Massachusetts is the only state to require these gear modifications by regulation, creating a consistent standard across the state's waters for all commercial trap/pot fishermen and one that is visibly distinguishable from adjacent gear.

Along with required gear modifications, Massachusetts is implementing extensive seasonal time/area closures that expand current restricted areas in time and space to significantly reduce co-occurrence of the fishery and North Atlantic right whales. As noted in the proposed rule (86 FR 43491; August 9, 2021), these combined management measures are supported by extensive monitoring of North Atlantic right whale populations through state and Federal aerial survey efforts over Massachusetts' waters and enhanced by additional sighting and entanglement reporting.

To separate a Category I fishery into a new fishery due to new regulatory measures, NMFS requires at a minimum that the new fishery significantly reduce the risk of entanglement of the stock driving the Category I classification, and that the new fishery requires gear marks to distinguish the fishery from its former fishery on the LOF. Massachusetts fulfills these threshold requirements. In addition, the new fishery's classification and status as a separate fishery will be reevaluated annually.

NMFS classifies the new Category II MA mixed species trap/pot fishery based on the regulatory definition (50 CFR 229.2) of a Category II fishery. As described above, this is a newly identified fishery and, as a new fishery, there is no information on incidental mortality and serious injury of marine mammals in this fishery as currently prosecuted. Based on this absence of incidental mortality and serious injury information, no marine mammal species/stocks are included on the list of species/stocks incidentally killed or injured in Table 2 for this new fishery. Species/stocks will be added to the list if mortalities or injuries are documented in the fishery. Using the information from the extensive monitoring programs in Massachusetts state waters, NMFS will annually evaluate the classification of this newly identified fishery for the LOF.

*Comment 11:* Both ME DMR and MLA comment that, based on the criteria used for classifying the new Category II MA mixed species trap/pot fishery, the Maine state waters lobster trap/pot fishery also meets the definition of a new Category II fishery under the Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations. They state

that the Maine state waters trap/pot fishery should be separated out from the broader Category I Northeast/Mid-Atlantic American lobster trap/pot and classified as a separate and independent Category II fishery. Both ME DMR and MLA cite the lack of attributed right whale entanglements in the Maine lobster fishery in over fifteen years, the implementation of additional risk reduction measures via the recent final rule amending the ALWTRP, and the ability to differentiate gear in Maine state waters area from the broader Category Northeast/Mid-Atlantic American lobster trap/pot fishery.

*Response:* NMFS acknowledges that all lobster and Jonah crab trap/pot fisheries are being required to implement regulatory measures to reduce risk of entanglement to North Atlantic right whales under the new ALWTRP regulations finalized in 2021 (86 FR 51970; September 17, 2021). However, the requirements implemented in Maine state waters are not significantly different from other areas where the fishery exists. Maine weak insertion requirements vary by Maine lobster management area and are not unique to Maine state waters. For comparison, all trap/pot fisheries in Massachusetts state waters are required to either use weak rope in the top 75 percent of the buoy line or include weak inserts every 60 feet within their buoy lines. Maine's gear modifications meet the standards under the ALWTRP throughout federal Lobster Management Area 1. Additionally, the gear marking for Maine state waters is not exclusive to those areas given that dual federal and state lobster permit holders are allowed to use federal marking when fishing in Maine state waters; whereas, the gear modifications combined with markings will allow for Massachusetts trap/pot gear to be identified specifically for state waters.

As previously stated in the final LOF for 2020 (85 FR 21079; April 16, 2020) and 2021 (86 FR 3028; January 14, 2021), most mortalities incidental to trap/pot fisheries are never observed, and Maine state waters cannot be ruled out for several cases of the subset of entanglements where gear has been recovered. Recovered gear has been found with red tracers, indicative of the gear marking scheme that was required for the ALWTRP Northern Inshore Trap/Pot fishery management area, a management area that overlaps Maine, New Hampshire, and Massachusetts state waters. For example, a case from 2011, previously noted in our 2020 and 2021 LOF comment responses, also included recovered gear with these red tracers, though the location of that entanglement remains unknown (E11–11/RW 4040). Therefore, lobster trap/pot fisheries in Maine state waters cannot be ruled out as the potential origin for entanglements with undetermined origins. As stated in the preamble of the 2022 proposed LOF (86 FR 43491; August 9, 2021), ''For fisheries with no observer coverage and for observed fisheries with evidence indicating that undocumented interactions may be occurring (*e.g.,* fishery has low observer coverage and stranding network data include evidence of fisheries interactions that cannot be attributed to a specific fishery) species and stocks may be retained for longer than 5 years. For these fisheries, NMFS will review the other sources of information listed above and use its discretion to decide when it is appropriate to remove a species or stock.'' In the case of state-only Maine permitted lobster fisheries, given there is no observer coverage to reference, NMFS retains species and stocks on the list of species/stocks incidentally killed or injured in the fishery outside of the 5-year summary time frame.

In the 2020 final LOF (85 FR 21079; April 16, 2020), NMFS noted that whale sighting information from this area is limited in part due to the lack of directed survey effort and that additional resources were being allocated towards broader surveys to provide further insight into the habitat use and distribution of these whales. While information is limited at this time, sightings and new acoustic data indicate that right whales are using these areas and that the risk of entanglement exists.

*Comment 12:* A member of the public commented that NMFS based its decision to add the new Category II MA mixed species trap/pot fishery on inaccurate information provided by the Massachusetts Division of Marine Fisheries in comments on the 2021 LOF (86 FR 3028; January 14, 2021). The commenter states the proposed new Category II fishery was based on the state of Massachusetts proposed regulations for trap/pot fisheries, several of which were not finalized, such as changes in the geographic scope of the closed area, banning the use of singles traps on commercial vessels greater 29 feet in length and shortening the haul out periods for recreational fishers.

*Response:* As described in the 2022 proposed rule (86 FR 43491; August 9, 2021), on January 28, 2021, the Massachusetts Marine Fisheries Advisory Commission approved several new regulatory measures affecting protected species and fixed gear fishing in Massachusetts. The suite of regulations include gear modifications and changes to seasonal closures that differentiate the Massachusetts trap/pot fishery from the Category I Northeast/Mid-Atlantic American lobster trap/pot and Category II Atlantic mixed species trap/pot fisheries. The Massachusetts Division of Marine Fisheries has begun implementing these regulations, as described above in response to Comment #10, and all measures will be in place for the 2022 fishing season. Based on these new regulations, the Massachusetts Division of Marine Fisheries commented on the 2021 LOF and asked NMFS to consider separating out the trap/pot fixed gear fishery operating in Massachusetts state waters from the Northeast/Mid-Atlantic American lobster trap/pot and Atlantic mixed species trap/pot fisheries. In the 2021 LOF final rule (86 FR 3028; January 14, 2021), NMFS agreed to reevaluate the fishery in the 2022 LOF. NMFS determined that these gear modifications and time/area restrictions sufficiently differentiate the risk posed by the Massachusetts mixed species trap/pot fishery from the surrounding trap/pot fisheries, warranting a separate fishery on the LOF.

*Comment 13:* A member of the public commented that NMFS' proposed new Category II MA mixed species trap/pot fishery conflicts with the statutory definition of a fishery under the MMPA. The commenter states that the MMPA incorporates the definition of fishery as it is defined in the Magnuson Stevens Fishery Conservation and Management Act (MSA), noting the management of endangered species under the MMPA should occur by fishery as defined under MSA (*e.g.* fisheries managed by the various species they target) not by how a fishery may protect marine mammals. Therefore, the MMPA prohibits separating out a part of the MSA managed lobster fishery on the LOF.

*Response:* NMFS disagrees. As stated in the 1995 proposed LOF (60 FR 31668, 16 June 1995): NMFS defined fisheries by gear type, geographical area, and target species, in accordance with existing state or Federal management designations. However, for some fisheries this information is only partially available or unavailable. In the proposed LOF, NMFS suggested that fisheries could be partitioned as necessary to reflect concentrations of marine mammals in certain areas within a fishery, or at certain times of the year in order to address management actions. Gear type (*e.g.,* mesh size) could also be used to define a fishery to allow flexibility. The proposed LOF would define fisheries based on state or

Federal management designations where these designations exist and where practicable. As stated in the 1994 LOF (59 FR 45263; September 1, 1994), NMFS bases fishery definitions on the location of the fishery, the gear type used, and sometimes the target fish species. A fishery may be grouped with other fisheries if the general location and gear type are similar and if the rates of incidental marine mammal M/SI are known or similar. For instance, the U.S. mid-Atlantic coastal gillnet fishery in the 1994 LOF is composed of many small fisheries that target different fish species seasonally but use the same general type or gear, fish in the same general location, and have similar incidental M/SI. When additional information on either incidental M/SI or on the fishery are available, fisheries may be grouped together or split apart in order to better manage the incidental M/SI in those fisheries. New fisheries were defined based on general location, gear type, and, when applicable, target species.

*Comment 14:* A member of the public states that separating the Massachusetts trap/pot fisheries from the Category I Northeast/Mid-Atlantic American lobster trap/pot and Category II Atlantic mixed species trap/pot fisheries is inconsistent with NMFS June 2020 negligible impact policy statement. The commenter notes NMFS 2020 policy states that fisheries should not be redefined or split on the LOF solely for purposes of making a negligible impact determination under the MMPA.

*Response:* On June 17, 2020, NMFS finalized Procedure 02–204–02 (Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E)) (NMFS 2020). Determining negligible impact under the MMPA is separate from the annual LOF process. As noted in our proposed 2022 LOF rule (86 FR 43491; August 9, 2021) and responses to comments above, NMFS has determined that, in order for a trap/pot fishery to be separated from the Category I fishery and designated as a new fishery, at a minimum the new fishery significantly reduces the risk of entanglement of the stock driving the Category I classification and the new fishery requires gear marks to distinguish the fishery from its former fishery on the LOF. Massachusetts fulfills these threshold requirements.

*Comment 15:* A member of the public states that there is no scientific evidence to show that the regulatory changes to the Massachusetts trap/pot fishery will reduce the risk to North Atlantic right whales. The commenter asserts there was no scientific basis for the conclusion in the proposed rule because (1) public hearings were not conducted for the proposed rule, and (2) there is no evidence to show the Massachusetts regulations will reduce North Atlantic right whale M/SI.

*Response:* As stated in the proposed rule (86 FR 43491; August 9, 2021) and reiterated in the responses to comments above about separating this fishery, NMFS considers the suite of changes to the fishery gear and operation to be significant enough to distinguish it from other trap/pot fisheries (in particular, see response to Comment #11). NMFS will continue to evaluate information received from the extensive monitoring programs in Massachusetts state waters, as well as throughout the range of North Atlantic right whales, to annually evaluate the classification of this newly identified fishery for the LOF.

**Summary of Changes From the Proposed Rule**

In this final rule, NMFS adds the CA Tanner crab pot fishery as a Category III fishery. This fishery was proposed in the 2022 LOF (86 FR 43491; August 9, 2021) as the Category III CA other crab/shellfish pot fishery. Based on public comment, NMFS modified the name of this new fishery to the CA Tanner crab pot fishery, as it is the only crab/shellfish pot fishery that is not currently named on the LOF. There is currently one participant in this fishery.

In this final rule, NMFS does not add the WA/OR/CA other groundfish pot fishery as a new Category III fishery as proposed. Upon further review, NMFS concludes that there is no separate federal groundfish pot gear fishery targeting species other than sablefish, and the proposed WA/OR/CA other groundfish pot fishery would have been duplicative of the current Category II WA/OR/CA sablefish pot fishery. Based on not adding the proposed WA/OR/CA other groundfish pot fishery, NMFS retains the previously named Category III CA nearshore finfish trap fishery. This fishery was proposed to be combined with the new WA/OR/CA other groundfish pot fishery.

Based on public comment, NMFS retains the following four stocks on the list of species/stocks incidentally killed or injured in the Category I HI deep-set longline fishery: (1) Pelagic stock of bottlenose dolphin, (2) Hawaii stock of Kogia spp., (3) Hawaii stock of Risso's dolphin and (4) Hawaii stock of striped dolphin.

Based on public comment, NMFS retains the Central North Pacific stock of humpback whale on the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic (HI deep-set component) fishery.

Based on public comment, NMFS retains four stocks on the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery: (1) Hawaii pelagic stock of bottlenose dolphin, (2) Central North Pacific stock of humpback whale, (3) Hawaii stock of Risso's dolphin and (4) Hawaii stock of striped dolphin.

Based on public comment, NMFS adds Hawaiian monk seal to the list of species/stocks incidentally killed or injured in the Category III HI offshore pen culture fishery.

In this final rule, NMFS corrects an error on the list of stocks incidentally killed or injured in the Category III AK Prince William Sound salmon set gillnet fishery. On the 2019 LOF (84 FR 22051; May 16, 2019), NMFS incorrectly added the Central North Pacific stock of humpback whale to the list of stocks incidentally killed or injured in the Category III AK Prince William Sound salmon set gillnet fishery based on stranding reports of two injuries in 2015. The 2020 SAR correctly attributes the 2015 humpback whale stranding reports to the Category II AK Prince William Sound salmon drift gillnet fishery, not the Category III Prince William Sound salmon set gillnet fishery (Muto *et al.,* 2021). NMFS removes the Central North Pacific stock of humpback whale from the list of stocks incidentally killed or injured in the Category III AK Prince William Sound salmon set gillnet fishery. NMFS adds the Central North Pacific stock of humpback to the list of stocks incidentally killed or injured in the Category II AK Prince William Sound salmon drift gillnet fishery. This correction does not change the classification of the Category II AK Prince William Sound salmon drift gillnet fishery or the Category III AK Prince William Sound salmon set gillnet fishery.

NMFS updates the MMAP certificate process for calendar year 2022. MMAP certificates issued in 2020 remain in effect, valid through December 31, 2022, for vessel or gear owners participating in all Category I and II fisheries as of the final 2022 LOF.

**Summary of Changes to the LOF for 2022**

The following summarizes changes to the LOF for 2022, including the classification of fisheries, fisheries listed, the estimated number of vessels/persons in a particular fishery, and the species and/or stocks that are incidentally killed or injured in a particular fishery. NMFS re-classifies one fishery in the LOF for 2022. Additionally, NMFS adds three fisheries

to the LOF. NMFS also makes changes to the estimated number of vessels/persons and list of species and/or stocks killed or injured in certain fisheries. The classifications and definitions of U.S. commercial fisheries for 2022 are identical to those provided in the LOF for 2021 with the changes discussed below. State and regional abbreviations used in the following paragraphs include: AK (Alaska), BSAI (Bering Sea, Aleutian Island), CA (California), Gulf of Alaska (GOA), HI (Hawaii), Maine Hawaiian Islands (MHI), OR (Oregon), WA (Washington), and WNA (Western North Atlantic).

**Commercial Fisheries in the Pacific Ocean**

*Classification of Fisheries*

NMFS reclassifies the Category II AK Bering Sea, Aleutian Island (BSAI) rockfish trawl fishery from a Category II to a Category III fishery.

*Addition of Fisheries*

NMFS adds the CA Tanner crab pot fishery as a Category III fishery.

NMFS adds the CA/OR/WA non-albacore Highly Migratory Species (HMS) hook and line fishery as a Category III fishery.

*Fishery Name and Organizational Changes and Clarification*

NMFS removes the superscript ''1'' from the Main Hawaiian Islands (MHI) insular stock of false killer whale to indicate the stock is no longer driving the Category I classification of the HI deep-set longline fishery.

NMFS corrects an administrative error in Table 1. NMFS adds the superscript ''1'' CA/OR/WA stock of humpback whales to indicate the stock is driving the Category II classification of the CA coonstripe shrimp pot fishery.

NMFS renames the Category III WA/OR herring, smelt, squid purse seine or lampara fishery to the WA/OR herring, anchovy, smelt, squid purse seine or lampara fishery.

NMFS renames the Category III WA salmon purse seine fishery to the WA salmon seine fishery.

NMFS combines the Category III CA halibut hook and line/handline fishery and Category III CA white seabass hook and line/handline fishery, and names it the Category III CA halibut, white seabass, and yellowtail hook and line/handline fishery.

NMFS renames the Category III WA/OR Pacific halibut longline fishery to the WA/OR/CA Pacific halibut longline fishery.

NMFS renames the Category III WA/CA kelp fishery to the CA/WA kelp, seaweed, and algae fishery.

NMFS combines the Category III WA groundfish, bottomfish jig fishery and the hook and line component of the Category III CA nearshore finfish live trap/hook-and-line fishery, and names it the Category III WA/OR/CA groundfish/finfish hook and line fishery.

NMFS combines and renames the Category III WA/OR bait shrimp, clam, hand, dive, or mechanical collection fishery and the Category III OR/CA sea urchin, sea cucumber hand, dive, or mechanical collection fishery into two distinct gear-based Category III fisheries: (1) The CA/OR/WA dive collection fishery and (2) the WA/OR/CA hand/mechanical collection fishery.

*Number of Vessels/Persons*

NMFS updates the estimated number of vessels/persons in the Pacific Ocean (Table 1) as follows:

Category II

- CA thresher shark/swordfish drift gillnet (≥14 in mesh) fishery from 14 to 21 vessels/persons;
- CA halibut/white seabass and other species set gillnet (≤3.5 in mesh) fishery from 37 to 39 vessels/persons;
- CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) fishery from 22 to 20 vessels/persons;
- WA Puget Sound Region salmon drift gillnet fishery from 154 to 136 vessels/persons;
- CA coonstripe shrimp pot fishery from 14 to 9 vessels/persons;
- CA spiny lobster fishery from 186 to 189 vessels/persons;
- CA spot prawn pot fishery from 23 to 22 vessels/persons;
- CA Dungeness crab pot fishery from 501 to 471 vessels/persons;
- OR Dungeness crab pot fishery from 342 to 323 vessels/persons;
- WA/OR/CA sablefish pot fishery from 155 to 144 vessels/persons;
- WA coastal Dungeness crab pot fishery from 197 to 204 vessels/persons;
- HI shortline fishery from 9 to 5 vessels/persons;

Category III

- CA set gillnet (mesh size <3.5 in) fishery from 296 to 11 vessels/persons;
- HI inshore gillnet fishery from 36 to 29 vessels/persons;
- WA Grays Harbor salmon drift gillnet fishery from 24 to 19 vessels/persons;
- WA/OR Mainstem Columbia River eulachon gillnet fishery from 5 to 10 vessels/persons;
- WA Willapa Bay drift gillnet fishery from 82 to 57 vessels/persons;
- WA/OR sardine purse seine fishery from 42 to 6 vessels/persons;
- CA anchovy, mackerel, sardine purse seine fishery from 65 to 53 vessels/persons;
- CA squid purse seine fishery from 80 to 68 persons/vessels;
- CA tuna purse seine fishery from 10 to 14 vessels/persons;
- WA/OR Lower Columbia River salmon seine fishery from 10 to 1 person/vessel;
- WA/OR herring, anchovy, smelt, squid purse seine or lampara fishery from 130 to 41 vessels/persons;
- WA salmon seine fishery from 75 to 81 vessels/persons;
- HI lift net fishery from 17 to 15 vessels/persons;
- HI inshore purse seine fishery from <3 to none recorded vessels/persons;
- HI throw net, cast net fishery from 23 to 15 vessels/persons;
- HI seine net fishery from 24 to 17 vessels/persons;
- CA squid dip net fishery from 115 to 19 vessels/persons;
- HI offshore pen culture fishery from 2 to 1 vessels/persons;
- WA/OR/CA albacore surface hook and line/troll fishery from 705 to 556 vessels/persons;
- CA/OR/WA salmon troll fishery from 4,300 to 1,030 vessels/persons;
- HI troll fishery from 2,117 to 1,380 vessels/persons;
- HI rod and reel fishery from 322 to 237 vessels/persons;
- Guam tuna troll fishery from 432 to 398 vessels/persons;
- WA/OR/CA groundfish, bottomfish longline/set line fishery from 367 to 314 vessels/persons;
- WA/OR/CA Pacific halibut longline fishery from 350 to 130 vessels/persons;
- CA pelagic longline fishery from 1 to 4 vessels/persons;
- HI kaka line fishery from 15 to 5 vessels/persons;
- HI vertical line fishery from 3 to none recorded vessels/persons;
- CA halibut bottom trawl fishery from 47 to 23 vessels/persons;
- CA sea cucumber trawl fishery from 16 to 11 vessels/persons;
- WA/OR/CA shrimp trawl fishery from 300 to 130 vessels/persons;
- WA/OR/CA groundfish trawl fishery from 160–180 to 118 vessels/persons;
- CA rock crab pot fishery from 124 to 113 vessels/persons;
- WA/OR/CA hagfish pot fishery from 54 to 63 vessels/persons;
- WA/OR shrimp pot/trap fishery from 54 to 28 vessels/persons;
- WA Puget Sound Dungeness crab pot/trap fishery from 249 to 145 vessels/persons;
- HI crab trap fishery from 5 to 4 vessels/persons;

- HI fish trap fishery from 9 to 4 vessels/persons;
- HI lobster trap fishery from <3 to none recorded vessels/persons;
- HI shrimp trap fishery from 10 to 3 vessels/persons;
- HI crab net fishery from 4 to none recorded vessels/persons;
- HI kona crab loop net fishery from 33 to 20 vessels/persons;
- American Samoa bottomfish handline fishery from fewer than 20 to 9 vessels/persons;
- Commonwealth of the Northern Mariana Islands bottomfish fishery from 28 to 11 vessels/persons;
- Guam bottomfish fishery from >300 to 67 vessels/persons;
- HI aku boat, pole and line fishery from <3 to none recorded vessels/persons;
- HI bottomfish handline fishery from 578 to 385 vessels/persons;
- HI inshore handline fishery from 357 to 206 vessels/persons;
- HI pelagic handline fishery from 534 to 300 vessels/persons;
- CA swordfish harpoon fishery from 6 to 21 vessels/persons;
- HI bullpen trap fishery from 3 to none recorded vessels/persons;
- HI black coral diving fishery from <3 to none recorded vessels/persons;
- HI fish pond fishery from 5 to none recorded vessels/persons;
- HI handpick fishery from 46 to 25 vessels/persons;
- HI lobster diving fishery from 19 to 12 vessels/persons;
- HI spearfishing fishery from 163 to 82 vessels/persons; and
- HI aquarium collecting fishery from 90 to 34 vessels/persons.

*List of Species and/or Stocks Incidentally Killed or Injured in the Pacific Ocean*

NMFS adds the Eastern North Pacific stock of gray whale and the Central North Pacific stock of humpback to the list of species/stocks incidentally killed or injured in the Category II AK Prince William Sound salmon drift gillnet fishery.

NMFS adds three stocks to the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands pollock trawl fishery: (1) Arctic stock of ringed seal, (2) Central North Pacific stock of humpback whale and (3) Western North Pacific stock of humpback whale.

NMFS adds the U.S. stock of California sea lion to the list of species/stocks incidentally killed or injured in the Category II CA spiny lobster fishery.

NMFS adds the California stock of Northern elephant seal to the list of species/stocks incidentally killed or injured in the Category II AK Gulf of Alaska sablefish longline fishery.

NMFS adds both the Western U.S. stock of Steller sea lion and North Kodiak stock of harbor seal to the list of species/stocks incidentally killed or injured in the Category III AK Kodiak salmon purse seine fishery.

NMFS adds the Gulf of Alaska, Aleutian Islands, Bering Sea transient stock of killer whale to the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Greenland turbot longline fishery.

NMFS adds the Clarence Strait stock of harbor seal to the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska halibut longline fishery.

NMFS adds the Cook Inlet/Shelikof Strait stock of harbor seal to the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska Pacific cod longline fishery.

NMFS adds the California stock of Northern elephant seal to the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Atka mackerel trawl fishery.

NMFS adds three stocks to the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska flatfish trawl fishery. The three stocks are: (1) Cook Inlet/Shelikof Strait stock of harbor seal, (2) North Kodiak stock of harbor seal, and (3) South Kodiak stock of harbor seal.

NMFS adds the North Pacific stock of sperm whale to the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands sablefish pot fishery.

NMFS adds the U.S. stock of California sea lion to the list of species/stocks incidentally killed or injured in the Category III WA/OR/CA groundfish/finfish hook and line fishery.

NMFS adds the Central North Pacific stock of humpback whale to the list of species/stocks incidentally killed or injured in the Category III AK/WA/OR/CA commercial passenger fishing vessel fishery.

NMFS retains the following four stocks on the list of species/stocks incidentally killed or injured in the Category I HI deep-set longline fishery: (1) Pelagic stock of bottlenose dolphin, (2) Hawaii stock of Kogia spp., (3) Hawaii stock of Risso's dolphin and (4) Hawaii stock of striped dolphin.

NMFS retains four stocks on the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery: (1) Hawaii pelagic stock of bottlenose dolphin, (2) Central North Pacific stock of humpback whale, (3) Hawaii stock of Risso's dolphin and (4) Hawaii stock of striped dolphin.

NMFS adds the unknown stock of striped dolphin to the list of species/stocks incidentally killed or injured in the Category II American Samoa longline fishery.

NMFS adds Hawaiian monk seal to the list of species/stocks incidentally killed or injured in the Category III HI offshore pen culture fishery.

NMFS removes the Central North Pacific stock of humpback whale from the list of stocks incidentally killed or injured in the Category III AK Prince William Sound salmon set gillnet fishery.

NMFS removes the Alaska resident stock of killer whale from the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Greenland turbot longline fishery.

NMFS removes the Alaska stock of spotted seal from the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Pacific cod longline fishery.

NMFS removes six stocks from the list of species/stocks incidentally killed or injured in the Category II AK Bering Sea, Aleutian Islands pollock trawl fishery: (1) Alaska stock of bearded seal, (2), Bristol Bay stock of beluga whale, (3) Eastern Bering Sea stock of beluga whale, (4) Eastern Chukchi Sea stock of beluga whale, (5) Eastern Pacific stock of Northern fur seal and (6) Alaska stock of spotted seal.

NMFS removes the Alaska stock of bearded seal from the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands Atka mackerel trawl fishery.

NMFS removes both the Gulf of Alaska, Aleutian Islands, Bering Sea transient stock and Eastern North Pacific Alaska resident stock of killer whale from the list of species/stocks incidentally killed or injured in the Category III AK Bering Sea, Aleutian Islands rockfish trawl fishery.

NMFS removes the North Pacific stock of Northern elephant seal from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska flatfish trawl fishery.

NMFS removes the Alaska stock of harbor seal from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska Pacific cod trawl fishery.

NMFS removes three stocks from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska pollock trawl fishery: (1) Alaska stock of Dall's porpoise, (2) Northeast Pacific stock of fin whale and (3) North Pacific stock of Northern elephant seal.

NMFS removes the Gulf of Alaska stock of harbor seal from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska Pacific cod pot fishery.

NMFS removes the Northeast Pacific stock of fin whale from the list of species/stocks incidentally killed or injured in the Category III AK Gulf of Alaska groundfish jig fishery.

NMFS removes the Hawaii stock of pygmy killer whale from the list of species/stocks incidentally killed or injured in the Category I HI deep-set longline fishery.

NMFS removes the Hawaii stock of Blainville's beaked whale and Hawaii stock of rough-toothed dolphin from the list of species/stocks incidentally killed or injured in the Category II HI shallow-set longline fishery.

NMFS revises marine mammal stock names on the list of species/stocks incidentally killed or injured for consistency with the current stock names in the SARs as follows:

Category II AK Cook Inlet Salmon Set Gillnet Fishery

- Harbor seal, GOA to harbor seal, Cook Inlet/Shelikof Strait;

Category II AK Bering Sea, Aleutian Islands Flatfish Ttrawl Fishery

- Bearded seal, AK to bearded seal, Beringia;
- Harbor seal, Bering Sea to harbor seal, Bristol Bay;
- Killer whale, AK resident to killer whale, Eastern North Pacific Alaska resident;
- Killer whale, GOA, AI, BS transient to killer whale, Eastern North Pacific GOA, AI, BS transient;
- Ringed seal, AK to ringed seal, Arctic;
- Ribbon seal, AK to ribbon seal;
- Spotted seal, AK to spotted seal, Bering;

Category II AK Bering Sea, Aleutian Islands Pollock Trawl Fishery

- Harbor seal, AK to harbor seal, Bristol Bay;
- Ribbon seal, AK to ribbon seal;

Category II AK Prince William Sound Salmon Set Gillnet Fishery

- Harbor seal, GOA to harbor seal, Prince William Sound;

Category III AK Bering Sea, Aleutian Islands Rockfish Trawl Fishery

- Ribbon seal, AK to ribbon seal; and

Category III AK Bering Sea, Aleutian Islands Pacific Cod Trawl Fishery

- Ribbon seal, AK to ribbon seal.

**Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean**

*Fishery Name and Organizational Changes and Clarification*

NMFS adds a new fishery, MA mixed species trap/pot fishery, as a Category II fishery that encompasses all trap/pot fishing that occurs in state waters of Massachusetts. We remove Massachusetts state waters trap/pot fisheries from the broader Category I Northeast/Mid-Atlantic American lobster trap/pot and Category II Atlantic mixed species trap/pot fisheries. NMFS adds the fishery to the list of affected fisheries for the ALWTRP in Table 4.

*List of Species and/or Stocks Incidentally Killed or Injured in the Atlantic Ocean, Gulf of Mexico, and Caribbean*

NMFS adds the Northern migratory coastal stock of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category I Northeast sink gillnet fishery.

NMFS adds both the Pensacola Bay, East Bay stock and Perdido Bay stocks of bottlenose dolphin to the list of species/stocks incidentally killed or injured in the Category II Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl fishery.

**Commercial Fisheries on the High Seas**

*Fishery Name and Organizational Changes and Clarification*

NMFS renames the Category II South Pacific tuna purse seine fishery to the Western and Central Pacific Ocean tuna purse seine fishery.

NMFS clarifies the fishery description for the renamed Category II Western and Central Pacific Ocean tuna purse seine fishery. NMFS clarifies that the only gear type used in this fishery is purse seine. Based on this clarification, NMFS also removes the Category II South Pacific tuna longline fishery from the LOF.

*Number of Vessels/Persons*

NMFS updates the estimated number of HSFCA permits for high seas fisheries (Table 3) as follows:

Category I

- Atlantic highly migratory species longline fishery from 45 to 39 HSFCA permits;

Category II

- Western and Central Pacific Ocean tuna purse seine fishery from 26 to 20 HSFCA permits;
- Pacific highly migratory species handline/pole and line fishery from 43 to 44 HSFCA permits;
- South Pacific albacore troll handline/pole and line fishery from 10 to 9 HSFCA permits;
- South Pacific albacore troll fishery from 18 to 20 HSFCA permits; South Pacific tuna troll fishery from 1 to 0 HSFCA permits;
- Western Pacific pelagic troll fishery from 4 to 6 HSFCA permits;

Category III

- Pacific highly migratory species longline fishery from 105 to 111 HSFCA permits; and
- Pacific highly migratory species troll fishery from 111 to 107 HSFCA permits.

*List of Species and/or Stocks Incidentally Killed or Injured on the High Seas*

NMFS retains the Central North Pacific stock of humpback whale on the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic (HI deep-set component) fishery.

NMFS adds the following 18 stocks to the list of species/stocks incidentally killed or injured in the Category II Western and Central Pacific Ocean tuna purse seine fishery: (1) Hawaii pelagic stock of bottlenose dolphin, (2) unknown stock of blue whale, (3) Hawaii stock of Bryde's whale, (4) Hawaii pelagic stock of false killer whale, (5) Hawaii stock of fin whale, (6) unknown stock of humpback whale, (7) Indo-Pacific bottlenose dolphin, (8) California stock of long-beaked common dolphin, (9) unknown stock of melon-headed whale, (10) Hawaii stock of minke whale, (11) unknown stock of pantropical spotted dolphin, (12) Hawaii stock of pygmy killer whale, (13) unknown stock of Risso's dolphin, (14) unknown stock of rough-toothed dolphin, (15) Hawaii stock of sei whale, (16) unknown stock of short-finned pilot whale, (17) Hawaii stock of sperm whale, and (18) unknown stock of spinner dolphin.

NMFS adds Ginkgo-toothed beaked whale to the list of species/stocks incidentally killed or injured in the Category II Western Pacific Pelagic longline fishery (HI shallow-set component).

NMFS removes the Hawaii stock of pygmy killer whale from the list of species/stocks incidentally killed or injured in the Category I Western Pacific Pelagic longline fishery (HI deep-set component).

NMFS removes three stocks from the list of species/stocks incidentally killed or injured in the Category II Western Pacific Pelagic longline fishery (HI shallow-set component). The three

stocks are: (1) Hawaii stock of Blainville's beaked whale, (2) unknown stock of Mesoplodon species, and (3) Hawaii stock of rough-toothed dolphin.

**List of Fisheries**

The following tables set forth the list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska), Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean, Table 3 lists commercial fisheries on the high seas, and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels or persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels or persons in the fishery. NMFS acknowledges that, in some cases, these estimates may be inflations of actual effort. For example, the State of Hawaii does not issue fishery-specific licenses, and the number of participants reported in the LOF represents the number of commercial marine license holders who reported using a particular fishing gear type/method at least once in a given year, without considering how many times the gear was used. For these fisheries, effort by a single participant is counted the same whether the fisherman used the gear only once or every day. In the Mid-Atlantic and New England fisheries, the numbers represent the potential effort for each fishery, given the multiple gear types for which several state permits may allow. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates, as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Tables 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to gather more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, contact the relevant regional office (contact information included above in Where can I find more information about the LOF and the MMAP? section).

For high seas fisheries, Table 3 lists the number of valid HSFCA permits currently held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time. As noted previously, the number of HSFCA permits listed in Table 3 for the high seas components of fisheries that also operate within U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

Tables 1, 2, and 3 also list the marine mammal species and/or stocks incidentally killed or injured (seriously or non-seriously) in each fishery based on SARs, injury determination reports, bycatch estimation reports, observer data, logbook data, stranding data, disentanglement network data, fishermen self-reports (*i.e.,* MMAP reports), and anecdotal reports. The best available scientific information included in these reports is based on data through 2018. This list includes all species and/or stocks known to be killed or injured in a given fishery, but also includes species and/or stocks for which there are anecdotal records of a mortality or injury. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those species/stocks driving a fishery's classification (*i.e.,* the fishery is classified based on mortalities and serious injuries of a marine mammal stock that are greater than or equal to 50 percent (Category I), or greater than 1 percent and less than 50 percent (Category II), of a stock's PBR) by a ''1'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented mortalities or serious injuries of marine mammals, or fisheries that did not result in a mortality or serious injury rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063; December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear types, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fishermen reports, stranding data, and the species and distribution of marine mammals in the area). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by adding a ''2'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately on Table 1 or 2 and Table 3, are considered the same fisheries on either side of the EEZ boundary. NMFS has designated those fisheries in each table with an asterisk (*) after the fishery's name.

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| **Category I** | | |
| *Longline/Set Line Fisheries:* | | |
| HI deep-set longline*^ | 143 | Bottlenose dolphin, HI Pelagic.<br>False killer whale, HI Pelagic[1].<br>False killer whale, MHI Insular.<br>False killer whale, NWHI.<br>Humpback whale. Central North Pacific.<br>Kogia *spp.* (Pygmy or dwarf sperm whale), HI. |

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| | | Risso's dolphin, HI.<br>Rough-toothed dolphin, HI.<br>Short-finned pilot whale, HI.<br>Striped dolphin, HI. |
| **Category II** | | |
| *Gillnet Fisheries:* | | |
| CA thresher shark/swordfish drift gillnet (≥14 in mesh) * .... | 21 | Bottlenose dolphin, CA/OR/WA offshore.<br>California sea lion, U.S.<br>Dall's porpoise, CA/OR/WA.<br>Gray whale, Eastern North Pacific.<br>Humpback whale, CA/OR/WA.<br>Long-beaked common dolphin, CA.<br>Minke whale, CA/OR/WA[1].<br>Northern elephant seal, CA breeding.<br>Northern right-whale dolphin, CA/OR/WA.<br>Pacific white-sided dolphin, CA/OR/WA.<br>Risso's dolphin, CA/OR/WA.<br>Short-beaked common dolphin, CA/OR/WA.<br>Short-finned pilot whale, CA/OR/WA[1].<br>Sperm Whale, CA/OR/WA[1]. |
| CA halibut/white seabass and other species set gillnet (>3.5 in mesh). | 39 | California sea lion, U.S.<br>Gray whale, Eastern North Pacific.<br>Harbor seal, CA.<br>Humpback whale, CA/OR/WA[1].<br>Long-beaked common dolphin, CA.<br>Northern elephant seal, CA breeding.<br>Sea otter, CA.<br>Short-beaked common dolphin, CA/OR/WA. |
| CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) [2]. | 20 | California sea lion, U.S.<br>Long-beaked common dolphin, CA.<br>Short-beaked common dolphin, CA/OR/WA. |
| AK Bristol Bay salmon drift gillnet [2] ..... | 1,862 | Beluga whale, Bristol Bay.<br>Gray whale, Eastern North Pacific.<br>Harbor seal, Bering Sea.<br>Northern fur seal, Eastern Pacific.<br>Pacific white-sided dolphin, North Pacific.<br>Spotted seal, AK.<br>Steller sea lion, Western U.S. |
| AK Bristol Bay salmon set gillnet [2] ..... | 979 | Beluga whale, Bristol Bay.<br>Gray whale, Eastern North Pacific.<br>Harbor seal, Bering Sea.<br>Northern fur seal, Eastern Pacific.<br>Spotted seal, AK. |
| AK Kodiak salmon set gillnet ..... | 188 | Harbor porpoise, GOA [1].<br>Harbor seal, GOA.<br>Humpback whale, Central North Pacific.<br>Humpback whale, Western North Pacific.<br>Sea otter, Southwest AK.<br>Steller sea lion, Western U.S. |
| AK Cook Inlet salmon set gillnet ..... | 736 | Beluga whale, Cook Inlet.<br>Dall's porpoise, AK.<br>Harbor porpoise, GOA.<br>Harbor seal, Cook Inlet/Shelikof Strait.<br>Humpback whale, Central North Pacific [1].<br>Sea otter, South central AK.<br>Steller sea lion, Western U.S. |
| AK Cook Inlet salmon drift gillnet ..... | 569 | Beluga whale, Cook Inlet.<br>Dall's porpoise, AK.<br>Harbor porpoise, GOA [1].<br>Harbor seal, GOA.<br>Steller sea lion, Western U.S. |
| AK Peninsula/Aleutian Islands salmon drift gillnet [2] ..... | 162 | Dall's porpoise, AK.<br>Harbor porpoise, GOA.<br>Harbor seal, GOA.<br>Northern fur seal, Eastern Pacific. |
| AK Peninsula/Aleutian Islands salmon set gillnet [2] ..... | 113 | Harbor porpoise, Bering Sea.<br>Northern sea otter, Southwest AK. |

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| | | Steller sea lion, Western U.S. |
| AK Prince William Sound salmon drift gillnet | 537 | Dall's porpoise, AK.<br>Gray whale, Eastern North Pacific.<br>Harbor porpoise, GOA [1].<br>Harbor seal, Prince William Sound.<br>Humpback whale, Central North Pacific.<br>Northern fur seal, Eastern Pacific.<br>Pacific white-sided dolphin, North Pacific.<br>Sea otter, South central AK.<br>Steller sea lion, Western U.S.[1] |
| AK Southeast salmon drift gillnet | 474 | Dall's porpoise, AK.<br>Harbor porpoise, Southeast AK.<br>Harbor seal, Southeast AK.<br>Humpback whale, Central North Pacific [1].<br>Pacific white-sided dolphin, North Pacific.<br>Steller sea lion, Eastern U.S. |
| AK Yakutat salmon set gillnet [2] | 168 | Gray whale, Eastern North Pacific.<br>Harbor Porpoise, Southeastern AK.<br>Harbor seal, Southeast AK.<br>Humpback whale, Central North Pacific (Southeast AK). |
| WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded). | 136 | Dall's porpoise, CA/OR/WA.<br>Harbor porpoise, inland WA [1].<br>Harbor seal, WA inland. |
| *Trawl Fisheries:* | | |
| AK Bering Sea, Aleutian Islands flatfish trawl | 32 | Bearded seal, Beringia.<br>Gray whale, Eastern North Pacific.<br>Harbor porpoise, Bering Sea.<br>Harbor seal, Bristol Bay.<br>Humpback whale, Western North Pacific [1].<br>Killer whale, Eastern North Pacific Alaska resident [1].<br>Killer whale, Eastern North Pacific GOA, AI, BS transient [1].<br>Northern fur seal, Eastern Pacific.<br>Ringed seal, Arctic.<br>Ribbon seal.<br>Spotted seal, Bering.<br>Steller sea lion, Western U.S.[1]<br>Walrus, AK. |
| AK Bering Sea, Aleutian Islands pollock trawl | 102 | Harbor seal, Bristol Bay.<br>Humpback whale, Central North Pacific.<br>Humpback whale, Western North Pacific.<br>Ribbon seal.<br>Ringed seal, Arctic.<br>Steller sea lion, Western U.S.[1] |
| *Pot, Ring Net, and Trap Fisheries:* | | |
| AK Bering Sea, Aleutian Islands Pacific cod pot | 59 | Harbor seal, Bristol Bay.<br>Humpback whale, Central North Pacific.<br>Humpback whale, Western North Pacific. |
| CA coonstripe shrimp pot | 9 | Gray whale, Eastern North Pacific.<br>Harbor seal, CA.<br>Humpback whale, CA/OR/WA [1]. |
| CA spiny lobster | 189 | Bottlenose dolphin, CA/OR/WA offshore.<br>California sea lion, U.S.<br>Humpback whale, CA/OR/WA [1].<br>Gray whale, Eastern North Pacific.<br>Southern sea otter. |
| CA spot prawn pot | 22 | Gray whale, Eastern North Pacific.<br>Humpback whale, CA/OR/WA [1].<br>Long-beaked common dolphin, CA. |
| CA Dungeness crab pot | 471 | Blue whale, Eastern North Pacific [1].<br>Gray whale, Eastern North Pacific.<br>Humpback whale, CA/OR/WA [1].<br>Killer whale, Eastern North Pacific GOA, BSAI transient.<br>Killer whale, West Coast transient. |
| OR Dungeness crab pot | 323 | Gray whale, Eastern North Pacific.<br>Humpback whale, CA/OR/WA [1]. |
| WA/OR/CA sablefish pot | 144 | Humpback whale, CA/OR/WA[1]. |
| WA coastal Dungeness crab pot | 204 | Gray whale, Eastern North Pacific.<br>Humpback whale, CA/OR/WA [1]. |

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| *Longline/Set Line Fisheries:* | | |
| AK Gulf of Alaska sablefish longline | 295 | Northern elephant seal, California.<br>Sperm whale, North Pacific.<br>Steller sea lion, Eastern U.S. |
| HI shallow-set longline *^ | 11 | Bottlenose dolphin, HI Pelagic.<br>False killer whale, HI Pelagic [1].<br>Humpback whale, Central North Pacific.<br>Risso's dolphin, HI.<br>Striped dolphin, HI. |
| American Samoa longline [2] | 13 | False killer whale, American Samoa.<br>Rough-toothed dolphin, American Samoa.<br>Short-finned pilot whale, unknown.<br>Striped dolphin, unknown. |
| HI shortline [2] | 5 | None documented. |
| **Category III** | | |
| *Gillnet Fisheries:* | | |
| AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet | 1,778 | Harbor porpoise, Bering Sea. |
| AK Prince William Sound salmon set gillnet | 29 | Harbor seal, GOA.<br>Sea otter, South central AK.<br>Steller sea lion, Western U.S. |
| AK roe herring and food/bait herring gillnet | 920 | None documented. |
| CA set gillnet (mesh size <3.5 in) | 11 | None documented. |
| HI inshore gillnet | 29 | Bottlenose dolphin, HI.<br>Spinner dolphin, HI. |
| WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing). | 19 | Harbor seal, OR/WA coast. |
| WA/OR Mainstem Columbia River eulachon gillnet | 10 | None documented. |
| WA/OR lower Columbia River (includes tributaries) drift gillnet. | 244 | California sea lion, U.S.<br>Harbor seal, OR/WA coast. |
| WA Willapa Bay drift gillnet | 57 | Harbor seal, OR/WA coast.<br>Northern elephant seal, CA breeding. |
| *Miscellaneous Net Fisheries:* | | |
| AK Cook Inlet salmon purse seine | 83 | Humpback whale, Central North Pacific. |
| AK Kodiak salmon purse seine | 376 | Dall's porpoise, AK.<br>Harbor seal, North Kodiak.<br>Humpback whale, Central North Pacific.<br>Humpback whale, Western North Pacific.<br>Steller sea lion, Western U.S. |
| AK Southeast salmon purse seine | 315 | Humpback whale, Central North Pacific. |
| AK roe herring and food/bait herring beach seine | 10 | None documented. |
| AK roe herring and food/bait herring purse seine | 356 | None documented. |
| AK salmon beach seine | 31 | None documented. |
| AK salmon purse seine (Prince William Sound, Chignik, Alaska Peninsula). | 936 | Harbor seal, GOA.<br>Harbor seal, Prince William Sound. |
| WA/OR sardine purse seine | 6 | None documented. |
| CA anchovy, mackerel, sardine purse seine | 53 | California sea lion, U.S.<br>Harbor seal, CA. |
| CA squid purse seine | 68 | California sea lion, U.S.<br>Long-beaked common dolphin, CA.<br>Risso's dolphin, CA/OR/WA.<br>Short-beaked common dolphin, CA/OR/WA. |
| CA tuna purse seine * | 14 | None documented. |
| WA/OR Lower Columbia River salmon seine | 1 | None documented. |
| WA/OR herring, anchovy, smelt, squid purse seine or lampara. | 41 | None documented. |
| WA salmon seine | 81 | None documented. |
| WA salmon reef net | 11 | None documented. |
| HI lift net | 15 | None documented. |
| HI inshore purse seine | None recorded | None documented. |
| HI throw net, cast net | 15 | None documented. |
| HI seine net | 17 | None documented. |
| *Dip Net Fisheries:* | | |
| CA squid dip net | 19 | None documented. |
| *Marine Aquaculture Fisheries:* | | |
| CA marine shellfish aquaculture | unknown | None documented. |
| CA salmon enhancement rearing pen | >1 | None documented. |
| CA white seabass enhancement net pens | 13 | California sea lion, U.S. |

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| HI offshore pen culture | 1 | Hawaiian monk seal. |
| WA salmon net pens | 14 | California sea lion, U.S.<br>Harbor seal, WA inland waters. |
| WA/OR shellfish aquaculture | 23 | None documented. |
| *Troll Fisheries:* | | |
| WA/OR/CA albacore surface hook and line/troll | 556 | None documented. |
| CA halibut, white seabass, and yellowtail hook and line/ handline. | 388 | None documented. |
| CA/OR/WA non-albacore HMS hook and line | 124 | None documented. |
| AK Bering Sea, Aleutian Islands groundfish hand troll and dinglebar troll. | unknown | None documented. |
| AK Gulf of Alaska groundfish hand troll and dinglebar troll | unknown | None documented. |
| AK salmon troll | 1,908 | Steller sea lion, Eastern U.S.<br>Steller sea lion, Western U.S. |
| American Samoa tuna troll | 13 | None documented. |
| CA/OR/WA salmon troll | 1,030 | None documented. |
| HI troll | 1,380 | Pantropical spotted dolphin, HI. |
| HI rod and reel | 237 | None documented. |
| Commonwealth of the Northern Mariana Islands tuna troll | 40 | None documented. |
| Guam tuna troll | 398 | None documented. |
| *Longline/Set Line Fisheries:* | | |
| AK Bering Sea, Aleutian Islands Greenland turbot longline | 4 | Killer whale, GOA, AI, BS transient. |
| AK Bering Sea, Aleutian Islands Pacific cod longline | 45 | Northern fur seal, Eastern Pacific.<br>Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands sablefish longline | 22 | None documented. |
| AK Bering Sea, Aleutian Islands halibut longline | 127 | Northern fur seal, Eastern Pacific.<br>Sperm whale, North Pacific. |
| AK Gulf of Alaska halibut longline | 855 | Harbor seal, Clarence Strait.<br>Harbor seal, Cook Inlet.<br>Steller sea lion, Eastern U.S. |
| AK Gulf of Alaska Pacific cod longline | 92 | Harbor seal, Cook Inlet/Shelikof Strait.<br>Steller sea lion, Western U.S. |
| AK octopus/squid longline | 3 | None documented. |
| AK state-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish). | 464 | None documented. |
| WA/OR/CA groundfish, bottomfish longline/set line | 314 | Bottlenose dolphin, CA/OR/WA offshore.<br>California sea lion, U.S.<br>Northern elephant seal, California breeding.<br>Sperm whale, CA/OR/WA.<br>Steller sea lion, Eastern U.S. |
| WA/OR/CA Pacific halibut longline | 130 | None documented. |
| CA pelagic longline | 4 | None documented in the most recent 5 years of data. |
| HI kaka line | 5 | None documented. |
| HI vertical line | None recorded | None documented. |
| *Trawl Fisheries:* | | |
| AK Bering Sea, Aleutian Islands Atka mackerel trawl | 13 | Harbor seal, Aleutian Islands.<br>Northern elephant seal, California.<br>Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands Pacific cod trawl | 72 | Bearded seal, AK.<br>Ribbon seal.<br>Steller sea lion, Western U.S. |
| AK Bering Sea, Aleutian Islands rockfish trawl | 17 | Harbor seal, Aleutian Islands.<br>Ribbon seal. |
| AK Gulf of Alaska flatfish trawl | 36 | Harbor seal, Cook Inlet/Shelikof Strait.<br>Harbor seal, North Kodiak.<br>Harbor seal, South Kodiak.<br>Steller sea lion, Western U.S. |
| AK Gulf of Alaska Pacific cod trawl | 55 | Steller sea lion, Western U.S. |
| AK Gulf of Alaska pollock trawl | 67 | Steller sea lion, Western U.S. |
| AK Gulf of Alaska rockfish trawl | 43 | Steller sea lion, Western U.S. |
| AK Kodiak food/bait herring otter trawl | 4 | None documented. |
| AK shrimp otter trawl and beam trawl | 38 | None documented. |
| AK state-managed waters of Prince William Sound groundfish trawl. | 2 | None documented. |
| CA halibut bottom trawl | 23 | California sea lion, U.S.<br>Harbor porpoise, unknown.<br>Harbor seal, unknown.<br>Northern elephant seal, CA breeding.<br>Steller sea lion, unknown. |

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| CA sea cucumber trawl | 11 | None documented. |
| WA/OR/CA shrimp trawl | 130 | California sea lion, U.S. |
| WA/OR/CA groundfish trawl | 118 | California sea lion, U.S.<br>Dall's porpoise, CA/OR/WA.<br>Harbor seal, OR/WA coast.<br>Northern elephant seal, CA breeding.<br>Northern fur seal, Eastern Pacific.<br>Northern right whale dolphin, CA/OR/WA.<br>Pacific white-sided dolphin, CA/OR/WA.<br>Steller sea lion, Eastern U.S. |
| *Pot, Ring Net, and Trap Fisheries:* | | |
| AK Bering Sea, Aleutian Islands sablefish pot | 6 | Sperm whale, North Pacific. |
| AK Bering Sea, Aleutian Islands crab pot | 540 | Bowhead whale, Western Arctic.<br>Gray whale, Eastern North Pacific. |
| AK Gulf of Alaska crab pot | 271 | None documented. |
| AK Gulf of Alaska Pacific cod pot | 116 | None documented in most recent 5 years of data. |
| AK Gulf of Alaska sablefish pot | 248 | None documented. |
| AK Southeast Alaska crab pot | 375 | Humpback whale, Central North Pacific (Southeast AK). |
| AK Southeast Alaska shrimp pot | 99 | Humpback whale, Central North Pacific (Southeast AK). |
| AK shrimp pot, except Southeast | 141 | None documented. |
| AK octopus/squid pot | 15 | None documented. |
| CA rock crab pot | 113 | Gray whale, Eastern North Pacific.<br>Harbor seal, CA. |
| CA Tanner crab pot fishery | 1 | None documented. |
| WA/OR/CA hagfish pot | 63 | None documented. |
| WA/OR shrimp pot/trap | 28 | None documented. |
| WA Puget Sound Dungeness crab pot/trap | 145 | None documented. |
| HI crab trap | 4 | Humpback whale, Central North Pacific. |
| HI fish trap | 4 | None documented. |
| HI lobster trap | None recorded | None documented in recent years. |
| HI shrimp trap | 3 | None documented. |
| HI crab net | None recorded | None documented. |
| HI Kona crab loop net | 20 | None documented. |
| *Hook and Line, Handline, and Jig Fisheries:* | | |
| AK Bering Sea, Aleutian Islands groundfish jig | 2 | None documented. |
| AK Gulf of Alaska groundfish jig | 214 | None documented in most recent 5 years of data. |
| AK halibut jig | 71 | None documented. |
| American Samoa bottomfish | 9 | None documented. |
| Commonwealth of the Northern Mariana Islands bottomfish. | 11 | None documented. |
| Guam bottomfish | 67 | None documented. |
| HI aku boat, pole, and line | None recorded | None documented. |
| HI bottomfish handline | 385 | None documented in recent years. |
| HI inshore handline | 206 | None documented. |
| HI pelagic handline | 300 | None documented. |
| WA/OR/CA groundfish/finfish hook and line | 689 | California sea lion, U.S. |
| Western Pacific squid jig | 0 | None documented. |
| *Harpoon Fisheries:* | | |
| CA swordfish harpoon | 21 | None documented. |
| *Pound Net/Weir Fisheries:* | | |
| AK herring spawn on kelp pound net | 291 | None documented. |
| AK Southeast herring roe/food/bait pound net | 2 | None documented. |
| HI bullpen trap | None recorded | None documented. |
| *Bait Pens:* | | |
| WA/OR/CA bait pens | 13 | California sea lion, U.S. |
| *Dredge Fisheries:* | | |
| AK scallop dredge | 108 (5 AK) | None documented. |
| *Dive, Hand/Mechanical Collection Fisheries:* | | |
| AK clam | 130 | None documented. |
| AK Dungeness crab | 2 | None documented. |
| AK herring spawn on kelp | 266 | None documented. |
| AK miscellaneous invertebrates handpick | 214 | None documented. |
| CA/OR/WA dive collection | 186 | None documented. |
| CA/WA kelp, seaweed and algae | 4 | None documented. |
| HI black coral diving | None recorded | None documented. |
| HI fish pond | None recorded | None documented. |
| HI handpick | 25 | None documented. |
| HI lobster diving | 12 | None documented. |
| HI spearfishing | 82 | None documented. |

TABLE 1—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| WA/OR/CA hand/mechanical collection | 320 | None documented. |
| *Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:* | | |
| AK/WA/OR/CA commercial passenger fishing vessel | >7,000 (1,006 AK) | Humpback whale, Central North Pacific.<br>Humpback whale, Western North Pacific.<br>Killer whale, unknown.<br>Steller sea lion, Eastern U.S.<br>Steller sea lion, Western U.S. |
| *Live Finfish/Shellfish Fisheries:* | | |
| CA nearshore finfish trap | 93 | None documented. |
| HI aquarium collecting | 34 | None documented. |

List of Abbreviations and Symbols Used in Table 1:
AI—Aleutian Islands; AK—Alaska; BS—Bering Sea; CA—California; ENP—Eastern North Pacific; GOA—Gulf of Alaska; HI—Hawaii; MHI—Main Hawaiian Islands; OR—Oregon; WA—Washington;
[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;
[2] Fishery classified by analogy;
* Fishery has an associated high seas component listed in Table 3; and
^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of species and/or stocks killed or injured in high seas component of the fishery, minus species and/or stocks that have geographic ranges exclusively on the high seas. The species and/or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| **Category I** | | |
| *Gillnet Fisheries:* | | |
| Mid-Atlantic gillnet | 4,020 | Bottlenose dolphin, Northern Migratory coastal.<br>Bottlenose dolphin, Southern Migratory coastal.[1]<br>Bottlenose dolphin, Northern NC estuarine system.[1]<br>Bottlenose dolphin, Southern NC estuarine system.[1]<br>Bottlenose dolphin, WNA offshore.<br>Common dolphin, WNA.<br>Gray seal, WNA.<br>Harbor porpoise, GME/BF.<br>Harbor seal, WNA.<br>Hooded seal, WNA.<br>Humpback whale, Gulf of Maine.<br>Minke whale, Canadian east coast. |
| Northeast sink gillnet | 4,072 | Bottlenose dolphin, Northern Migratory coastal.<br>Bottlenose dolphin, WNA offshore.<br>Common dolphin, WNA.<br>Fin whale, WNA.<br>Gray seal, WNA.[1]<br>Harbor porpoise, GME/BF.<br>Harbor seal, WNA.<br>Harp seal, WNA.<br>Humpback whale, Gulf of Maine.<br>Minke whale, Canadian east coast.<br>North Atlantic right whale, WNA.<br>Risso's dolphin, WNA.<br>White-sided dolphin, WNA. |
| *Trap/Pot Fisheries:* | | |
| Northeast/Mid-Atlantic American lobster trap/pot | 8,485 | Humpback whale, Gulf of Maine.<br>Minke whale, Canadian east coast.<br>North Atlantic right whale, WNA.[1] |
| *Longline Fisheries:* | | |
| Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline*. | 201 | Atlantic spotted dolphin, Northern GMX.<br>Bottlenose dolphin, Northern GMX oceanic.<br>Bottlenose dolphin, WNA offshore.<br>Common dolphin, WNA.<br>Cuvier's beaked whale, WNA.<br>False killer whale, WNA. |

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| | | Harbor porpoise, GME, BF.<br>Kogia *spp.* (Pygmy or dwarf sperm whale), WNA.<br>Long-finned pilot whale, WNA.<br>Mesoplodon beaked whale, WNA.<br>Minke whale, Canadian East coast.<br>Pantropical spotted dolphin, Northern GMX.<br>Pygmy sperm whale, GMX.<br>Risso's dolphin, Northern GMX.<br>Risso's dolphin, WNA.<br>Rough-toothed dolphin, Northern GMX.<br>Short-finned pilot whale, Northern GMX.<br>Short-finned pilot whale, WNA.[1]<br>Sperm whale, Northern GMX. |
| **Category II** | | |
| *Gillnet Fisheries:* | | |
| Chesapeake Bay inshore gillnet[2] | 265 | Bottlenose dolphin, unknown (Northern migratory coastal or Southern migratory coastal). |
| Gulf of Mexico gillnet[2] | 248 | Bottlenose dolphin, Eastern GMX coastal.<br>Bottlenose dolphin, GMX bay, sound, and estuarine.<br>Bottlenose dolphin, Mobile Bay, Bonsecour Bay.<br>Bottlenose dolphin, Northern GMX coastal.<br>Bottlenose dolphin, Western GMX coastal. |
| NC inshore gillnet | 2,676 | Bottlenose dolphin, Northern NC estuarine system.[1]<br>Bottlenose dolphin, Southern NC estuarine system.[1] |
| Northeast anchored float gillnet[2] | 852 | Harbor seal, WNA.<br>Humpback whale, Gulf of Maine.<br>White-sided dolphin, WNA. |
| Northeast drift gillnet[2] | 1,036 | None documented. |
| Southeast Atlantic gillnet[2] | 273 | Bottlenose dolphin, Central FL coastal.<br>Bottlenose dolphin, Northern FL coastal.<br>Bottlenose dolphin, SC/GA coastal.<br>Bottlenose dolphin, Southern migratory coastal. |
| Southeastern U.S. Atlantic shark gillnet | 21 | Bottlenose dolphin, unknown (Central FL, Northern FL, SC/GA coastal, or Southern migratory coastal).<br>North Atlantic right whale, WNA. |
| *Trawl Fisheries:* | | |
| Mid-Atlantic mid-water trawl (including pair trawl) | 320 | Bottlenose dolphin, WNA offshore.<br>Harbor seal, WNA. |
| Mid-Atlantic bottom trawl | 633 | Bottlenose dolphin, WNA offshore.[1]<br>Common dolphin, WNA.[1]<br>Gray seal, WNA.[1]<br>Harbor seal, WNA.<br>Risso's dolphin, WNA.[1]<br>White-sided dolphin, WNA. |
| Northeast mid-water trawl (including pair trawl) | 542 | Common dolphin, WNA.<br>Gray seal, WNA.<br>Harbor seal, WNA.<br>Long-finned pilot whale, WNA.[1] |
| Northeast bottom trawl | 968 | Bottlenose dolphin, WNA offshore.[1]<br>Common dolphin, WNA.<br>Gray seal, WNA.[1]<br>Harbor porpoise, GME/BF.<br>Harbor seal, WNA.<br>Harp seal, WNA.<br>Long-finned pilot whale, WNA.[1]<br>Risso's dolphin, WNA.[1]<br>White-sided dolphin, WNA.[1] |
| Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl | 10,824 | Atlantic spotted dolphin, Northern Gulf of Mexico.<br>Bottlenose dolphin, Charleston estuarine system.<br>Bottlenose dolphin, Eastern GMX coastal.[1]<br>Bottlenose dolphin, GMX bay, sound, estuarine.[1]<br>Bottlenose dolphin, GMX continental shelf.<br>Bottlenose dolphin, Mississippi River Delta.<br>Bottlenose dolphin, Mobile Bay, Bonsecour Bay.<br>Bottlenose dolphin, Northern GMX coastal.[1]<br>Bottlenose dolphin, Pensacola Bay, East Bay. |

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| | | Bottlenose dolphin, Perdido Bay. |
| | | Bottlenose dolphin, SC/GA coastal.[1] |
| | | Bottlenose dolphin, Southern migratory coastal. |
| | | Bottlenose dolphin, Western GMX coastal.[1] |
| *Trap/Pot Fisheries:* | | |
| MA mixed species trap/pot | 1,240 | None documented. |
| Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot[2]. | 1,101 | Bottlenose dolphin, Biscayne Bay estuarine. |
| | | Bottlenose dolphin, Central FL coastal. |
| | | Bottlenose dolphin, Eastern GMX coastal. |
| | | Bottlenose dolphin, FL Bay. |
| | | Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion). |
| | | Bottlenose dolphin, Indian River Lagoon estuarine system. |
| | | Bottlenose dolphin, Jacksonville estuarine system. |
| | | Bottlenose dolphin, Northern GMX coastal. |
| | | Bottlenose dolphin, Sarasota Bay, Little Sarasota Bay. |
| Atlantic mixed species trap/pot[2] | 3,493 | Fin whale, WNA. |
| | | Humpback whale, Gulf of Maine. |
| Atlantic blue crab trap/pot | 6,679 | Bottlenose dolphin, Central FL coastal. |
| | | Bottlenose dolphin, Central GA estuarine system.[1] |
| | | Bottlenose dolphin, Charleston estuarine system.[1] |
| | | Bottlenose dolphin, Indian River Lagoon estuarine system. |
| | | Bottlenose dolphin, Jacksonville estuarine system. |
| | | Bottlenose dolphin, Northern FL coastal.[1] |
| | | Bottlenose dolphin, Northern GA/Southern SC estuarine system. |
| | | Bottlenose dolphin, Northern Migratory coastal. |
| | | Bottlenose dolphin, Northern NC estuarine system.[1] |
| | | Bottlenose dolphin, Northern SC estuarine system. |
| | | Bottlenose dolphin, SC/GA coastal. |
| | | Bottlenose dolphin, Southern GA estuarine system. |
| | | Bottlenose dolphin, Southern Migratory coastal.[1] |
| | | Bottlenose dolphin, Southern NC estuarine system. |
| | | West Indian manatee, FL. |
| *Purse Seine Fisheries:* | | |
| Gulf of Mexico menhaden purse seine | 40–42 | Bottlenose dolphin, GMX bay, sound, estuarine. |
| | | Bottlenose dolphin, Mississippi River Delta. |
| | | Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau. |
| | | Bottlenose dolphin, Northern GMX coastal.[1] |
| | | Bottlenose dolphin, Western GMX coastal.[1] |
| Mid-Atlantic menhaden purse seine[2] | 17 | Bottlenose dolphin, Northern Migratory coastal. |
| | | Bottlenose dolphin, Southern Migratory coastal. |
| *Haul/Beach Seine Fisheries:* | | |
| Mid-Atlantic haul/beach seine | 359 | Bottlenose dolphin, Northern Migratory coastal.[1] |
| | | Bottlenose dolphin, Northern NC estuarine system.[1] |
| | | Bottlenose dolphin, Southern Migratory coastal.[1] |
| NC long haul seine | 22 | Bottlenose dolphin, Northern NC estuarine system.[1] |
| | | Bottlenose dolphin, Southern NC estuarine system. |
| *Stop Net Fisheries:* | | |
| NC roe mullet stop net | 1 | Bottlenose dolphin, Northern NC estuarine system. |
| | | Bottlenose dolphin, unknown (Southern migratory coastal or Southern NC estuarine system). |
| *Pound Net Fisheries:* | | |
| VA pound net | 20 | Bottlenose dolphin, Northern migratory coastal. |
| | | Bottlenose dolphin, Northern NC estuarine system. |
| | | Bottlenose dolphin, Southern Migratory coastal.[1] |
| **Category III** | | |
| *Gillnet Fisheries:* | | |
| Caribbean gillnet | 127 | None documented in the most recent 5 years of data. |
| DE River inshore gillnet | unknown | None documented in the most recent 5 years of data. |
| Long Island Sound inshore gillnet | unknown | None documented in the most recent 5 years of data. |
| RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet. | unknown | None documented in the most recent 5 years of data. |
| Southeast Atlantic inshore gillnet | unknown | Bottlenose dolphin, Northern SC estuarine system. |
| *Trawl Fisheries:* | | |

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| Atlantic shellfish bottom trawl | >58 | None documented. |
| Gulf of Mexico butterfish trawl | 2 | Bottlenose dolphin, Northern GMX oceanic.<br>Bottlenose dolphin, Northern GMX continental shelf. |
| Gulf of Mexico mixed species trawl | 20 | None documented. |
| GA cannonball jellyfish trawl | 1 | Bottlenose dolphin, SC/GA coastal. |
| *Marine Aquaculture Fisheries:* | | |
| Finfish aquaculture | 48 | Harbor seal, WNA. |
| Shellfish aquaculture | unknown | None documented. |
| *Purse Seine Fisheries:* | | |
| Gulf of Maine Atlantic herring purse seine | >7 | Harbor seal, WNA. |
| Gulf of Maine menhaden purse seine | >2 | None documented. |
| FL West Coast sardine purse seine | 10 | Bottlenose dolphin, Eastern GMX coastal. |
| U.S. Atlantic tuna purse seine * | 5 | None documented in most recent 5 years of data. |
| *Longline/Hook and Line Fisheries:* | | |
| Northeast/Mid-Atlantic bottom longline/hook-and-line | >1,207 | None documented. |
| Gulf of Maine, U.S. Mid-Atlantic tuna, shark, swordfish hook-and-line/harpoon. | 2,846 | Humpback whale, Gulf of Maine. |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/ hook-and-line. | >5,000 | Bottlenose dolphin, GMX continental shelf. |
| Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line. | 39 | Bottlenose dolphin, Eastern GMX coastal.<br>Bottlenose dolphin, Northern GMX continental shelf. |
| Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon. | 680 | None documented. |
| U.S. Atlantic, Gulf of Mexico trotline | unknown | None documented. |
| *Trap/Pot Fisheries:* | | |
| Caribbean mixed species trap/pot | 154 | Bottlenose dolphin, Puerto Rico and United States Virgin Islands. |
| Caribbean spiny lobster trap/pot | 40 | None documented. |
| FL spiny lobster trap/pot | 1,268 | Bottlenose dolphin, Biscayne Bay estuarine.<br>Bottlenose dolphin, Central FL coastal.<br>Bottlenose dolphin, Eastern GMX coastal.<br>Bottlenose dolphin, FL Bay estuarine.<br>Bottlenose dolphin, FL Keys. |
| Gulf of Mexico blue crab trap/pot | 4,113 | Bottlenose dolphin, Barataria Bay.<br>Bottlenose dolphin, Eastern GMX coastal.<br>Bottlenose dolphin, GMX bay, sound, estuarine.<br>Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau.<br>Bottlenose dolphin, Mobile Bay, Bonsecour Bay.<br>Bottlenose dolphin, Northern GMX coastal.<br>Bottlenose dolphin, Western GMX coastal.<br>West Indian manatee, FL. |
| Gulf of Mexico mixed species trap/pot | unknown | None documented. |
| Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot. | 10 | None documented. |
| U.S. Mid-Atlantic eel trap/pot | unknown | None documented. |
| *Stop Seine/Weir/Pound Net/Floating Trap/Fyke Net Fisheries:* | | |
| Gulf of Maine herring and Atlantic mackerel stop seine/ weir. | >1 | Harbor porpoise, GME/BF.<br>Harbor seal, WNA.<br>Minke whale, Canadian east coast.<br>Atlantic white-sided dolphin, WNA. |
| U.S. Mid-Atlantic crab stop seine/weir | 2,600 | None documented. |
| U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net). | unknown | Bottlenose dolphin, Northern NC estuarine system. |
| RI floating trap | 9 | None documented. |
| Northeast and Mid-Atlantic fyke net | unknown | None documented. |
| *Dredge Fisheries:* | | |
| Gulf of Maine sea urchin dredge | unknown | None documented. |
| Gulf of Maine mussel dredge | unknown | None documented. |
| Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge | >403 | None documented. |
| Mid-Atlantic blue crab dredge | unknown | None documented. |
| Mid-Atlantic soft-shell clam dredge | unknown | None documented. |
| Mid-Atlantic whelk dredge | unknown | None documented. |
| U.S. Mid-Atlantic/Gulf of Mexico oyster dredge | 7,000 | None documented. |
| New England and Mid-Atlantic offshore surf clam/quahog dredge. | unknown | None documented. |
| *Haul/Beach Seine Fisheries:* | | |

TABLE 2—LIST OF FISHERIES—COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

| Fishery description | Estimated number of vessels/ persons | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| Caribbean haul/beach seine | 38 | West Indian manatee, Puerto Rico. |
| Gulf of Mexico haul/beach seine | unknown | None documented. |
| Southeastern U.S. Atlantic haul/beach seine | 25 | None documented. |
| *Dive, Hand/Mechanical Collection Fisheries:* | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection. | 20,000 | None documented. |
| Gulf of Maine urchin dive, hand/mechanical collection | unknown | None documented. |
| Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net. | unknown | None documented. |
| *Commercial Passenger Fishing Vessel (Charter Boat) Fisheries:* | | |
| Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel. | 4,000 | Bottlenose dolphin, Barataria Bay estuarine system.<br>Bottlenose dolphin, Biscayne Bay estuarine.<br>Bottlenose dolphin, Central FL coastal.<br>Bottlenose dolphin, Choctawhatchee Bay.<br>Bottlenose dolphin, Eastern GMX coastal.<br>Bottlenose dolphin, FL Bay.<br>Bottlenose dolphin, GMX bay, sound, estuarine.<br>Bottlenose dolphin, Indian River Lagoon estuarine system.<br>Bottlenose dolphin, Jacksonville estuarine system.<br>Bottlenose dolphin, Mississippi Sound, Lake Borgne, Bay Boudreau.<br>Bottlenose dolphin, Northern FL coastal.<br>Bottlenose dolphin, Northern GA/Southern SC estuarine.<br>Bottlenose dolphin, Northern GMX coastal.<br>Bottlenose dolphin, Northern migratory coastal.<br>Bottlenose dolphin, Northern NC estuarine.<br>Bottlenose dolphin, Southern migratory coastal.<br>Bottlenose dolphin, Southern NC estuarine system.<br>Bottlenose dolphin, SC/GA coastal.<br>Bottlenose dolphin, Western GMX coastal.<br>Short-finned pilot whale, WNA. |

List of Abbreviations and Symbols Used in Table 2:
DE—Delaware; FL—Florida; GA—Georgia; GME/BF—Gulf of Maine/Bay of Fundy; GMX—Gulf of Mexico; MA—Massachusetts; NC—North Carolina; NY—New York; RI—Rhode Island; SC—South Carolina; VA—Virginia; WNA—Western North Atlantic;
[1] Fishery classified based on mortalities and serious injuries of this stock, which are greater than or equal to 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR;
[2] Fishery classified by analogy; and
* Fishery has an associated high seas component listed in Table 3.

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS

| Fishery description | Number of HSFCA permits | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| **Category I** | | |
| *Longline Fisheries:* | | |
| Atlantic Highly Migratory Species* | 39 | Atlantic spotted dolphin, WNA.<br>Bottlenose dolphin, Northern GMX oceanic.<br>Bottlenose dolphin, WNA offshore.<br>Common dolphin, WNA.<br>Cuvier's beaked whale, WNA.<br>False killer whale, WNA.<br>Killer whale, GMX oceanic.<br>Kogia *spp.* whale (Pygmy or dwarf sperm whale), WNA.<br>Long-finned pilot whale, WNA.<br>Mesoplodon beaked whale, WNA.<br>Minke whale, Canadian East coast.<br>Pantropical spotted dolphin, WNA.<br>Risso's dolphin, GMX.<br>Risso's dolphin, WNA.<br>Short-finned pilot whale, WNA. |
| Western Pacific Pelagic (HI Deep-set component)*^ | 143 | Bottlenose dolphin, HI Pelagic.<br>False killer whale, HI Pelagic.<br>Humpback whale, Central North Pacific.<br>Kogia *spp.* (Pygmy or dwarf sperm whale), HI. |

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

| Fishery description | Number of HSFCA permits | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| | | Risso's dolphin, HI.<br>Short-finned pilot whale, HI.<br>Striped dolphin, HI. |
| **Category II** | | |
| *Drift Gillnet Fisheries:* | | |
| Pacific Highly Migratory Species*^ | 5 | Long-beaked common dolphin, CA.<br>Humpback whale, CA/OR/WA.<br>Northern right-whale dolphin, CA/OR/WA.<br>Pacific white-sided dolphin, CA/OR/WA.<br>Risso's dolphin, CA/OR/WA.<br>Short-beaked common dolphin, CA/OR/WA. |
| *Trawl Fisheries:* | | |
| Atlantic Highly Migratory Species** | 1 | No information. |
| CCAMLR | 0 | Antarctic fur seal. |
| *Purse Seine Fisheries:* | | |
| Western and Central Pacific Ocean Tuna Purse Seine | 20 | Bottlenose dolphin, HI Pelagic.<br>Blue whale, unknown.<br>Bryde's whale, HI.<br>False killer whale, HI Pelagic.<br>Fin whale, HI.<br>Humpback whale, unknown.<br>Indo-Pacific dolphin.<br>Long-beaked common dolphin, CA.<br>Melon-headed whale, unknown.<br>Minke whale, HI.<br>Pantropical spotted dolphin, unknown.<br>Pygmy killer whale, HI.<br>Risso's dolphin, unknown.<br>Rough-toothed dolphin, unknown.<br>Sei whale, HI.<br>Short-finned pilot whale, unknown.<br>Sperm whale, HI.<br>Spinner dolphin, unknown. |
| Western Pacific Pelagic | 1 | No information. |
| *Longline Fisheries:* | | |
| CCAMLR | 0 | None documented. |
| South Pacific Albacore Troll | 6 | No information. |
| Western Pacific Pelagic (HI Shallow-set component)*^ | 11 | Bottlenose dolphin, HI Pelagic.<br>False killer whale, HI Pelagic.<br>Fin whale, HI.<br>Ginkgo-toothed beaked whale.<br>Guadalupe fur seal.<br>Humpback whale, Central North Pacific.<br>Northern elephant seal, CA breeding.<br>Risso's dolphin, HI.<br>Short-beaked common dolphin, CA/OR/WA.<br>Striped dolphin, HI. |
| *Handline/Pole and Line Fisheries:* | | |
| Atlantic Highly Migratory Species | 1 | No information. |
| Pacific Highly Migratory Species | 44 | No information. |
| South Pacific Albacore Troll | 9 | No information. |
| Western Pacific Pelagic | 5 | No information. |
| *Troll Fisheries:* | | |
| Atlantic Highly Migratory Species | 0 | No information. |
| South Pacific Albacore Troll | 20 | No information. |
| South Pacific Tuna Fisheries** | 0 | No information. |
| Western Pacific Pelagic | 6 | No information. |
| **Category III** | | |
| *Longline Fisheries:* | | |
| Northwest Atlantic Bottom Longline | 2 | None documented. |
| Pacific Highly Migratory Species | 111 | None documented in the most recent 5 years of data. |
| *Purse Seine Fisheries:* | | |
| Pacific Highly Migratory Species*^ | 5 | None documented. |
| *Trawl Fisheries:* | | |
| Northwest Atlantic | 4 | None documented. |
| *Troll Fisheries:* | | |

TABLE 3—LIST OF FISHERIES—COMMERCIAL FISHERIES ON THE HIGH SEAS—Continued

| Fishery description | Number of HSFCA permits | Marine mammal species and/or stocks incidentally killed or injured |
|---|---|---|
| Pacific Highly Migratory Species * | 107 | None documented. |

List of Terms, Abbreviations, and Symbols Used in Table 3:
CA—California; GMX—Gulf of Mexico; HI—Hawaii; OR—Oregon; WA—Washington; WNA—Western North Atlantic;
* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery;
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for 5 years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type; and
^ The list of marine mammal species and/or stocks killed or injured in this fishery is identical to the list of marine mammal species and/or stocks killed or injured in U.S. waters component of the fishery, minus species and/or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species and/or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

TABLE 4—FISHERIES AFFECTED BY TAKE REDUCTION TEAMS AND PLANS

| Take reduction plans | Affected fisheries |
|---|---|
| Atlantic Large Whale Take Reduction Plan (ALWTRP)—50 CFR 229.32 | *Category I*<br>Mid-Atlantic gillnet.<br>Northeast/Mid-Atlantic American lobster trap/pot.<br>Northeast sink gillnet.<br>*Category II*<br>Atlantic blue crab trap/pot.<br>Atlantic mixed species trap/pot.<br>MA mixed species trap/pot.<br>Northeast anchored float gillnet.<br>Northeast drift gillnet.<br>Southeast Atlantic gillnet.<br>Southeastern U.S. Atlantic shark gillnet.*<br>Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^ |
| Bottlenose Dolphin Take Reduction Plan (BDTRP)—50 CFR 229.35 .... | *Category I*<br>Mid-Atlantic gillnet.<br>*Category II*<br>Atlantic blue crab trap/pot.<br>Chesapeake Bay inshore gillnet fishery.<br>Mid-Atlantic haul/beach seine.<br>Mid-Atlantic menhaden purse seine.<br>NC inshore gillnet.<br>NC long haul seine.<br>NC roe mullet stop net.<br>Southeast Atlantic gillnet.<br>Southeastern U.S. Atlantic shark gillnet.<br>Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.^<br>Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot.^<br>VA pound net. |
| False Killer Whale Take Reduction Plan (FKWTRP)—50 CFR 229.37 .. | *Category I*<br>HI deep-set longline.<br>*Category II*<br>HI shallow-set longline. |
| Harbor Porpoise Take Reduction Plan (HPTRP)—50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic). | *Category I*<br>Mid-Atlantic gillnet.<br>Northeast sink gillnet. |
| Pelagic Longline Take Reduction Plan (PLTRP)—50 CFR 229.36 ..... | *Category I*<br>Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline. |
| Pacific Offshore Cetacean Take Reduction Plan (POCTRP)—50 CFR 229.31. | *Category II*<br>CA thresher shark/swordfish drift gillnet (≥14 in mesh). |
| Atlantic Trawl Gear Take Reduction Team (ATGTRT) ..... | *Category II*<br>Mid-Atlantic bottom trawl.<br>Mid-Atlantic mid-water trawl (including pair trawl).<br>Northeast bottom trawl.<br>Northeast mid-water trawl (including pair trawl). |

List of Symbols Used in Table 4:
* Only applicable to the portion of the fishery operating in U.S. waters; and
^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

**Classification**

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received on that certification, and no new information has been discovered to change that conclusion. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

This rule contains existing collection-of-information (COI) requirements subject to the Paperwork Reduction Act and would not impose additional or new COI requirements. The COI for the registration of individuals under the MMPA has been approved by the OMB under OMB Control Number 0648–0293 (0.15 hours per report for new registrants). The requirement for reporting marine mammal mortalities or injuries has been approved by OMB under OMB Control Number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the COI. Send comments regarding these reporting burden estimates or any other aspect of the COI, including suggestions for reducing burden, to NMFS (see **ADDRESSES**). You may also submit comments on these or any other aspects of the collection of information at *www.reginfo.gov/public/do/PRAMain.*

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

This rule has been determined to be not significant for the purposes of Executive Orders 12866 and 13563.

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS determined that publishing this LOF qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an Environmental Impact Statement or Environmental Assessment, as required under NEPA, specific to that action.

This rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would consult under ESA section 7 on that action.

This rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

**References**

Baird, R.W. 2016. The lives of Hawai'i's dolphins and whales: natural history and conservation. University of Hawai'i Press, Honolulu.

Baird, R.W., and D.L. Webster. 2020. Using dolphins to catch tuna: Assessment of associations between pantropical spotted dolphins and yellowfin tuna hook and line fisheries in Hawai'i. Fisheries Research. 230. (2020):105652.

Carretta, J.V., E. Oleson, K.A. Forney, J. Baker, J.E. Moore, D.W. Weller, A.R. Lang, M.M. Muto, B. Hanson, A.J. Orr, H. Huber, M.S. Lowry, J. Barlow, D. Lynch, L. Carswell, and R.L. Brownell Jr. 2021. U.S. Pacific Marine Mammal Stock Assessments: 2020. U.S. Department of Commerce, NOAA Technical Memorandum NMFS–SWFSC–646. 394 p.

Muto, M.M., V.T. Helker, B.J. Delean, N.C. Young, J.C. Freed R.P. Angliss, P.L. Boveng, J.M. Breiwick, B.M. Brost, M.F. Cameron, P.J. Clapham, J.L. Crance, S.P. Dahle, M.E. Dahlheim, B.S. Fadely, M.C. Ferguson, L.W. Fritz, K.T. Goetz, R.C. Hobbs, Y.V. Ivashchenko, A.S. Kennedy, J.M. London, S.A. Mizroch, R.R. Ream, E.L. Richmond, K.E.W. Shelden, K.L. Sweeney, R.G. Towell, P.R. Wade, J.M. Waite, and Alexandre N. Zerbini. 2021. Alaska Marine Mammal Stock Assessments 2020. U.S. Department of Commerce, NOAA Tech. Memo. NMFS–AFSC–421. 398 p.

National Marine Fisheries Service (NMFS). 2020. National Marine Fisheries Service Procedure 02–204–02: Criteria for Determining Negligible Impact under MMPA Section 101(a)(5)(E). 20 p. Available online: *https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives.*

Dated: April 12, 2022.

**Samuel D. Rauch, III,**

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

[FR Doc. 2022–08210 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 220411–0092]**

**RIN 0648–BL39**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic Region; Correction

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** NMFS corrects the final rule that implemented management measures described in the Comprehensive Ecosystem-Based Amendment 2 (CE–BA 2) to multiple fishery management plans (FMPs) of the South Atlantic Region, which published in the **Federal Register** on December 30, 2011. Among other measures, that final rule modified management in special management zones (SMZs) off South Carolina in the South Atlantic exclusive economic zone (EEZ). In that final rule, NMFS inadvertently applied recreational harvest and possession restrictions for certain species to the Ft. Pierce Offshore Reef SMZ, a pre-existing SMZ off the Florida east coast. The purpose of this correcting amendment is to fix that error.

**DATES:** This correction is effective on April 19, 2022.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *karla.gore@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** On December 30, 2011, NMFS published a final rule in the **Federal Register** (76 FR 82183) to implement management measures contained in CE–BA 2 that, among other actions, modified management in the SMZs in the EEZ off South Carolina. CE–BA 2 modified multiple FMPs and included Amendment 1 to the FMP for Pelagic Sargassum Habitat of the South Atlantic Region; Amendment 7 to the FMP for Coral, Coral Reefs, and Live and Hard Bottom Habitats of the South Atlantic Region; Amendment 25 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region; and Amendment 21 to the FMP for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region. The final rule implementing CE–BA 2 became effective on January 30, 2012.

The final rule for CE–BA 2 modified management in the SMZs off South Carolina and limited the harvest and possession of snapper-grouper and coastal migratory pelagic (CMP) species using allowable fishing gear to the recreational bag and possession limits. None of the alternatives analyzed within CE–BA 2 included the Ft. Pierce Offshore Reef SMZ, which is located off the Florida east coast.

In 2021, NMFS became aware of an error in the regulatory text implementing CE–BA 2 after a constituent sought clarification on whether recreational bag and possession limits apply to commercial fishermen who are fishing in the Ft. Pierce Offshore SMZ. This rule corrects that error.

## Correction

In the proposed and final regulatory text for CE–BA 2 (76 FR 69230, November 8, 2011; 76 FR 82183, December 30, 2011), NMFS inadvertently included the Ft. Pierce Offshore Reef SMZ along with the SMZs off South Carolina for the restrictions on the recreational bag and possession limits. The geographic coordinates for the Ft. Pierce Offshore Reef SMZ are currently located at 50 CFR 622.182(a)(1)(xx), and the recreational bag and possession limits are currently contained in 50 CFR 622.187 and 622.382 for South Atlantic snapper-grouper and CMP species, respectively. Therefore, fishermen issued a valid Federal commercial permit for snapper-grouper or CMP species in the South Atlantic EEZ are incorrectly restricted within the Ft. Pierce Offshore Reef SMZ to the recreational bag limits identified in the table at 50 CFR 622.182(a)(2) and 50 CFR 622.382(a)(1)(v).

On April 17, 2013, NMFS implemented a final rule to reorganize the fishery regulations in part 622 (78 FR 22950, April 17, 2013). That final rule moved harvest restrictions for CMP species in certain South Atlantic SMZs, including the Ft. Pierce Offshore Reef SMZ, to the current regulatory location at 50 CFR 622.382(a)(1)(v). The table at 50 CFR 622.182(a)(2) continues to limit the harvest and possession of a South Atlantic snapper-grouper species within the Ft. Pierce Offshore Reef SMZ to the bag limits specified in 50 CFR 622.187(b).

The bag limit restriction remains in error for the harvest and possession of South Atlantic snapper-grouper and Atlantic CMP species in the Ft. Pierce Offshore Reef SMZ.

CE–BA 2 did not discuss management measures for any SMZ other than those off South Carolina. Thus, through this correcting amendment, NMFS makes two regulatory corrections. NMFS corrects the table in paragraph 622.182(a)(2) by removing reference to the Ft. Pierce Offshore Reef SMZ in paragraph 622.182(a)(1)(xx) for bag limit restrictions applicable to SMZs in the South Atlantic for snapper-grouper species. This final rule also removes reference to the Ft. Pierce Offshore Reef SMZ in paragraph 622.382(a)(1)(v) for CMP species. Upon implementation of this final rule, fishermen issued a valid Federal commercial permit for snapper-grouper or CMP species may possess commercial quantities of such species harvested in or from the Ft. Pierce Offshore Reef SMZ as was intended by the South Atlantic Fishery Management Council (Council) through CE–BA 2.

## Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with CE–BA 2, the applicable FMPs, other provisions of the Magnuson-Stevens Fisheries Conservation and Management Act, and other applicable law.

This final rule has been determined to be not significant under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for additional public comment because it would be unnecessary and contrary to the public interest. This correcting amendment removes the incorrect application of the recreational bag and possession limits for South Atlantic snapper-grouper and CMP species in the Ft. Pierce Offshore Reef SMZ harvested by a person issued a valid Federal commercial permit for such species in the South Atlantic EEZ. Providing prior notice and opportunity for public comment is unnecessary and contrary to the public interest because the Council document for CE–BA 2 did not consider or analyze such a restriction for the Ft. Pierce Offshore Reef SMZ, and because the regulations implementing CE–BA 2 have already been subject to notice and public comment. Providing an additional opportunity for public comment would add unnecessary delay to the removal of the restrictions in the Ft. Pierce Offshore Reef SMZ, which remain in the regulations in error. Further, retaining the incorrect restriction will continue to cause confusion among the affected fishermen, law enforcement, and the public.

For the same reasons, the AA also finds good cause, pursuant to 5 U.S.C. 553(d), to waive the 30-day delay in the date of effectiveness for this correcting amendment.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, this rule is exempt from the procedures of the Regulatory Flexibility Act. Accordingly, no Regulatory Flexibility Act analysis is required and none has been prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

## List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Recreational, South Atlantic.

Dated: April 11, 2022.

**Samuel D. Rauch, III,**

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

Accordingly, 50 CFR part 622 is corrected by making the following correcting amendment:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

### § 622.182 Gear-restricted areas.

■ 2. In § 622.182, amend paragraph (a)(2) by:

■ a. Designating the table as table 2 to paragraph (a)(2); and

■ b. Revising newly designated table 2.

The revision reads as follows:

TABLE 2 TO PARAGRAPH (a)(2)

| In SMZs specified in the following paragraphs of this section | These restrictions apply |
|---|---|
| (a)(1)(i) through (x) and (a)(1)(xxii) through (xxxix). | Use of a powerhead to take South Atlantic snapper-grouper is prohibited. |
| (a)(1)(i) through (x) and (a)(1)(xxii) through (xxxix). | Possession of a powerhead and a mutilated South Atlantic snapper-grouper in, or after having fished in, one of these SMZs constitutes *prima facie* evidence that such fish was taken with a powerhead in the SMZ. Harvest and possession of a South Atlantic snapper-grouper is limited to the bag limits specified in § 622.187(b). |
| (a)(1)(i) through (xviii) and (a)(1)(xxii) through (li). | Fishing may only be conducted with handline, rod and reel, and spearfishing gear. |
| (a)(1)(i) through (li) | Use of a sea bass pot or bottom longline is prohibited. |
| (a)(1)(xii) through (xviii) and (a)(1)(xl) through (li). | Possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.187(b). |
| (a)(1)(xix) and (a)(1)(xx) | A hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper. |
| (a)(1)(xix) and (a)(1)(xxi) | Use of spearfishing gear is prohibited. |

* * * * *

■ 3. In § 622.382, revise paragraph (a)(1)(v) to read as follows:

**§ 622.382 Bag and possession limits.**

* * * * *

(a) * * *

(1) * * *

(v) Coastal migratory pelagic fish within certain South Atlantic SMZs—§ 622.11(a) notwithstanding, all harvest and possession of coastal migratory pelagic fish within the South Atlantic SMZs specified in § 622.182(a)(1)(i) through (xi) and (a)(1)(xxii) through (xxxix) is limited to the bag limits specified in paragraphs (a)(1)(i) through (iv) of this section.

* * * * *

[FR Doc. 2022–08057 Filed 4–18–22; 8:45 am]

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# Proposed Rules

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2022–0433; Airspace Docket No. 22–ASO–06]**

**RIN 2022–AA66**

## Proposed Amendment of Class D Airspace, and Class E Airspace, and Removal of Class E Airspace; Greenville, MS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface for Greenville Mid-Delta Airport, Greenville, MS, as the Greenville Very High Frequency Omnidirectional Range (VOR) has been decommissioned, and associated approaches cancelled. This action would also update the airport's name, and remove Class E airspace designated as an extension to Class D airspace. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

**DATES:** Comments must be received on or before June 3, 2022.

**ADDRESSES:** Send comments on this proposal to: The U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; Telephone: (800) 647–5527, or (202) 366–9826. You must identify Docket No. FAA–2022–0433; Airspace Docket No. 22–ASO–6 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on-line at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

### Authority for This Rulemaking

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

### Comments Invited

Interested persons are invited to comment on this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (Docket No. FAA–2022–0433 and Airspace Docket No. 22–ASO–06) and be submitted in triplicate to DOT Docket Operations (see **ADDRESSES** section for the address and phone number). You may also submit comments through the internet at *https://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0433; Airspace Docket No. 22–ASO–06.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of the comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined between 8:00 a.m. and 4:30 p.m., Monday through Friday, except federal holidays, at the office of the Eastern Service Center, Federal Aviation Administration, Room 350, 1701 Columbia Avenue, College Park, GA 30337.

### Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA proposes an amendment to Title 14 CFR part 71 to amend Class D airspace and Class E airspace extending upward from 700 feet above the surface for Greenville Mid-Delta Airport (formerly Greenville Municipal Airport), Greenville, MS, due to the decommissioning of the Greenville VOR. The Class D airspace would be increased to a 4.4-mile radius, (from 4.0 miles) and by adding 2-mile extensions to the north and south of the airport. Additionally, the Class E airspace extending upward from 700 feet above the surface would be increased to an 8.9-mile radius (from 7-miles), and eliminating two extensions, as well as removing the navigational aids from the airport's description, as they are no longer necessary. Also, this action would update the airport's name and replace the term Airport/Facility Directory with the term Chart Supplement in the Class D description. In addition, this action would remove Class E airspace designated as an extension to Class D airspace, as the extensions are addressed in the proposed Class D airspace.

Class D and Class E airspace designations are published in Paragraphs 5000, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11F.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

*Paragraph 5000 Class D Airspace.*

* * * * *

**ASO MS D Greenville, MS [Amended]**

Greenville Mid-Delta Airport, MS
(Lat. 33°28′58″ N, long. 90°59′08″ W)

That airspace extending upward from the surface to and including 2,600 feet MSL, within a 4.4-mile radius of Greenville Mid-Delta Airport, and within 1-mile each side of a 180° bearing extending from the 4.4-mile radius to 6.4 miles south of the airport, and within 1-mile each side of the and a 360° bearing extending from the 4.4-mile radius to 6.4 miles north of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6004 Class E Airspace Designated as an Extension to Class D Surface Area.*

* * * * *

**ASO MS E4 Greenville, MS [Removed]**

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

* * * * *

**ASO MS E5 Greenville, MS [Amended]**

Greenville Mid-Delta Airport, MS
(Lat. 33°28′58″ N, long. 90°59′08″ W)

That airspace extending upward from 700 feet above the surface within an 8.9-mile radius of Greenville Mid-Delta Airport.

Issued in College Park, Georgia, on April 13, 2022.

**Andreese C. Davis,**

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

[FR Doc. 2022–08279 Filed 4–18–22; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF VETERANS AFFAIRS

## 38 CFR Part 36

**RIN 2900–AR42**

## Loan Guaranty: Servicer Tier Ranking Procedures

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Department of Veterans Affairs (VA) Loan Guaranty Service (LGY) intends to revise and finalize its temporary regulations governing the assignment of a performance-based tier ranking to each of the servicers that participate in VA's guaranteed home loan program. VA is issuing this advance notice of proposed rulemaking (ANPR) to solicit comments, questions, and information to assist VA in developing a future proposed regulation. Although VA identifies, below, specific topics and questions for discussion, it encourages commenters to discuss any other topic that will help VA develop regulations to assign performance-based tier rankings to servicers that participate in VA's guaranteed home loan program.

**DATES:** Comments must be received on or before June 21, 2022.

**ADDRESSES:** Comments may be submitted through *www.Regulations.gov.* Comments received will be available at *www.Regulations.gov* for public viewing, inspection, or copies.

**FOR FURTHER INFORMATION CONTACT:** Andrew Trevayne, Assistant Director for Loan Administration, Loan Guaranty Service (26), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632–8862. (This is not a toll-free telephone number.)

**SUPPLEMENTARY INFORMATION:**

## I. Background

On February 1, 2008, VA published a final rule, Loan Guaranty: Loan Servicing and Claims Procedures Modifications (VALERI final rule). 73 FR 6293–6368. The VALERI final rule was the result of a lengthy business reengineering process that led to the modernization of VA's loan servicing policies and began a phased implementation of a servicer reporting application called the VA Loan Electronic Interface (VALERI). In the VALERI final rule, VA established temporary procedures for servicer tier ranking, currently codified at 38 CFR 36.4318. 73 FR 6293, 6327; 75 FR 33704–33705.

Section 36.4318(a) states that VA will assign to each servicer a tier ranking based upon the servicer's performance in servicing guaranteed loans. Section 36.4318(a) provides for four tiers, known as tier one, tier two, tier three, and tier four. In the VALERI final rule, VA explained that VA would presume each servicer to rank in tier two until VA develops and implements, via a regulation, a final Tier Ranking System (TRS). 73 FR 6293, 6301. After implementing a TRS, VA would quarterly evaluate each servicer's performance, and annually rank each servicer in tier one, two, three, or four-tier one being the highest rated and tier four the lowest. 38 CFR 36.4318. The VALERI final rule also established servicer loss mitigation options and incentives, currently found at 38 CFR 36.4319 (initially codified at § 36.4819). 73 FR 6293, 6327; 75 FR 33704–33705. Section 36.4319 provides a schedule of incentive payments that VA will pay a servicer in tiers one, two, or three following successful completion of each applicable loss mitigation action or alternative to foreclosure. 38 CFR 36.4319. For the same type of loss mitigation action or alternative to foreclosure, VA will pay servicers in tier one, the highest incentive payment, which will decrease for tier two, and further decrease for tier three. *Id.* A servicer in tier four will not receive any incentive payment. *Id.*

As noted in the VALERI final rule (and its accompanying proposed rule), VA intended to fully operationalize VALERI, and collect specific, servicer-reported loan servicing and claims data to develop its TRS. 73 FR 6293, 6301. However, due to competing priorities and VALERI reporting limitations, VA has delayed the development and implementation of a TRS. In the meantime, VA continues to presume each servicer to rank in tier two and pays them incentive payments accordingly. See 38 CFR 36.4318, 36.4319. Considering a recent re-design of the VALERI application, which includes enhanced reporting functionality, VA is ready to develop and implement its TRS. By implementing a TRS, VA intends to further encourage its servicers to provide the best level of default resolution and foreclosure avoidance efforts to its borrowers.

## II. Questions for Comment

Once VA's TRS is effective, VA would use the TRS to calculate a quarterly performance score (quarterly score) for each servicer based on servicing data from the prior quarter. 38 CFR 36.4318(c)(1). VA would notify each servicer of its quarterly score. *Id.* After four quarters, VA would aggregate the quarterly scores to derive the annual performance score (annual score) for each servicer. 38 CFR 36.4318(c)(2). Based on the servicer's annual score, VA would assign each servicer a performance tier rank (tier rank) one, two, three, or four. 38 CFR 36.4318(a). Finally, this tier rank would determine the amount of incentive payment that each servicer would receive for each applicable loss mitigation or alternative to foreclosure action that the servicer would complete in the following year. 38 CFR 36.4319. The purpose of this performance-based scoring and tier ranking, and tier-rank-based incentive payments, is to recognize and reward servicers based on their level of efforts to help borrowers resolve default and avoid foreclosure. Further, it would help identify servicers who may need additional training or assistance in improving their loss mitigation and foreclosure avoidance efforts. Timely default resolution helps borrowers retain their homes, and foreclosure avoidance helps them mitigate the negative impact on their chances of future homeownership.

VA's objective is to develop a TRS that accurately and effectively assesses the performance of each servicer's loss mitigation and foreclosure avoidance efforts. Consequently, the tier-based incentive payments would encourage servicers to timely perform loss mitigation actions that are in the best interest of participants in VA's guaranteed home loan program. With this objective, VA invites comments on the specific questions set forth in this ANPR, and on any other issues that commenters think should be addressed as part of the rulemaking that would establish VA's TRS.

*Question 1: Are there concerns VA should be made aware of that could hinder the implementation of the TRS?*

VA would like to know whether ongoing financial effects of the COVID–19 National Emergency should affect the timing of a TRS implementation. Are there other possible considerations, burdens, or obstacles VA should be made aware of in the implementation of the TRS?

*Question 2: Should VA consider a servicer's volume of VA loans in developing the TRS?*

For servicers who service a small number of VA loans, the performance of one or few seriously delinquent loan(s) would most likely have a volatile effect, good or bad, on the servicer's quarterly/annual score and/or the tier ranking. Should VA consider establishing separate requirements for scoring and ranking servicers who service a small number of VA loans? If yes, what volume of loans would be an appropriate definition of ''small'' and why? What information is relevant to understand whether VA should establish separate requirements for this type of servicer? Alternatively, is there another way VA could/should differentiate smaller servicers (*i.e.,* number of annual foreclosure claims)?

*Question 3: Should VA expand the scope of the TRS to include consideration of factors beyond a servicer's performance in the areas of default resolution and foreclosure avoidance?*

As described above, VA would use the TRS to evaluate and score a servicer's performance during default resolution and foreclosure avoidance. Further, the tier ranking assigned would be used to determine the amount of incentive paid to the servicer for completing a loss mitigation activity or alternative to foreclosure. With that in mind, should VA limit its entire process of scoring, ranking, and calculating incentive payments to monthly servicer-reported data related to default resolution and foreclosure avoidance, or should VA consider additional factors in its TRS that are not necessarily shown in default resolution and foreclosure avoidance rates? Such factors might include, for example, timely, accurate, and complete reporting of monthly servicer-reported data. Please elaborate on which factors should/should not be included and describe how VA would confirm the successful completion of such factors.

*Question 4: During the testing phase of the TRS, would servicers like to know their quarterly performance scores? If yes, for how many quarters prior to the TRS becoming effective?*

Once the TRS is effective, VA would evaluate an existing servicer's performance for at least four full

quarters to assign the servicer an annual tier ranking. Until then, based on current § 36.4318, VA will continue to presume each servicer to rank in tier two. VA is not planning to implement a TRS pilot. However, leading up to the TRS becoming effective, VA intends to test certain aspects of the TRS internally with live servicer-reported data. To the extent that VA is able, would there be any benefits to servicers if VA were to provide this information to servicers on a quarterly basis?

*Question 5: What would be the anticipated burden for a servicer to participate in an error resolution process? Should VA provide servicers with such option in developing the TRS?*

To derive the quarterly performance scores for each servicer, the TRS would apply a range of calculations onto a considerable volume of data. VA is considering a number of different criteria upon which to base the quarterly score on servicer performance, including: Delinquency rate, roll rate, default resolution rate percentage, quality of service, foreclosure timeline management, data quality and regulatory infractions, and recidivism rate. Subsequently, for each servicer, the TRS would aggregate the quarterly scores to calculate the annual score, and finally, the TRS would use the annual score to assign a tier ranking. It is conceivable that, due to inaccurate or incomplete data, the quarterly score, the annual score, and/or the annual tier ranking could be incorrect.

VA might, within a certain number of days, allow a servicer to contest a quarterly or annual score or annual tier ranking by submitting supporting evidence to VA. VA is interested in understanding the potential burden to servicers to prepare such supporting evidence and submit it to VA.

*Question 6: Should VA consider providing a new VA servicer with a provisional tier ranking after 12 months of servicing has elapsed?*

For a new servicer, including a new servicer who acquires a portfolio of existing VA loans, VA is considering whether to presume the new servicer to rank in tier two until at least 12 months and four full quarters of servicing has elapsed. Once the new servicer completes at least 12 months and four full quarters of servicing, VA could continue to presume the new servicer to rank in tier two until VA next completes its annual scoring and tier ranking of all servicers. In some cases, this could result in VA presuming a new servicer to rank in tier two for up to 23 months. Alternatively, after the new servicer completes at least 12 months and four full quarters of servicing, VA could assign the new servicer a provisional tier rank based on the quarterly scores of four prior full quarters. The provisional tier rank would be in place until VA next completes its annual scoring and tier ranking of all servicers. VA invites comments as to which approach the public finds more reasonable and why.

*Question 7: Are there other servicer tier ranking systems that VA should review and consider, in part or full, for developing its TRS? Please describe.*

*Question 8: Based on other servicer tier ranking system(s) that servicers may have implemented, approximately how long does it take a servicer to review and understand a new servicer tier ranking system?*

*Question 9: Based on other servicer tier ranking system(s) that servicers may have implemented, as an estimate, what costs and burdens do servicers expect to incur for implementing a new servicer tier ranking system? Please describe the type(s) of cost(s) and provide dollar figures, if available.*

*Question 10: Based on other servicer tier ranking system(s) that servicers may have implemented, what impact, if any, would a lower tier ranking (and smaller incentive payments) have on servicer participation in the VA home loan program? Would smaller incentive payments, due to a lower tier ranking, result in any costs for borrowers, either existing or new?*

### Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on April 12, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2022–08276 Filed 4–18–22; 8:45 am]

**BILLING CODE 8320–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 22–151; RM–11927; DA 22–404; FRS 83016]**

### Television Broadcasting Services Hampton, Virginia

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by WVEC Television, LLC (Petitioner), the licensee of WVEC, channel 11, Hampton, Virginia. The Petitioner requests the substitution of channel 35 for channel 11 at Hampton in the Table of Allotments.

**DATES:** Comments must be filed on or before May 19, 2022 and reply comments on or before June 3, 2022.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Michael Beder, Esq., Associate General Counsel, TEGNA, Inc., 8350 Broad Street, Suite 2000, Tysons, Virginia 22102.

**FOR FURTHER INFORMATION CONTACT:** Joyce Bernstein, Media Bureau, at (202) 418–1647; or Joyce Bernstein, Media Bureau, at *Joyce.Bernstein@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** In support of its channel substitution request, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 11, despite being able to receive the NBC, CBS, and FOX network affiliates in the Norfolk, Virginia market, all of which operate on UHF channels. The proposed channel change would not cause any loss of service to viewers of WVEC's existing coverage area.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–151; RM–11927; DA 22–404, adopted April 13, 2022, and released April 13, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden

''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a Notice of Proposed Rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in Section 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

*See* Sections 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television.

Federal Communications Commission.

**Thomas Horan,**

*Chief of Staff, Media Bureau.*

**Proposed Rule**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICE

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

**Authority:** 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

**§ 73.622 [Amended]**

■ 2. In § 73.622 in paragraph (j), amend the Table of Allotments under Virginia by revising the entry for Hampton to read as follows:

**§ 73.622 Table of allotments.**

* * * * *

(j) * * *

| Community | Channel No. |
|---|---|
| * * * * * | |
| **VIRGINIA** | |
| * * * * * | |
| Hampton ..... | 35 |
| * * * * * | |

[FR Doc. 2022–08342 Filed 4–18–22; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 220413–0094]**

**RIN 0648–BL28**

## Pacific Halibut Fisheries; Catch Sharing Plan

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to revise regulations for the commercial individual fishing quota (IFQ) Pacific halibut (halibut) fisheries for the 2022 IFQ fishing year. This proposed rule would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps, in IFQ regulatory Areas 4A (Eastern Aleutian Islands), 4B (Central and Western Aleutian Islands), 4C (Central Bering Sea), and 4D (Eastern Bering Sea). This action is needed to provide additional flexibility to IFQ participants in 2022 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these areas. This action is within the authority of the Secretary of Commerce to establish additional regulations governing the taking of halibut that are in addition to, and not in conflict with, those adopted by the International Pacific Halibut Commission (IPHC). This action is intended to promote the goals and objectives of the IFQ Program, the Northern Pacific Halibut Act of 1982 (Halibut Act), and other applicable laws.

**DATES:** Submit comments on or before May 4, 2022.

**ADDRESSES:** You may submit comments on this document, identified by FDMS Docket number NOAA–NMFS–2022–0037, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0037 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *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).

Electronic copies of the Categorical Exclusion and the Regulatory Impact Review (RIR) (herein referred to as the ''Analysis'') prepared for this action are available from *www.regulations.gov* or from the NMFS Alaska Region website at *https://www.fisheries.noaa.gov/region/alaska*.

**FOR FURTHER INFORMATION CONTACT:** Abby Jahn, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Authority for Action

The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with the concurrence of the Secretary of Commerce. NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. The 2022 IPHC annual management measures published on March 7, 2022 (87 FR 12604).

Additionally, the Northern Pacific Halibut Act of 1982 (Halibut Act), 16 U.S.C. 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act, including the authority to adopt regulations necessary to carry out the purposes and objectives of the Convention. The Halibut Act, 16 U.S.C. 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations recommended by the Council may be implemented by NMFS only after approval by the Secretary of Commerce.

The Council has exercised its authority in developing halibut management programs for the

subsistence, sport, and commercial halibut fisheries. The Secretary of Commerce exercised authority to implement the commercial IFQ halibut fishery management program (58 FR 59375; November 9, 1993). The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679.

The halibut IFQ fishery is managed in specific areas defined by the IPHC. These IFQ regulatory areas (areas) are: Area 2A (California, Oregon, and Washington); Area 2B (British Columbia); Area 2C (Southeast Alaska), Area 3A (Central Gulf of Alaska), Area 3B (Western Gulf of Alaska), and Area 4 (subdivided into five Areas, 4A through 4E, in the Bering Sea and Aleutian Islands of Western Alaska). These Areas are described at 50 CFR part 679, Figure 15. The halibut IFQ fishery is limited to persons holding quota share (QS). Halibut allocated under the IFQ program in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E are subject to limits on the maximum amount of halibut IFQ that may be harvested by a vessel, commonly known as vessel use caps. Throughout this preamble, the term ''vessel use cap'' refers to regulations applicable to the halibut IFQ fishery (§ 679.42(h)(1)).

As relevant to this action, a Community Quota Entity (CQE) is authorized to hold halibut QS in Area 4B. IFQ halibut derived from QS held by a CQE is subject to vessel use caps (§ 679.42(h)(1)(ii)). NMFS also allocates halibut to the Western Alaska Community Development Quota (CDQ Program) in Areas 4B, 4C, 4D, and 4E (§ 679.31(a)(2)), but those allocations are not subject to a vessel use cap and are not affected by this rulemaking.

**Background**

This proposed rule would implement regulations to temporarily remove vessel use caps in Areas 4A, 4B, 4C, and 4D in 2022. The existing vessel use caps were recommended by the Council and implemented by NMFS as part of the IFQ Program (58 FR 59375; November 9, 1993) as regulations that were in addition to, and not in conflict with, those adopted by the IPHC, consistent with the Halibut Act (16 U.S.C. 773c(c)). The following sections describe the IFQ Program; halibut IFQ vessel use caps; the rationale and effects of temporarily removing vessel use caps in Areas 4A, 4B, 4C, and 4D; and the regulations that would be implemented under this proposed rule.

*IFQ Program*

Commercial halibut and sablefish fisheries in Alaska are subject to regulation under the IFQ Program and the CDQ Program (50 CFR part 679). A key objective of the IFQ Program is to support the social and economic character of the fisheries and the coastal fishing communities where many of these fisheries are based. For more information about the IFQ Program, please refer to Section 2.4 of the Analysis. Because this rule is specific to the halibut IFQ fishery, reference to the IFQ Program in this preamble is specific to halibut unless otherwise noted.

Under the IFQ Program, access to the commercial halibut fisheries is limited to those persons holding QS, which is the limited access permit NMFS uses to calculate a person's IFQ each year. Halibut QS is designated for a specific geographic area of harvest, a specific vessel operation type (catcher vessel (CV) or catcher/processor), and for a specific range of vessel sizes that may be used to harvest the halibut (vessel category). Out of the four vessel categories of halibut QS, category A shares are designated for catcher/processors that process their catch at sea (*e.g.,* freezer longline vessels) and do not have a vessel length designation, whereas category B, category C, and category D shares are designated to be fished on CVs that meet specific length designations (§ 679.40(a)(5)).

NMFS annually issues IFQ permits to each QS holder. IFQ permits authorize permit holders to harvest a specified amount of a particular IFQ species in an area from a specific operation type and vessel category, consistent with the QS they hold. IFQ is expressed in pounds (lbs) and is based on the amount of QS held by the permit holder in relation to the total QS pool for each area with an assigned catch.

The IFQ Program also established: (1) Limits on the maximum amount of QS that a person could use (*i.e.,* be used to receive annual IFQ) (§ 679.42(f)); (2) limits on the number of small amounts of indivisible QS units, known as QS blocks, that a person can hold (§ 679.42(g)); (3) limits on the ability of IFQ assigned to one CV vessel category (vessel category B, C, or D IFQ) to be fished on a different (larger) vessel category with some limited exceptions (§ 679.42(a)(2)); and (4) limits on the maximum amount of halibut IFQ that may be harvested by a vessel during an IFQ fishing year (§ 679.42(h)). Only qualified individuals and initial recipients of QS are eligible to hold CV QS, and they are required to be on the vessel when the IFQ is being fished, with a few limited exceptions (§ 679.41(h)(2)). All of these limitations were established to retain the owner-operator nature of the CV halibut IFQ fisheries, limit consolidation of QS, and ensure the annual IFQ is not harvested on a small number of larger vessels.

*Halibut IFQ Vessel Use Caps*

The IFQ Program established vessel use caps to limit the maximum amount of halibut that could be harvested on any one vessel. The limits are intended to help ensure that a minimum number of vessels are engaged in the halibut IFQ fishery and to address concerns about the socio-economic impacts of consolidation under the IFQ Program. For additional detail on vessel use caps, see the preamble to the proposed rule for the IFQ Program (57 FR 57130; December 3, 1992).

This proposed rule refers to halibut catch limits, commercial halibut allocations, and vessel use caps in net pounds or net metric tons. Net pounds and net metric tons are defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. This terminology used in this proposed rule is consistent with the IPHC, which establishes catch limits and calculates mortality in net pounds.

Relevant to this proposed rule, for IFQ regulatory Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E; vessels cannot be used to harvest more halibut IFQ than on-half percent of the combined total catch limits of halibut (§ 679.42(h)(1)). Applying this regulation to 2022 yields a vessel use cap of 101,490 (46.0 mt). This vessel use cap applies to vessels harvesting IFQ halibut in the regulatory areas subject to this proposed rule: Areas 4A, 4B, 4C, and 4D.

Applicable to Area 4B for this proposed action, a CQE is authorized to hold halibut QS in Area 4B on behalf of the community of Adak, Alaska (79 FR 8870; February 14, 2014). A CQE is a NMFS-approved non-profit organization that represents small, remote, coastal communities that meet specific criteria to purchase and hold CV halibut QS on behalf of an eligible community. The CQE holds QS and leases the IFQ derived from the underlying QS to community residents. Any vessel harvesting halibut IFQ derived from the QS held by the CQE representing the community of Adak is subject to the vessel use cap regulations at § 679.42(h)(1)(ii), which limit a vessel to harvest no more than 50,000 lb (22.7 mt), in addition to those set forth at § 679.42(h)(1) introductory text and 679.42(h)(i).

*Rationale and Effects of Temporarily Removing Vessel Use Caps in Areas 4A, 4B, 4C, and 4D*

On February 10, 2022, at its regularly-scheduled meeting, the Council

addressed requests from IFQ fishery stakeholders to remove vessel use caps applicable to the halibut IFQ fisheries in Areas 4A, 4B, 4C, and 4D (Sections 1 and 2.3 of the Analysis). The Council requested this proposed rule because of the ongoing socio-economic impacts of the COVID–19 pandemic as identified by the public, including coastal communities and fishery participants in Area 4. NMFS proposes this rule to provide additional flexibility to vessels operating in Area 4 during the 2022 fishing season. This action is expected to facilitate the harvest of halibut allocated under the IFQ program in Area 4 and provide additional harvest flexibility to vessels operating in Area 4. This action is needed because of the relatively large proportion of vessels participating in the Areas 4A, 4B, 4C, and 4D halibut IFQ fisheries that are operating near the current vessel use cap, thereby limiting the amount of additional IFQ that could be harvested on vessels operating in those areas (Section 2.3 of the Analysis). Additionally, this action is expected to provide flexibility to the CQE representing the community of Adak, Alaska, because the minimum number of vessels needed under current use caps exceeds the number of vessels owned by residents of the community (Section 2.5.2 of the Analysis).

The reader is referred to the Analysis, particularly Sections 2.3, 2.6, and 2.7, for additional detail on the efficacy of 2020 and 2021 rulemakings that temporarily removed vessel use caps in Area 4, a broader discussion of the range of factors considered for this proposed rule, and the anticipated effects of removing the vessel use caps in Areas 4A, 4B, 4C, and 4D for both CQE and non-CQE-associated vessels.

The Council recommended ''expedited action'' to remove vessel use caps for the halibut IFQ fishery in Areas 4A, 4B, 4C, and 4D to be effective during the 2022 fishing year, which ends on December 7, 2022. NMFS accordingly has established an expedited 15-day comment period for this proposed rule.

The Council did not recommend, and this proposed rule does not include, measures to relieve the vessel use caps for the sablefish IFQ fishery, or for other halibut IFQ areas, due to the larger number of vessels that are currently active in the sablefish IFQ fishery and these other halibut areas. Area 4E was not included because it is entirely allocated to harvest under the CDQ Program; therefore, vessel use caps do not apply. Detailed information indicating that halibut harvests in these other IFQ areas would not be constrained under the current vessel use caps is available in Section 2.5.2.1 of the Analysis.

NMFS also considered the potential impacts on halibut conservation and management if vessel use caps vessels in Areas 4A, 4B, 4C, and 4D are relieved for the 2022 IFQ fishing year. The proposed regulatory amendments in this rule would temporarily add a regulation that would remove vessel use caps in Areas 4A, 4B, 4C, and 4D. This proposed rule would provide additional flexibility to facilitate harvest of the halibut resource and is responsive to the Council request to implement expedited rulemaking for the 2022 IFQ fishing year due to the ongoing economic, social, and public health impacts of the COVID–19 pandemic. This rule does not modify the vessel use cap provisions in future years, consistent with the Council's goals in implementing vessel use caps in this fishery (Section 2.3 in the Analysis). This proposed rule would not modify other elements of the IFQ Program. This proposed rule would not increase or otherwise modify the 2022 halibut catch limits adopted by the IPHC and implemented by NMFS (87 FR 12604, March 7, 2022). This proposed rule would not modify any other conservation measures recommended by the IPHC and adopted by NMFS, nor any other conservation measures implemented by NMFS independent of the IPHC. This proposed rule would not modify other limitations on the use of QS and IFQ described in the previous sections of this preamble.

*Proposed Regulations*

After considering the best available information, the Convention, the status of the halibut resource, and the potential social and economic costs of maintaining the vessel use cap limits described in the preamble, this proposed rule would add a new, temporary provision at 50 CFR 679.42(h)(1)(iii) to remove vessel use caps for vessels harvesting IFQ halibut in Areas 4A, 4B, 4C, and 4D during the 2022 IFQ fishing year. Because vessel use caps are applied under existing regulations at the fishery level including harvest in all areas, the proposed regulations clarify that harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps in IFQ regulatory Areas 2C, 3A, or 3B during the 2022 IFQ fishing year.

## Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the Regional Council authority over a particular geographical area, to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. This proposed action is consistent with the Council's authority to allocate halibut catch among fishery participants in Convention waters in and off Alaska.

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

A Regulatory Impact Review was prepared to assess costs and benefits of available regulatory alternatives. A copy of this analysis is available from NMFS (see **ADDRESSES**). Specific aspects of the economic analysis are discussed below in the Initial Regulatory Flexibility Analysis section.

*Initial Regulatory Flexibility Analysis*

This Initial Regulatory Flexibility Analysis (IRFA) was prepared for this proposed rule, as required by Section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 603), to describe the economic impact this proposed rule, if adopted, would have on small entities. The IRFA describes the action; the reasons why this proposed rule is proposed; the objectives and legal basis for this proposed rule; the number and description of directly regulated small entities to which this proposed rule would apply; the recordkeeping, reporting, and other compliance requirements of this proposed rule; and the relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule. The description of the proposed action, its purpose, and the legal basis are explained in the preamble and are not repeated here.

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

*Number and Description of Small Entities Regulated by This Proposed Rule*

This proposed rule would directly regulate the owners and operators of vessels that harvest halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. As of 2020 (the most recent year of gross revenue data), there were 99 unique vessels that harvested halibut IFQ in IFQ Areas 4A, 4B, 4C, or 4D. Based on average annual gross revenue data, including affiliations, all but one of these vessels that landed halibut in 2020 are considered small entities based on the applicable $11 million threshold. Additional details are included in Sections 2.9 in the Analysis prepared for this proposed rule (see **ADDRESSES**).

*Impacts of This Action on Small Entities*

This action could better facilitate harvest of IFQ in Area 4 in fishing season 2022. Although it is difficult to discern the entire scope of impact of the regulatory exemptions implemented for the 2020 and 2021 IFQ seasons, harvest rates achieved in 2020 and 2021 relative to prior years (2006–2019) indicate the regulatory flexibilities implemented in 2020 and 2021 (both the temporary transfer provisions as well the vessel use cap exemption) had some positive impact on the harvest rates, as described in Section 2.7 of the Analysis (See **ADDRESSES**).

*Description of Significant Alternatives That Minimize Adverse Impacts on Small Entities*

The RFA requires identification of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. The Council requested one action alternative. No other alternatives were considered. Additionally, NMFS did not identify other action alternatives that would provide the same level of flexibility that was requested by the Council within the requested expedited timeframe. Further, this action is the same as the action implemented 2021 and similar to the action implemented in 2020. In consideration of the Council's request, NMFS analyzed the impacts of the action alternative compared to the status quo.

The status quo alternative would retain the existing vessel use cap restrictions as defined under 50 CFR 679.42(h). It is possible that existing vessel use caps regulations under the status quo may increase the likelihood that some of the annual halibut allocation is left unharvested in Area 4.

The action alternative would remove limits on the maximum amount of halibut IFQ that may be harvested by a vessel in IFQ regulatory Areas 4A, 4B, 4C, and 4D. The action alternative and the regulations proposed by this action would provide additional flexibility to IFQ participants in 2022 to ensure allocations of halibut IFQ can be harvested by the limited number of vessels operating in these Areas. However, if this temporary flexibility is implemented for 2022, this may result in a reduction in crew jobs and opportunities for new entrants in Areas 4A, 4B, 4C, and 4D. Additionally, if there are fewer participants in the fishery, it is possible that landings could consolidate to fewer processors and communities depending on landing location and historic harvester-processor relationships.

*Duplicate, Overlapping, or Conflicting Federal Rules*

NMFS has not identified any duplication, overlap, or conflict between this proposed rule and existing Federal rules.

*Recordkeeping, Reporting, and Other Compliance Requirements*

This action does not contain additional recordkeeping, reporting, or other compliance requirements.

*Collection-of-Information Requirements*

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 13, 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 679 is proposed to be amended as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; 3631 *et seq.*; Pub. L. 108–447; Pub. L. 111–281.

■ 2. In § 679.42, add paragraph (h)(1)(iii) to read as follows:

**§ 679.42 Limitations on use of QS and IFQ.**

* * * * *

(h) * * *

(1) * * *

(iii) Notwithstanding the vessel use caps specified in paragraphs (h)(1) introductory text and (h)(1)(ii) of this section, vessel use caps do not apply to vessels harvesting IFQ halibut in IFQ regulatory Areas 4A, 4B, 4C, and 4D during the 2022 IFQ fishing year. Harvest of IFQ halibut in regulatory Areas 4A, 4B, 4C, and 4D is excluded from the calculation of vessel use caps for IFQ regulatory Areas 2C, 3A, or 3B during the 2022 IFQ fishing year.

* * * * *

[FR Doc. 2022–08278 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register
Vol. 87, No. 75
Tuesday, April 19, 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

### 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 19, 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.

**Food Safety and Inspection Service**

*Title:* Analyzing Consumers' Value of ''Product of USA'' Labeling Claims.

*OMB Control Number:* 0583–New.

*Summary of Collection:* The U.S. Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and Poultry Products Inspection Act (21 U.S.C. 453 *et seq.*). This statute mandates that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. The FSIS Food Standards and Labeling Policy Book (the ''Policy Book'') provides guidance to help meat and poultry product manufacturers prepare product labels that are truthful and not misleading.

The ''Policy Book'' states that labeling may bear the phrase ''Product of USA'' under one of the following conditions: (1) If the country to which the product is exported requires this phrase, and the product is processed in the United States or (2) if the product is processed in the United States (*i.e.,* is of domestic origin).

*Need and Use of the Information:* FSIS will conduct a web-based survey/experiment that will address three primary research questions: (1) Do consumers notice the ''Product of USA'' labeling claim?; (2) Do consumers understand the current ''Product of USA'' definition and other ''USDA'' labeling (*e.g.,* ''USDA Choice'') as it relates to country of origin?; and (3) How much are consumers willing to pay for meat products bearing the ''Product of USA'' labeling claim for the current definition and potential revised definitions (*e.g.,* if the meat were from an animal that was born, raised, slaughtered, and processed in the United States)?

*Description of Respondents:* Individuals or households.

*Number of Respondents:* 9,873.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 1,815.

Dated: April 14, 2022.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–08343 Filed 4–18–22; 8:45 am]

BILLING CODE 3410–DM–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 19, 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.

**Food and Nutrition Service**

*Title:* Annual State Report on Verification of Supplemental Nutrition Assistance Program (SNAP) Participation.

*OMB Control Number:* 0584–0605.

*Summary of Collection:* SNAP regulations at 7 CFR 273.16 require that State agencies disqualify an individual who has committed an intentional program violation (IPV). Paragraph 7 CFR 273.16(e)(8) requires that these individuals ''be disqualified in accordance with the disqualification periods and procedures in paragraph (b) of this section'' (273.16(b)). Paragraph 7 CFR 273.16(i) requires State agencies to report information concerning each individual disqualified for an IPV to the disqualified recipient database, the electronic Disqualified Recipient System (eDRS), and to use eDRS data to determine the eligibility of individual applicants prior to certification. SNAP regulations at 7 CFR 272.14 require that each State agency establish a system to verify and ensure that benefits are not issued to individuals who are deceased, and that data source is the Social Security Administration's (SSA) Death Master File. The information required for the Annual State Report on Verification of SNAP Participation is obtained by validating that the State had the appropriate systems in place and followed procedures currently mandated at 7 CFR 272.14 and 7 CFR 273.16 for the preceding fiscal year.

*Need and Use of the Information:* The information required for the Annual State Report on Verification of SNAP Participation is obtained by validating that the State agency had the appropriate systems in place and followed procedures currently mandated at 7 CFR 272.14 and 7 CFR 273.16 for the preceding fiscal year. State agencies must annually confirm, by stating in one email to their FNS Regional SNAP Program Director, that the appropriate systems were in place in the State to meet the requirements of regulations at 7 CFR 272.14 and 273.16(i)(4), and that they conducted the matches required by these regulations. States are required to submit their Section 4032 reports to the FNS Regional SNAP Director by March 31 each year for the preceding Federal fiscal year. 7 CFR 272.1(f) mandates that State agencies are required to retain all records associated with the administration of SNAP for no less than 3 years.

*Description of Respondents:* State, Local, or Tribal government.

*Number of Respondents:* 106.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 119.

Dated: April 14, 2022.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2022–08333 Filed 4–18–22; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request: Uniform Grant Application Package for Discretionary Grant Programs

**AGENCY:** Food and Nutrition Service (FNS), USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this revised information collection. This is a revision of a currently approved collection. The purpose of the Uniform Grant Application Package for Discretionary Grant Programs is to provide a standardized format for the development of all Requests for Applications for discretionary grant programs released by the Food and Nutrition Service (FNS) Agency and to allow for a more expeditious OMB clearance process. This revision also addresses additional information to be collected for some grant programs as supplemental information beyond the Uniform Grant Application. This notice provides 60 day notice to the public that State Plan information will be submitted in association with this information collection, and program-specific supplemental forms will be used as discussed in this notice.

**DATES:** Written comments must be received on or June 21, 2022.

**ADDRESSES:** Comments may be sent to: The Grants Management Operations Branch, U.S. Department of Agriculture, 1320 Braddock Place, 5th Floor, Alexandria, VA 22314. Comments may also be submitted via email to *greg.walton@usda.gov.*

Comments will be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this information collection should be directed to Gregory Walton at 703–305–1575 or *greg.walton@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were 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 those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Title:* Uniform Grant Application Package for Discretionary Grant Programs.

*Form Number:* SF–424 Form, SF–LLL, FNS–908, FNS–887.

*OMB Number:* 0584–0512.

*Expiration Date:* July 31, 2022.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* FNS has a number of discretionary grant programs. (Consistent with the definition in 2 CFR part 200, the term ''grant'' as used in this notice includes cooperative agreements.) The authorities for these grants vary and will be cited as part of each grant application solicitation. The purpose of the revision to the currently approved collection for the Uniform Grant Application Package for Discretionary Grant Programs is to continue the authority for the established uniform grant application package and to update the number of collection burden hours, accounting for noncompetitive grants issued by FNS into this information collection request package. FNS is revising the uniform collection package to allow and account for all of FNS' competitive and noncompetitive discretionary grant programs to collect information from grant applicants that are needed to evaluate and rank applicants and protect the integrity of the grantee selection process. This revision also encompasses the submittal of associated State Plan information and the use of program-specific forms, including but not limited to, Form FNS–887 Farm to

School Coversheet, the Farm to School Baseline Report, and Farm to School Final Report. Under certain criteria, all FNS discretionary grant programs will be eligible to use the uniform grant application package. Before soliciting applications for a competitive or noncompetitive discretionary grant program, FNS will decide whether the uniform grant application package will meet the needs of that grant program. If FNS decides to use the uniform grant application package, FNS will note in the grant solicitation that applicants must use the uniform grant application package and that the information collection has already been approved by OMB. If FNS decides not to use the uniform grant application package or determines that it needs grant applicants to provide additional information not contained in the uniform package, then FNS will publish at least a 30-day notice soliciting comments on its proposal to collect different or additional information before making the grant solicitation, if not already discussed in this notice. This notice discusses and gives 60 day notice to the public that State Plan information will be collected in association with grants covered by this information collection and program-specific supplemental forms will also be used, including but not limited to, Form FNS–887 Farm to School Coversheet, the Farm to School Baseline Report, and Farm to School Final Report. State Plans can discuss a wide range of information associated with the use of grant funds including, but not limited to, the goals of the project, the implementation plan, associated schedule for implementation and expected and actual results. Applicants complete Form FNS–887, Farm to School Coversheet, when applying for a farm to school grant. Farm to School grantees will complete the new Farm to School Baseline Report at the start of their grant. The purpose is to collect information about farm to school activities at the start of the grant, which will be compared to the final grant report. In the new Farm to School Final Report, grantees will provide a final update on their specific project activities and respond to the same series of questions from the baseline report in order to capture changes from the beginning of the grant project to the end.

The uniform grant application package will include: General information and instructions; a checklist; a requirement for the program narrative statement describing how the grant goals and objectives will be reached; the Standard Form (SF) 424 series forms (SF–424A and SF–424B) that request basic grant project information, budget information, and a disclosure of lobbying activities certification (SF–LLL); and the Standardized Performance Progress Report (FNS–908). The revised information collection covered by this notice is related to the requirements for the program narrative statement. The requirements for the program narrative statement described in 2 CFR part 200, Appendix I and will apply to all types of grantees—State and Local governments, Indian Tribal organizations (ITOs), Business such as Non-Profit organizations, Institutions of Higher Education, and For-Profit organizations. The information collection burden related to the SF–424 series, and the lobbying certification forms have been separately approved by OMB under OMB Control Numbers: 0584–0512, December 31, 2022.

This collection also encompasses requirements for States to prepare and submit State Plans as part of, or in follow-up to, the application process for grants covered under OMB number 0584–0512, as well as the use of program-specific forms including but not limited to Form FNS–887 Farm to School Coversheet, the Farm to School Baseline Report, and Farm to School Final Report. This collection has two different affected public, State, Local & Tribal government as well as Business-for-profit and not-for-profit organizations. The respondent type for Business are usually Higher Education and Universities.

FNS is requesting 6,155 total respondents (5,517 for SLT and 638 for Business', we are also seeking 429,994 total annual burden hours and 139,229 total annual responses and since generic clearance are granted three years of burden upfront, this renewal is requesting 1,500,000 burden hours and 417,687 annual responses for next three years. This includes 428,954 total burden hours for reporting and 41,598 total burden hours for recordkeeping.

The estimates below are for pre and post-award reporting and post-award recordkeeping for competitive and non-competitive grant opportunities for State, Local or Tribal government (known as Indian Tribal Organizations or ITOs). Below are the breakdowns for each affected public, for each type of grants available (competitive and non-competitive) for the reporting and recordkeeping burden activities involved before and then after grants are awarded to these affected publics.

**Reporting—(Competitive) Pre Award**

*Affected Public (Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 3,276.

*Estimated Number of Responses per Respondent:* 8.

*Estimated Total Annual Responses:* 26,208.

*Estimated Average Hours per Response:* 6.05586081.

*Estimated Total Annual Reporting Burden Hours:* 158,712.

**Reporting—(Competitive) Post Award**

*Affected Public:* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 2,324.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Responses:* 11,620.

*Estimated Average Hours per Response:* 5.6.

*Estimated Total Annual Reporting Burden Hours:* 65,072.

**Recordkeeping—Post Award Only**

*Affected Public (Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Recordkeepers:* 2,324.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 20,916.

*Estimate Average Hours per Response:* 0.025.

*Estimated Annual Hours per Recordkeeper:* 522.9.

**Reporting—Pre Award**

*Affected Public (Competitive):* Business—Non-Profit organizations, Institutions of Higher Education, and For-Profit organizations.

*Estimated Number of Respondents:* 300.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 2,700.

*Estimated Average Hours per Response:* 6.26148148.

*Estimated Total Annual Reporting Burden Hours:* 16,906.

**Reporting—Post Award**

*Affected Public (Competitive):* Business—Non-Profit organizations, Institutions of Higher Education, and For-Profit organizations.

*Estimated Number of Respondents:* 95.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Responses:* 475.

*Estimated Average Hours per Response:* 5.6.

*Estimated Total Annual Reporting Burden Hours:* 2,660.

**Recordkeeping—Post Award Only**

*Affected Public (Competitive):* Business Non-Profit organizations, Institutions of Higher Education, and For-Profit organizations.

*Estimated Number of Recordkeepers:* 95.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 855.

*Estimate Average Hours per Response:* 0.0245615.

*Estimated Annual Hours per Recordkeeper:* 21.

**Reporting—Pre-Award**

*Affected Public (Noncompetitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 2,241.

*Estimated Number of Responses per Respondent:* 8.

*Estimated Total Annual Responses:* 17,928.

*Estimated Average Hours per Response:* 5.9549866.

*Estimated Total Annual Reporting Burden Hours:* 106,761.

**Reporting—Post Award**

*Affected Public (Noncompetitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,796.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Responses:* 16,164.

*Estimate Average Hours per Response:* .025000.

*Estimated Total Annual Burden Reporting Hours:* 404.

**Recordkeeping—Post Award Only**

*Affected Public (Noncompetitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,796.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Responses:* 16,164.

*Estimate Average Hours per Response:* .025000.

*Estimated Total Annual Burden Reporting Hours:* 404.

**Reporting—Pre-Award**

*Affected Public (Noncompetitive):* Business Non-Profit organizations, Institutions of Higher Education, and For-Profit organizations.

*Estimated Number of Respondents:* 338.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 3,042.

*Estimated Average Hours per Response:* 5.64069691.

*Estimated Total Annual Reporting Burden Hours:* 17,159.

**Reporting—Post Award**

*Affected Public (Noncompetitive):* Business Non-Profit organizations, Institutions of Higher Education, and For-Profit organizations.

*Estimated Number of Respondents:* 301.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Responses:* 1,505.

*Estimate Average Hours per Response:* 5.6.

*Estimated Total Annual Burden Reporting Hours:* 8,428.

**Recordkeeping—Post Award Only**

*Affected Public (Noncompetitive):* Business Non-Profit organizations, Institutions of Higher Education, and For-Profit organizations.

*Estimated Number of Respondents:* 301.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 2,709.

*Estimate Average Hours per Response:* 0.02510151.

*Estimated Total Annual Burden Reporting Hours:* 68.

**Reporting—State Plans (Competitive) Pre-Award**

*Affected Public (Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,092.

*Estimated Number of Responses per Respondent:* 8.

*Estimated Total Annual Responses:* 8,736.

*Estimated Average Hours per Response:* 5.8.

*Estimated Total Annual Reporting Burden Hours:* 50,687.

**Reporting—State Plans (Competitive) Post Award**

*Affected Public (Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,092.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Responses:* 5,460.

*Estimated Average Hours per Response:* 5.6.

*Estimated Total Annual Reporting Burden Hours:* 30,576.

**Recordkeeping—State Plans (Competitive Post Award)**

*Affected Public (Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,092.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 9,828.

*Estimated Average Hours per Response:* .02503053.

*Estimated Total Annual Reporting Burden Hours:* 246.

**Reporting—State Plans (Non-Competitive) Pre-Award**

*Affected Public (Non-Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,092.

*Estimated Number of Responses per Respondent:* 8.

*Estimated Total Annual Responses:* 8,736.

*Estimated Average Hours per Response:* 5.8375.

*Estimated Total Annual Reporting Burden Hours:* 50,996.

**Reporting—State Plans (Non-Competitive) Post Award**

*Affected Public (Non-Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,092.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Total Annual Responses:* 5,460.

*Estimated Average Hours per Response:* 5.6.

*Estimated Total Annual Reporting Burden Hours:* 30,576.

**Recordkeeping—State Plans (Non-Competitive Post Award)**

*Affected Public (Non-Competitive):* State and Local governments, Indian Tribal Organizations (ITOs).

*Estimated Number of Respondents:* 1,092.

*Estimated Number of Responses per Respondent:* 9.

*Estimated Total Annual Responses:* 9,828.

*Estimated Average Hours per Response:* 0.02503053.

*Estimated Total Annual Reporting Burden Hours:* 246.

| Appendix—Grant; Affected public | Pre-award RFA | | Pre-award forms | Pre-award reporting forms burden (~6.4/6.7 hours time per grantee) | Total pre-award burden | Post award forms | | Total post award reporting | Recordkeeping | | Total | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Estimated number of annual respondents (applicants) | Total estimated pre-award burden hours | Pre-award reporting forms responses (8 per SLT; 9 per business IC) | | | Post award forms responses (5 per grantee) | Post award reporting burden (14 hours time per grantee) | Post award hours | Record-keeping responses (9 per grantee) | Record-keeping burden (~.2 hours per grantee) | Total reporting burden hours (pre & post award) | Total responses | Grand total burden hours (reporting & record-keeping) |
| **COMPETITIVE GRANT OPPORTUNITIES** | | | | | | | | | | | | | |
| Subtotal for Competitive State, Local & Tribal Government Agencies | 3,276 | 137,665 | 26,208 | 21,047 | 158,712 | 11,620 | 32,536 | 65,072 | 21,870 | 547 | 226,752 | 73,224 | 227,299 |
| **COMPETITIVE BUSINESS GRANT OPPORTUNITIES** | | | | | | | | | | | | | |
| Sub total for Competitive Business Grant Opportunities | 300 | 14,906 | 2,700 | 2,000 | 16,906 | 475 | 1,330 | 2,660 | 855 | 21 | 19,566 | 4,710 | 19,587 |
| **NONCOMPETITIVE GRANT OPPORTUNITIES** | | | | | | | | | | | | | |
| Subtotal for Noncompetitive State, Local & Tribal | 2,241 | 91,801 | 17,928 | 14,960 | 106,761 | 8,980 | 25,144 | 50,288 | 16,164 | 404 | 157,049 | 52,497 | 157,453 |
| **NONCOMPETITIVE BUSINESS GRANT OPPORTUNITIES** | | | | | | | | | | | | | |
| Subtotal for Non Competitive Businesses | 338 | 14,978 | 3,042 | 2,181 | 17,159 | 1,505 | 4,214 | 8,428 | 2,709 | 68 | 25,587 | 8,798 | 25,655 |
| Grand Total SLT & Bus (competitive and non competitive) | 6,155 | 259,350 | 49,878 | 40,188 | 299,538 | 23,110 | 64,708 | 129,416 | 41,598 | 1,040 | 428,954 | 139,229 | 429,994 |

**Cynthia Long,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 2022–08320 Filed 4–18–22; 8:45 am]

**BILLING CODE 3410–30–P**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

**[Docket No. RUS–22–ELECTRIC–0016]**

### Notice of Revision of a Currently Approved Information Collection

**AGENCY:** Rural Utilities Service, Department of Agriculture (USDA).

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Rural Utilities Service (RUS), an agency of the U.S. Department of Agriculture (USDA) Rural Development mission area, invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

**DATES:** Comments on this notice must be received by June 21, 2022.

**FOR FURTHER INFORMATION CONTACT:** Pamela Bennett, Regulations Management Division, Innovation Center, U.S. Department of Agriculture. Email: *pamela.bennett@usda.gov.* Telephone: (202) 720–9639.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for approval. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the RUS, including whether the information will have practical utility; (b) the accuracy of the RUS's estimate of the burden of the proposed collection of information including validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 may be sent by the Federal eRulemaking Portal: Go to *https://www.regulations.gov* and, in the ''Search'' box, type in the Docket No. RUS–22–ELECTRIC–0016. A link to the Notice will appear. You may submit a comment here by selecting the ''Comment'' button or you can access the ''Docket'' tab, select the ''Notice,'' and go to the ''Browse & Comment on Documents'' Tab. Here you may view comments that have been submitted as well as submit a comment. To submit a comment, select the ''Comment'' button, complete the required information, and select the ''Submit Comment'' button at the bottom. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link at the bottom.

*Title:* Mergers and Consolidations of Electric Borrowers, 7 CFR 1717, subpart D.

*OMB Control Number:* 0572–0114.

*Expiration Date of Approval:* November 30, 2022.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* The Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq.*), as amended (RE Act), authorizes and empowers the administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. Due to deregulation and restructuring activities in the electric industry, RUS borrowers may find it advantageous to merge or consolidate to meet the challenges of industry change. This information collection addresses the requirements of RUS policies and procedures for mergers and consolidations of electric program borrowers.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.32 hours per response.

*Respondents:* Not for profit institutions; business or other for-profit entities.

*Estimated Number of Respondents:* 10.

*Estimated Number of Responses per Respondent:* 10.6.

*Estimated Total Annual Burden on Respondents:* 140 hours.

Copies of this information collection can be obtained from Pamela Bennett, Rural Development Innovation Center, Regulations Management Division, at (202) 720–9639. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 2022–08277 Filed 4–18–22; 8:45 am]

**BILLING CODE 3410–15–P**

## CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

### Sunshine Act Meeting

**TIME AND DATE:** May 5, 2022, 1:00 p.m. EDT (4 hours).

**PLACE:** The meeting will be held virtually via ZOOM. Please access the meeting via the link: *https://www.zoomgov.com/j/1604959044?pwd=OWdOUXJzUXJzM0NoR0Z6a24ycElvUT09.*
Meeting ID: 160 495 9044
Passcode: 883045
One tap mobile:
+16692545252,,1604959044# U.S. (San Jose);
+16692161590,,1604959044# U.S. (San Jose)
Dial by your location: +1 669 254 5252 U.S. (San Jose), +1 669 216 1590 U.S. (San Jose), +1 551 285 1373 U.S., +1 646 828 7666 U.S. (New York)

**PLACE:** Public Meeting Hosted via Zoom.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Chemical Safety and Hazard Investigation Board (CSB) announces that it will convene a public meeting to consider the Loy-Lange Final Investigation Report. The report details the investigation into a fatal incident that occurred on April 3, 2017, in St. Louis, Missouri. A massive steam explosion caused a pressure vessel weighing approximately 2,000 pounds to launch itself into the air. The initial explosion killed one worker and critically injured another. The vessel flew several hundred feet and landed nearby on another company's property, fatally injuring three members of the public.

CSB staff will present its final report with corresponding findings and recommendations. Staff presentations are preliminary and are intended to allow the Board to consider in a public forum the issues and factors involved in this case.

To submit public comments for the record please email us at *public@csb.gov.* Public comments sent in advance may be addressed at the meeting.

**CONTACT PERSON FOR FURTHER INFORMATION:** Hillary Cohen,

Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about this public meeting can be found on the CSB website at: *www.csb.gov.*

**ADDITIONAL INFORMATION:**

**Background**

The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

**Public Participation**

The meeting is free and open to the public. This meeting will only be available via ZOOM. Close captions (CC) will be provided.

Dated: April 15, 2022.

**Tamara Qureshi,**

*Assistant General Counsel, Chemical Safety and Hazard Investigation Board.*

[FR Doc. 2022–08473 Filed 4–15–22; 4:15 pm]

**BILLING CODE 6350–01–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–14–2022]**

### Foreign-Trade Zone 61—San Juan, Puerto Rico, Application for Subzone, González Trading, LLC, Toa Baja, Puerto Rico

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Department of Economic Development and Commerce, grantee of FTZ 61, requesting subzone status for the facility of González Trading, LLC, located in Toa Baja, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on April 13, 2022.

The proposed subzone (16 acres) is located at Carr. 865 and 866, Candelaria and Sabana Seca Ward, Toa Baja, Puerto Rico. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 31, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 13, 2022.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov.*

Dated: April 13, 2022.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2022–08331 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–15–2022]**

### Foreign-Trade Zone (FTZ) 148—Knoxville, Tennessee, Notification of Proposed Production Activity CoLinx, LLC (Spherical Roller Bearing Kits), Crossville, Tennessee

CoLinx, LLC submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Crossville, Tennessee within FTZ 148. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on April 12, 2022.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.* The proposed finished product(s) and material(s)/component(s) would be added to the production authority that the Board previously approved for the operation, as reflected on the Board's website.

The proposed finished products are spherical roller bearing kits (duty rate 5.8%).

The proposed foreign-status materials and components include plummer block housings, spherical roller bearings (double row), housing and adapter sleeves, housing seals, and lubricators (duty rate ranges from 2.5% to 5.8%). The request indicates that certain materials/components are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is May 31, 2022.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *Juanita.Chen@trade.gov.*

Dated: April 13, 2022.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2022–08322 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–886]**

### Polyethylene Retail Carrier Bags From the People's Republic of China: Preliminary Determination of No Shipments and Rescission of Review in Part; 2020–2021

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on polyethylene retail carrier bags (PRCBs) from the Peoples' Republic of China (China), in part, for the period of review (POR) August 1, 2020, through July 31, 2021. Commerce also preliminarily determines that Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd. (collectively, Nozawa) had no shipments of subject merchandise during the POR. We invite interested parties to comment on these preliminary results of review.

**DATES:** Applicable April 19, 2022.

**FOR FURTHER INFORMATION CONTACT:** Claudia Cott, AD/CVD Operations, Office I, Enforcement and Compliance,

International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270.

**SUPPLEMENTARY INFORMATION:**

## Background

On August 9, 2004, Commerce published in the **Federal Register** an antidumping duty order on PRCBs from China.[1] On August 2, 2021, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.[2] On August 31, 2021, the petitioners [3] timely requested an administrative review of the *Order* with respect to Nozawa and Crown Polyethylene Products (International) Ltd. (Crown).[4] Commerce received no other requests for an administrative review of the *Order.* On October 7, 2021, pursuant to section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated this administrative review.[5]

## Scope of the Order

The products covered by the *Order* are PRCBs which may be referred to as t-shirt sacks, merchandise bags, grocery bags, or checkout bags. The subject merchandise is defined as non-sealable sacks and bags with handles (including drawstrings), without zippers or integral extruded closures, with or without gussets, with or without printing, of polyethylene film having a thickness no greater than 0.035 inch (0.889 mm) and no less than 0.00035 inch (0.00889 mm), and with no length or width shorter than 6 inches (15.24 cm) or longer than 40 inches (101.6 cm). The depth of the bag may be shorter than 6 inches but not longer than 40 inches (101.6 cm).

PRCBs are typically provided without any consumer packaging and free of charge by retail establishments, *e.g.,* grocery, drug, convenience, department, specialty retail, discount stores, and restaurants, to their customers to package and carry their purchased products. The scope of the *Order* excludes (1) polyethylene bags that are not printed with logos or store names and that are closeable with drawstrings made of polyethylene film and (2) polyethylene bags that are packed in consumer packaging with printing that refers to specific end-uses other than packaging and carrying merchandise from retail establishments, *e.g.,* garbage bags, lawn bags, trash-can liners.

Imports of the subject merchandise are currently classifiable under statistical category 3923.21.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). This subheading also covers products that are outside the scope of this *Order.* Furthermore, although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this *Order* is dispositive.

## Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation. On November 12, 2021, the petitioners timely withdrew their request for an administrative review of Crown.[6] Because no other party requested an administrative review of Crown, we are rescinding this administrative review, in part, with respect to Crown, pursuant to 19 CFR 351.213(d)(1).

## Preliminary Determination of No Shipments

On October 29, 2021, Nozawa submitted a letter certifying that it did not have any exports, sales, or entries of subject merchandise to the United States during the POR.[7] Record evidence supports Nowaza's no-shipment claim,[8] and we preliminarily find that Nozawa had no shipments of subject merchandise to the United States during the POR. Consistent with Commerce's practice, we will not rescind the review with respect to Nowaza but, rather, will complete the review and issue appropriate instructions to CBP based on the final results of review.[9]

## China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[10] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the China-wide entity rate (*i.e.,* 77.57 percent) [11] is not subject to change as a result of this review.

## Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce did not calculate a weighted-average dumping margin for any company in this review, nor for the China-wide entity, there are no calculations to disclose. Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[12] Commerce modified certain of its requirements for serving documents containing business proprietary information until further notice.[13] Parties submitting case or

[1] *See Antidumping Duty Order: Polyethylene Retail Carrier Bags from the People's Republic of China,* 69 FR 48201 (August 9, 2004) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 86 FR 41436 (August 2, 2021).

[3] The petitioners are the Polyethylene Retail Carrier Bag Committee and its individual members, Hilex Poly Co., LLC and Superbag Corporation.

[4] *See* Petitioners' Letter, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Request for Administrative Review,'' dated August 31, 2021.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55817 (October 7, 2021).

[6] *See* Petitioners' Letter, ''Polyethylene Retail Carrier Bags from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated November 12, 2021.

[7] *See* Nozawa's Letter, ''Polyethylene Retail Carrier Bags from the People's Republic of China: No Shipment Certification,'' dated October 29, 2021.

[8] *See* Memorandum, ''Polyethylene Retail Carrier Bags from the People's Republic of China, Antidumping Duty Administrative Review; 2020/2021: Preliminary Determination of No Shipments—Dongguan Nozawa Plastics Products Co., Ltd. and United Power Packaging, Ltd.,'' dated concurrently with this notice.

[9] *See, e.g., Certain Frozen Warmwater Shrimp from Thailand; Preliminary Results of Antidumping Duty Administrative Review, Partial Rescission of Review, Preliminary Determination of No Shipments; 2012–2013,* 79 FR 15951, 15952 (March 24, 2014), unchanged in *Certain Frozen Warmwater Shrimp from Thailand: Final Results of Antidumping Duty Administrative Review, Final Determination of No Shipments, and Partial Rescission of Review; 2012–2013,* 79 FR 51306, 51307 (August 28, 2014).

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[11] *See Order,* 69 FR at 48203.

[12] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs *via* ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect).'').

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

rebuttal briefs are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[14]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically *via* ACCESS. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice.

Unless extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

**Assessment Rates**

Upon issuance of the final results of this review, Commerce will determine, and CBP shall assess, AD duties on all appropriate entries covered by this review.[15] Because Commerce is rescinding this administrative review with respect to Crown, Commerce will instruct CBP to assess antidumping duties on all appropriate entries of PRCBs from China from Crown during the POR at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

With respect to Nozawa if we continue to find that Nozawa had no shipments of subject merchandise in the final results, then following the issuance of the final results of review, Commerce will instruct CBP to liquidate any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) at the China-wide rate.[16]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed Chinese and non-Chinese exporters that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (2) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity (*i.e.,* 77.57 percent); and (3) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter(s) that supplied that non-Chinese exporter (or, if unidentified, that of the China-wide entity). These deposit requirements, when imposed, shall remain in effect until further notice.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

**Notification to Interested Parties**

Commerce is issuing and publishing these preliminary results in accordance with sections 751(a)(1)(B), 751(a)(3) and 777(i) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: April 13, 2022.

**Lisa W. Wang,**

*Assistant Secretary for Enforcement and Compliance.*

[FR Doc. 2022–08347 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–DS–P**

[14] *See* 19 CFR 351.309(c)(2) and (d)(2).

[15] *See* 19 CFR 351.212(b)(1).

[16] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65695 (October 24, 2011).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Malcolm Baldrige National Quality Award and Examiner Applications

**AGENCY:** National Institute of Standards and Technology (NIST), Commerce.

**ACTION:** Notice of information collection, request for comment.

**SUMMARY:** The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before June 21, 2022.

**ADDRESSES:** Interested persons are invited to submit written comments to Maureen O'Reilly, Management Analyst, NIST by email to *PRAcomments@doc.gov.* Please reference OMB Control Number 0693–0006 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Dawn Bailey, Baldrige Performance Excellence Program, NIST, 100 Bureau Drive, Stop 1020, Gaithersburg, MD 20899, 301–975–3074, *dawn.bailey@nist.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Department of Commerce is responsible for the Baldrige Performance Excellence Program (BPEP) and the Malcolm Baldrige National Quality Award (MBNQA), the nation's highest award for organizational performance excellence. Directly associated with this award is the Board of Examiners, an integral volunteer workforce for BPEP. NIST manages BPEP. An applicant organization for the MBNQA is required to perform two steps: (1) The applicant organization

self-certifies that it meets eligibility requirements with an eligibility form; and (2) the applicant organization prepares and completes an application package. BPEP will assist with or offer advice on any questions or issues that the applicant may have concerning the eligibility or application processes; this includes BPEP staff manning a hotline during the week and on weekends for organizations to call or email. With the help of the Board of Examiners, BPEP will use the eligibility forms and application package to assess and provide feedback on the applicant's performance excellence practices. These practices could lead to a MBNQA awarded by the President of the United States or his delegate.

Per Public Law 100–107 (Malcolm Baldrige National Quality Improvement Act of 1987), the MBNQA helps to stimulate American companies to improve quality and productivity for the pride of recognition while obtaining a competitive edge through increased profits; recognizes the achievements of those companies that improve the quality of their goods and services and provide an example to others; establishes guidelines and criteria that can be used by business, industrial, governmental, and other organizations in evaluating their own quality improvement efforts; and provides specific guidance for other American organizations that wish to learn how to manage for high quality by making available detailed information on how winning organizations were able to change their cultures and achieve eminence.

The application to be a member of the Board of Examiners is a one-step, secure, online process. Each year, BPEP recruits highly skilled experts in the fields of manufacturing, service, small business, health care, education, and nonprofit, the six Award eligibility categories, to evaluate the applications that BPEP receives. Examiners serve for a one-year term; participation on the board is entirely voluntary. Examiners receive three- to four-days of free on-site training (depending on experience level).

BPEP's mission to improve the competitiveness and performance of U.S. organizations for the benefit of all U.S. residents.

## II. Method of Collection

MBNQA applicant organizations must comply in writing according to the Eligibility Certification Form and Baldrige Award Application Form available at *http://www.nist.gov/baldrige/enter/how_to_apply.cfm.* Information on the application for the Board of Examiners can be found at *http://www.nist.gov/baldrige/examiners/index.cfm.* BPEP will electronically send a unique user ID and password (separate emails) on how applicants to the Board of Examiners can apply to the secure system.

## III. Data

*OMB Control Number:* 0693–0006.

*Form Number(s):* None.

*Type of Review:* Regular submission, revision of a current information collection.

*Affected Public:* Business, health care, education, or other for-profit organizations; health care, education, and other nonprofit organizations; and individuals or households.

*Estimated Number of Respondents:* 580 (30 Applications for MBNQA and 550 Applicants for the Board of Examiners).

*Estimated Time per Response:* 30 minutes for MBNQA eligibility form, 74 hours for MBNQA application, and 30 minutes for examiner applications.

*Estimated Total Annual Burden Hours:* 2,510 (MBNQA = 15 hours for eligibility form, 2,220 hours for application, Board of Examiners = 275 hours).

*Estimated Total Annual Cost to Public:* MBNQA = $1,610–$79,610 (application and site visit fees vary depending on profit nature of organization and its sector [*e.g.,* smallest fee is for a nonprofit K–12 school, largest fee is for a global manufacturer]; additionally, only 25% of applications pay site visit fees that again vary depending on number of sites and sector of the organization and Board of Examiners: $0.

*Respondent's Obligation:* Voluntary.

## IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2022–08338 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### National Artificial Intelligence Advisory Committee

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of Federal Advisory Committee open meeting.

**SUMMARY:** The National Institute of Standards and Technology (NIST) announces that the National Artificial Intelligence Advisory Committee (NAIAC or Committee) will hold an open meeting on Wednesday, May 4, 2022 from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time. The primary purpose of the meeting is for the NAIAC members to discuss how to organize to address the current state of U.S. competitiveness, the state of the science around Artificial Intelligence (AI), issues related to workforce and the potential to use AI for workforce training, government operations, whether societal issues are adequately being addressed, international coordination, oversight of AI systems, and enhancing opportunities for diverse geographic regions of the United States. The agenda may change to accommodate Committee business. The final agenda will be posted to the NAIAC website: *https://www.ai.gov/naiac/.*

**DATES:** The meeting will be held on Wednesday, May 4, 2022 from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time.

**ADDRESSES:** The meeting will be open to the public via webcast. Registration will be required; for instructions on how to register, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

NAIAC members may attend the meeting via webcast or in-person at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Alicia Chambers, Committee Liaison Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899, *alicia.chambers@nist.gov* or 301–975–5333, or Melissa Banner, Designated Federal Officer, National Institute of Standards and Technology, 100 Bureau Drive, MS 1000, Gaithersburg, MD 20899, *melissa.banner@nist.gov* or 301–975–5245.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. spp., notice is hereby given that the National Artificial Intelligence Advisory Committee (the NAIAC or the Committee) will hold an open meeting on Wednesday, May 4, 2022, from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time.

The NAIAC is authorized by Section 5104 of the National Artificial Intelligence Initiative Act of 2020 (Pub. L. 116–283), in accordance with the provisions of the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. app. The Committee advises the President and the National Artificial Intelligence Initiative Office on matters related to the National Artificial Intelligence Initiative. Additional information on the NAIAC is available at *https://www.ai.gov/naiac/.*

*Agenda:* The meeting agenda will include a discussion on how the NAIAC members will organize to address the current state of U.S. competitiveness, the state of the science around Artificial Intelligence (AI), issues related to workforce and the potential to use AI for workforce training, government operations, whether societal issues are adequately being addressed, international coordination, oversight of AI systems, and enhancing opportunities for diverse geographic regions of the United States. The agenda will also include establishment of the statutorily mandated Subcommittee on Law Enforcement and Artificial Intelligence. The agenda may change to accommodate Committee business. The final agenda will be posted on the NAIAC website at *https://www.ai.gov/naiac/.*

*Comments:* Individuals and representatives of organizations who would like to offer comments and suggestions or ask questions related to the NAIAC's business are invited to submit comments and questions in advance of the meeting. Written comments and questions may be submitted to the DFO, Melissa Banner, via email to: *melissa.banner@nist.gov* with the subject line ''May 4 NAIAC Meeting Comments'' in either Adobe Acrobat or Microsoft Word format. Comments and questions must be received by 5:00 p.m. Eastern Daylight Time, Thurday, April 28, 2022 to be considered. The DFO will compile all written submissions and provide them to the NAIAC members for consideration. Please note that all submitted comments will be treated as public documents and will be made available for public inspection.

Approximately 15 minutes will be reserved for NAIAC members to address public comments and questions. The time that the members will address public comments will be included in the final agenda that will be posted at *https://www.ai.gov/naiac/.*

*Admittance Instructions:* Anyone wishing to attend this meeting via webcast must register via the registration link at *https://www.ai.gov/naiac/* by 5:00 p.m. Eastern Daylight Time, Thursday, April 28, 2022.

**Alicia Chambers,**

*NIST Executive Secretariat.*

[FR Doc. 2022–08319 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XB835]**

### Endangered and Threatened Species; Take of Anadromous Fish; Correction

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

**ACTION:** Notice of availability of a proposed evaluation for a Tribal Resource Management Plan and request for comment; correction.

**SUMMARY:** On April 11, 2022, NMFS published a notice in the **Federal Register** announcing that the Northwest Indian Fisheries Commission (NWIFC) has submitted a Tribal Resource Management Plan (Tribal Plan) for NMFS to evaluate. NMFS has completed a proposed evaluation of how well the Tribal Plan fulfills ESA criteria, and the Secretary of Commerce is making that proposed evaluation available for public comment. That notice published on April 11, 2022, had an error in the URL link to view the proposed evaluation. This notice includes the correct URL link to view the proposed evaluation.

**FOR FURTHER INFORMATION CONTACT:** Shivonne Nesbit, Portland, OR (Ph: 503–231–6741, email: *shivonne.nesbit@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** The notice of availability and request for comment (87 FR 21103; April 11, 2022) had an error in the URL link to view the proposed evaluation. This notice includes the correct URL link.

All other information in the document is unchanged.

**Correction**

In the **Federal Register** of April 11, 2022, in FR Doc 2022–07661, on page 21103, in the **ADDRESSES** section the last sentence is corrected to read as follows: *https://www.fisheries.noaa.gov/action/tribal-resource-management-plan-trmp-northwest-indian-fisheries-commission.*

Dated: April 14, 2022.

**Jennifer Schultz,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2022–08337 Filed 4–18–22; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2022–SCC–0053]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Strengthening Historically Black Graduate Institutions (HBGI) (1894–0001)

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension without change of a currently approved information collection.

**DATES:** Interested persons are invited to submit comments on or before May 19, 2022.

**ADDRESSES:** Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection

activities, please contact Bernadette Miles, 202–453–7892.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Application Package for Strengthening Historically Black Graduate Institutions (HBGI) (1894–0001).

*OMB Control Number:* 1840–0836.

*Type of Review:* An extension without change of a currently approved collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Private Sector.

*Total Estimated Number of Annual Responses:* 32.

*Total Estimated Number of Annual Burden Hours:* 704.

*Abstract:* The Strengthening Historically Black Graduate Institutions (HBGI) Program provides grants to assist institutions in establishing and strengthening their physical plants, development offices, endowment funds, academic resources and student services so that they may continue to participate in fulfilling the goal of equality of educational opportunity in graduate education.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Dated: April 14, 2022.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2022–08341 Filed 4–18–22; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Applications for New Awards; Upward Bound Math and Science Program

**AGENCY:** Office of Postsecondary Education, Department of Education.

**ACTION:** Notice.

**SUMMARY:** The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2022 for the Upward Bound Math and Science (UBMS) Program, Assistance Listing Number 84.047M. This notice relates to the approved information collection under OMB control number 1840–0824.

**DATES:**

*Applications Available:* April 19, 2022.

*Deadline for Transmittal of Applications:* June 3, 2022.

*Deadline for Intergovernmental Review:* August 2, 2022.

**ADDRESSES:** For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979*. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a Data Universal Numbering System (DUNS) number to the implementation of the Unique Entity Identifier (UEI). More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Tanisha Hamblin-Johnson, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C104, Washington, DC 20202–4260. Telephone: (202) 453–6090. Email: *Tanisha.Johnson@ed.gov.* or,

Tara Lawrence, U.S. Department of Education, 400 Maryland Avenue SW, Room 2C104, Washington, DC 20202–4260. Telephone: (202) 260–1475. Email: *Tara.Lawrence@ed.gov.*

If you are deaf, hard of hearing, or have a speech disability and wish to access telecommunications relay services, please dial 7–1–1.

**SUPPLEMENTARY INFORMATION:**

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* The Upward Bound (UB) Program is one of seven programs collectively known as the Federal TRIO Programs. The UB Program is a discretionary grant program that supports projects that provide students with the skills and motivation necessary to complete a program of secondary education and enter into and succeed in a program of postsecondary education. There are three types of grants under the UB Program: UB; Veterans UB; and UB Math and Science grants. In this notice, we invite applications for UBMS grants only. The invitation to apply for UB grants published in the **Federal Register** on December 16, 2021, and available at *https://www.federalregister.gov/documents/2021/12/16/2021-27235/applications-for-new-awards-upward-bound-program.* We will invite applications for Veterans UB grants in a forthcoming notice.

The UBMS Program supports projects designed to prepare high school students for postsecondary education programs that lead to careers in the fields of math and science.

UBMS grantees are required to provide the services listed in sections 402C(b) and (c) of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–13(b), (c)). Permissible services under the UBMS Program are specified in section 402C(d) of the HEA (20 U.S.C. 1070a–13(d)).

*Priorities:* This notice contains three competitive preference priorities. Competitive Preference Priority 1 is from the Secretary's Notice of Administrative Priorities for Discretionary Grant Programs, published in the **Federal Register** on March 9, 2020 (85 FR 13640) (Administrative Priorities). Competitive Preference Priorities 2 and 3 are from the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs, published in the **Federal Register** on December 10, 2021 (86 FR 70612) (Supplemental Priorities).

*Note:* Applicants must include in the one-page abstract submitted with the application a statement indicating

which, if any, competitive preference priorities are addressed. If the applicant has addressed one or more of the competitive preference priorities, this information must also be listed on the UBMS Program Profile Form.

*Competitive Preference Priorities:* For FY 2022 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award up to an additional nine points to an applicant, depending on how well the application meets the priorities.

The priorities are:

*Competitive Preference Priority 1: Applications that Demonstrate a Rationale* (Up to 3 points).

Under this priority, an applicant proposes a project that demonstrates a rationale (as defined in this notice).

*Note:* A list of evidence-based practices that are relevant to the UBMS Program is available at *https://www2.ed.gov/programs/triomathsci/applicant.html.* This list is not exhaustive. Additional information regarding the What Works Clearinghouse practice guides and intervention reports that could also be relevant is posted on the Department's website at *www.ies.ed.gov/ncee/wwc.*

*Competitive Preference Priority 2: Meeting Student Social, Emotional, and Academic Needs* (Up to 3 points).

Projects that are designed to improve students' social, emotional, academic, and career development, with a focus on underserved students, through providing multi-tiered systems of supports that address learning barriers both in and out of the classroom, that enable healthy development and respond to students' needs, and which may include evidence-based trauma-informed practices and professional development for educators on avoiding deficit-based approaches.

*Note:* Because the UBMS Program supports students and not the professional development of educators, applicants should address supports for students only.

*Competitive Preference Priority 3: Strengthening Cross-Agency Coordination and Community Engagement to Advance Systemic Change* (Up to 3 points).

Projects that are designed to take a systemic evidence-based approach to improving outcomes for underserved students by establishing cross-agency partnerships, or community-based partnerships with local nonprofit organizations, businesses, philanthropic organizations, or others, to meet family well-being needs.

*Definitions:* The definitions below are from 34 CFR 77.1 and the Supplemental Priorities.

*Demonstrates a rationale* means a key project component included in the project's logic model is informed by research or evaluation findings that suggest the project component is likely to improve relevant outcomes.

*Disconnected youth* means an individual, between the ages of 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

*Evidence-based* means the proposed project component is supported by evidence that demonstrates a rationale.

*Logic model* (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes.

*Note:* In developing logic models, applicants may want to use resources such as the Regional Educational Laboratory Program's (REL Pacific) Education Logic Model Application, available at *https://ies.ed.gov/ncee/edlabs/regions/pacific/elm.asp.*

*Other sources include: https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014025.pdf, https://ies.ed.gov/ncee/edlabs/regions/pacific/pdf/REL_2014007.pdf,* and *https://ies.ed.gov/ncee/edlabs/regions/northeast/pdf/REL_2015057.pdf.*

*Project component* means an activity, strategy, intervention, process, product, practice, or policy included in a project. Evidence may pertain to an individual project component or to a combination of project components (*e.g.,* training teachers on instructional practices for English learners and follow-on coaching for these teachers).

*Relevant outcome* means the student outcome(s) or other outcome(s) the key project component is designed to improve, consistent with the specific goals of the program.

*Underserved student* means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student experiencing homelessness or housing insecurity.

(c) A student who is in foster care.

(d) A student who is the first in their family to attend postsecondary education.

(e) A student who is enrolled in or is seeking to enroll in postsecondary education who is eligible for a Pell Grant.

(f) A student performing significantly below grade level.

*Application Requirements:* The following application requirements for FY 2022 are from section 402C(e) of the HEA (20 U.S.C. 1070a–13(e)) and the program regulations at 34 CFR 645.21.

An applicant must submit the following assurances, as part of its application—

(1) Not less than two-thirds of the youths participating in the project proposed to be carried out under any application be low-income individuals who are first generation college students;

(2) The remaining youths participating in the project proposed to be carried out under any application be low-income individuals or potential first-generation college students;

(3) No student will be denied participation in a project assisted under section 402C of the HEA because the student will enter the project after the 9th grade.

(4) The project will collaborate with other Federal TRIO projects, GEAR UP projects, or programs serving similar populations that are serving the same target schools or target area in order to minimize the duplication of services and promote collaborations so that more students can be served.

*Program Authority:* 20 U.S.C. 1070a–11 and 1070a–13.

*Note:* Projects will be awarded and must be operated in a manner consistent with the nondiscrimination requirements contained in Federal civil rights laws.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The regulations for this program in 34 CFR part 645. (e) The Administrative Priorities. (f) The Supplemental Priorities.

*Note:* The regulations in 34 CFR 86 apply to institutions of higher education only.

**II. Award Information**

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* The Administration received $1,137,000,000 for the Federal TRIO Program for FY 2022, of which we intend to use an estimated $65,928,188 for UBMS awards.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in subsequent years from the list of unfunded applications from this competition.

*Estimated Range of Awards:* $287,537–$442,525.

*Estimated Average Size of Awards:* $310,982.

*Maximum Award:* The maximum award varies based on whether the applicant is currently receiving a UBMS Program grant, as well as the number of participants served.

- For an applicant that is not currently receiving a UBMS Program grant, the maximum award amount is $287,537, based upon a per-participant cost of no more than $4,792 and a minimum of 60 participants.
- For an applicant that is currently receiving a UBMS Program grant, the maximum award amount is equal to the applicant's base award amount for FY 2021, and the minimum number of participants is the number of participants in the project's FY 2021 grant award notification.

*Estimated Number of Awards:* 212.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 60 months.

**III. Eligibility Information**

1. *Eligible Applicants:* Institutions of higher education, public and private agencies, and organizations including community-based organizations with experience in serving disadvantaged youth, secondary schools, combinations of such institutions, agencies, and organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Indirect Cost Rate Information:* This program uses a training indirect cost rate. This limits indirect cost reimbursement to an entity's actual indirect costs, as determined in its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. For more information regarding training indirect cost rates, see 34 CFR 75.562. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www2.ed.gov/about/offices/list/ocfo/intro.html.*

4. *Administrative Cost Limitation:* This program does not include any program-specific limitation on administrative expenses. All administrative expenses must be reasonable and necessary and conform to Cost Principles described in 2 CFR part 200 subpart E of the Uniform Guidance.

5. *Subgrantees:* A grantee under this competition may not award subgrants to entities to directly carry out project activities described in its application.

6. *Other:* An applicant may submit more than one application for a UBMS Program grant so long as each application describes a project that serves a different target area or target school (34 CFR 645.20(a)). The Secretary is not designating any additional populations for which an applicant may submit a separate application under this competition (34 CFR 645.20(b)). The term ''target area'' is defined as a discrete local or regional geographic area served by a project (34 CFR 645.6(b)). The term ''target school'' is defined as a school designated by the applicant as a focus of project services (34 CFR 645.6(b)).

**IV. Application and Submission Information**

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on December 27, 2021 (86 FR 73264) and available at *www.federalregister.gov/d/2021-27979,* which contain requirements and information on how to submit an application. Please note that these Common Instructions supersede the version published on February 13, 2019, and, in part, describe the transition from the requirement to register in *SAM.gov* a DUNS number to the implementation of the UEI. More information on the phase-out of DUNS numbers is available at *https://www2.ed.gov/about/offices/list/ofo/docs/unique-entity-identifier-transition-fact-sheet.pdf.*

2. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

3. *Funding Restrictions:* We specify unallowable costs in 34 CFR 645.41. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative, which includes the budget narrative, to no more than 65 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, excluding titles, headings, footnotes, quotations, references, and captions as well as all text in charts, tables, figures, and graphs, which may be single-spaced.
- Use a font that is either 12 point or larger, and no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract. However, the recommended page limit does apply to all of the application narrative. We recommend that any application addressing the competitive preference priorities include no more than three additional pages for each priority, for a total of up to nine additional pages for the competitive preference priorities if the three competitive preference priorities are addressed.

**V. Application Review Information**

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 645.31.

We will award up to 100 points to an application under the selection criteria and up to 9 additional points to an application under the competitive preference priorities, for a total score of up to 109 points. The maximum number of points available for each criterion is indicated in parentheses.

(a) *Need for the project.* (Up to 24 points). The Secretary evaluates the need for a UBMS Program in the proposed target area on the basis of—

(i) The extent to which student performance on standardized achievement and assessment tests in mathematics and science in the target area is lower than State or national norms; (Up to 6 points)

(ii) The extent to which potential participants attend schools in the target area that lack the resources and coursework that would help prepare persons for entry into postsecondary programs in mathematics, science, or engineering; (Up to 6 points)

(iii) The extent to which such indicators as attendance data, dropout rates, college-going rates and student/counselor ratios in the target area indicate the importance of having additional educational opportunities available to low-income, first-generation students; and (Up to 6 points)

(iv) The extent to which there are eligible students in the target area who have demonstrated interest and capacity to pursue academic programs and careers in mathematics and science, and who could benefit from an Upward Bound Math and Science program. (Up to 6 points)

(b) *Objectives.* (Up to 9 points). The Secretary evaluates the quality of the applicant's objectives and proposed targets (percentages) in the following areas on the basis of the extent to which they are both ambitious, as related to the need data provided under selection criterion (a), and attainable, given the project's plan of operation, budget, and other resources—

(i) Academic performance (GPA); (1 point)

(ii) Academic performance (standardized test scores); (1 point)

(iii) Secondary school retention and graduation (with regular secondary school diploma); (2 points)

(iv) Completion of rigorous secondary school program of study; (1 point)

(v) Postsecondary enrollment; (3 points) and

(vi) Postsecondary completion. (1 point)

(c) *Plan of operation.* (Up to 30 points). The Secretary determines the quality of the applicant's plan of operation by assessing the quality of—

(1) The plan to inform the faculty and staff at the applicant institution or agency and the interested individuals and organizations throughout the target area of the goals and objectives of the project; (Up to 3 points)

(2) The plan for identifying, recruiting, and selecting participants to be served by the project; (Up to 3 points)

(3) The plan for assessing individual participant needs and monitoring the academic progress of participants while they are in UBMS; (Up to 3 points)

(4) The plan for locating the project within the applicant's organizational structure; (Up to 3 points)

(5) The curriculum, services and activities that are planned for participants in both the academic year and summer components; (Up to 3 points)

(6) The planned timelines for accomplishing critical elements of the project; (Up to 3 points)

(7) The plan to ensure effective and efficient administration of the project, including, but not limited to, financial management, student records management, and personnel management; (Up to 3 points)

(8) The applicant's plan to use its resources and personnel to achieve project objectives and to coordinate the UBMS project with other projects for disadvantaged students; (Up to 3 points)

(9) The plan to work cooperatively with parents and key administrative, teaching, and counseling personnel at the target schools to achieve project objectives; (Up to 3 points) and

(10) A follow-up plan for tracking graduates of UBMS as they enter and continue in postsecondary education. (Up to 3 points)

(d) *Applicant and community support.* (Up to 16 points). The Secretary evaluates the applicant and community support for the proposed project on the basis of the extent to which—

(1) The applicant is committed to supplementing the project with resources that enhance the project such as: Space, furniture and equipment, supplies, and the time and effort of personnel other than those employed in the project. (Up to 8 points)

(2) Resources secured through written commitments from community partners. (Up to 8 points)

(i) An applicant that is an institution of higher education must include in its application commitments from the target schools and community organizations;

(ii) An applicant that is a secondary school must include in its application commitments from institutions of higher education, community organizations, and, as appropriate, other secondary schools and the school district; and

(iii) An applicant that is a community organization must include in its application commitments from the target schools and institutions of higher education.

(e) *Quality of personnel.* (Up to 8 points). To determine the quality of personnel the applicant plans to use, the Secretary looks for information that shows—

(1) The qualifications required of the project director, including formal training or work experience in fields related to the objectives of the project and experience in designing, managing, or implementing similar projects; (Up to 3 points)

(2) The qualifications required of each of the other personnel to be used in the project, including formal training or work experience in fields related to the objectives of the project; (Up to 3 points)

(3) The quality of the applicant's plan for employing personnel who have succeeded in overcoming barriers similar to those confronting the project's target population. (Up to 2 points)

(f) *Budget and cost effectiveness.* (Up to 5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support planned project services and activities; (Up to 3 points) and

(2) Costs are reasonable in relation to the objectives and scope of the project. (Up to 2 points)

(g) *Evaluation plan.* (Up to 8 points). The Secretary evaluates the quality of the evaluation plan for the project on the basis of the extent to which the applicant's methods of evaluation—

(1) Are appropriate to the project and include both quantitative and qualitative evaluation measures; (Up to 4 points) and

(2) Examine in specific and measurable ways the success of the project in making progress toward achieving its process and outcomes objectives. (Up to 4 points)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

For this competition, a panel of non-Federal reviewers will review each application in accordance with the selection criteria in 34 CFR 645.31. The individual scores of the reviewers will be added and the sum divided by the number of reviewers to determine the peer review score received in the review process. Additionally, in accordance with 34 CFR 645.32, the Secretary will award prior experience points to

applicants that conducted a UBMS Program project during budget periods 2017–18, 2018–19, 2019–20, and 2020–21, based on their documented experience. Prior experience points, if any, will be added to the application's averaged reader score to determine the total score for each application.

If there are insufficient funds for all applications with the same total scores, the Secretary will choose among the tied applications so as to serve geographic areas in which there is significant child poverty and that have been underserved by the UBMS Program, in accordance with the following procedures. The Secretary will identify and recommend an award for—

- First, applicants in the funding band that applied to serve target schools within a Congressional District (a) that has a child poverty level greater than 30 percent and (b) where UBMS projects previously served either 10 or fewer target schools or fewer than 150 students within that Congressional District. If this first tie-breaker provision exhausts available funds, then no further action is taken.
- Second, applicants in the funding band that applied to serve target schools within a Congressional District (a) that has a child poverty level greater than 25 percent and (b) where UBMS projects previously served either 15 or fewer target schools or fewer than 200 students within that Congressional District. If this second tie-breaker provision exhausts available funds, then no further action is taken.
- Third, applicants in the funding band that applied to serve target schools within a Congressional District where UBMS projects previously served zero target schools.

*Note:* Within each of the steps of the tie-breaker process, if there is more than one application with the same score and insufficient funding to support these applications, the applicant proposing to serve target schools within the more impoverished Congressional District will be the final application identified and recommended to receive an award.

In applying the tie-breaker criteria, the Department will use the most current data available. With respect to Congressional Districts and child poverty data within Congressional Districts, the most recent available Child Poverty data from the United States Census for Congressional Districts is for the 117th Congress, and therefore, the geographical boundaries used for the tie-breaker are drawn from the 115th Congress. The number of target schools served within the boundaries of a Congressional District, and the number of students served within these target schools, will be derived from the UBMS Annual Performance Report (APR). The Department will use data from the 2020–21 APR to count the number of target schools that receive services within Congressional District boundaries.

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.206, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 200.208, the Secretary may impose specific conditions and, under 2 CFR 3474.10, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.206(a)(2), we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

5. *In General:* In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, the Department will review and consider applications for funding pursuant to this notice inviting applications in accordance with—

(a) Selecting recipients most likely to be successful in delivering results based on the program objectives through an objective process of evaluating Federal award applications (2 CFR 200.205);

(b) Prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. 115—232) (2 CFR 200.216);

(c) Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR 200.322); and

(d) Terminating agreements in whole or in part to the greatest extent authorized by law if an award no longer effectuates the program goals or agency priorities (2 CFR 200.340).

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after

your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html*.

5. *Performance Measures:* The success of the UBMS Program will be measured by the percentage of UBMS participants who enroll in and complete postsecondary education. The following performance measures have been developed to track progress toward achieving program success for purposes of Department reporting under 34 CFR 75.110:

a. The percentage of UBMS students who took two years of mathematics beyond Algebra I by the 12th grade;

b. The percentage of UBMS students who graduated from secondary school with a regular secondary school diploma;

c. The percentage of UBMS students who enrolled in postsecondary education;

d. The percentage of UBMS students who enrolled in a program of postsecondary education by the fall term following graduation from high school and who in the first year of postsecondary education placed into college-level math and English without need for remediation;

e. The percentage of former UBMS students who enrolled in a program of postsecondary education and graduated on time—within four years for the bachelor's degree and within two years for the associate's degree;

f. The percentage of former UBMS participants who enrolled in a program of postsecondary education and attained either an associate's degree within three years or a bachelor's degree within six years of enrollment; and

g. The percentage of UBMS students expected to graduate high school in the reporting year who complete a Free Application for Federal Student Aid (FAFSA).

All UBMS Program grantees will be required to submit APRs.

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, whether the grantee has made substantial progress in achieving the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

## VII. Other Information

*Accessible Format:* On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document and a copy of the application package in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

**Michelle Asha Cooper,**

*Deputy Assistant Secretary for Higher Education Programs, Delegated the Authority to Perform the Functions and Duties of the Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 2022–08295 Filed 4–18–22; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meetings

**TIME AND DATE:** April 21, 2022, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street NE, Washington, DC 20426.

Open to the public via video Webcast only. Join FERC online to view this event live at *https://ferc.capitolconnection.org/.*

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1089TH—MEETING

[Open Meeting; April 21, 2022, 10:00 a.m.]

| Item No. | Docket No. | Company |
|---|---|---|
| | **Administrative** | |
| A–1 ..... | AD22–1–000 ..... | Agency Administrative Matters. |
| A–2 ..... | AD22–2–000 ..... | Customer Matters, Reliability, Security and Market Operations. |
| A–3 ..... | AD06–3–000 ..... | Market Update. |
| | **Electric** | |
| E–1 ..... | RM21–17–000 ..... | Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection. |
| E–2 ..... | AD21–10–000 ..... | Modernizing Wholesale Electricity Market Design. |
| E–3 ..... | ER21–42–000 ..... | Tenaska Power Services Co. |
| E–4 ..... | ER21–51–000; ER21–51–001; ER21–51–002. | bp Energy Company. |
| | ER21–55–000; ER21–55–001 ..... | Mesquite Power, LLC. |
| E–5 ..... | ER21–47–000 ..... | Tuscon Electric Power Company. |
| E–6 ..... | ER21–46–000 ..... | Mercuria Energy America, LLC. |
| E–7 ..... | ER21–57–000; ER21–57–001 ..... | Shell Energy North America (US), L.P. |
| E–8 ..... | ER21–2818–001; EL22–4–001 (consolidated). | Tri-State Generation and Transmission Association, Inc. |
| E–9 ..... | ER20–1075–002 ..... | California Independent System Operator Corporation. |
| E–10 ..... | EL22–38–000 ..... | PacifiCorp. |
| E–11 ..... | EL22–37–000 ..... | Idaho Power Company. |
| E–12 ..... | EL22–41–000 ..... | Puget Sound Energy, Inc. |
| E–13 ..... | EL22–40–000 ..... | Public Service Company of New Mexico. |
| E–14 ..... | EL22–39–000 ..... | Public Service Company of Colorado. |
| E–15 ..... | EC22–27–000 ..... | FirstEnergy Corp. |
| E–16 ..... | EC22–33–000 ..... | FirstEnergy Transmission, LLC, American Transmission Systems, Incorporated, Mid-Atlantic Interstate Transmission, LLC, Trans-Allegheny Interstate Line Company, Potomac-Appalachian Transmission Highline, LLC, and North American Transmission Company II LLC. |
| | **Gas** | |
| G–1 ..... | PL20–3–000 ..... | Actions Regarding the Commission's Policy on Price Index Formation and Transparency, and Indices Referenced in Natural Gas and Electric Tariffs. |
| G–2 ..... | RP22–725–000 ..... | Guardian Pipeline, L.L.C. |
| G–3 ..... | RP19–73–003 ..... | El Paso Natural Gas Company, L.L.C. |
| | **Hydro** | |
| H–1 ..... | P–9685–036 ..... | Ampersand Cranberry Lake Hydro, LLC. |
| H–2 ..... | P–3819–012 ..... | STS Hydropower, LLC and Sugarloaf Hydro, LLC. |
| | **Certificates** | |
| C–1 ..... | CP20–27–000 ..... | North Baja Pipeline, LLC. |
| C–2 ..... | CP20–484–000; CP20–485–000 ..... | ANR Pipeline Company. Great Lakes Transmission Gas Limited Partnership. |
| C–3 ..... | CP20–493–000 ..... | Tennessee Gas Pipeline Company, L.L.C. |
| C–4 ..... | CP21–474–000 ..... | Rover Pipeline LLC. |
| C–5 ..... | CP21–492–000 ..... | Rover Pipeline LLC. |
| C–6 ..... | CP95–35–000 ..... | EcoElectrica, L.P. |

A free webcast of this event is available through *https://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *https://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Issued: April 14, 2022.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2022–08471 Filed 4–15–22; 4:15 pm]

**BILLING CODE 6717–01–P**

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

### Notice of Board Meeting

**DATES:** April 26, 2022 at 10:00 a.m.

**ADDRESSES:** Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 676 492 751#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_MzEwYTM0OTYtODE2Ny00MTU5LWIyYmQtNjgzNzFjMjJiOWRi%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%227c8d802c-5559-41ed-9868-8bfad5d44af9%22%7d.*

**FOR FURTHER INFORMATION CONTACT:** Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

**SUPPLEMENTARY INFORMATION:**

**Board Meeting Agenda**

*Open Session*

1. Approval of the March 24, 2022 Board Meeting Minutes
2. Investment Manager Annual Service Review—BlackRock
3. Monthly Reports
   (a) Participant Activity Report
   (b) Legislative Report
4. Quarterly Reports
   (c) Investment Policy
   (d) Budget Review
   (e) Audit Status
5. Annual Financial Audit
6. DOL Presentation
7. Converge Update

*Closed Session*

8. Information covered under 5 U.S.C. 552b(c)(9)(B).

*Authority:* 5 U.S.C. 552b(e)(1).

Dated: April 14, 2022.

**Dharmesh Vashee,**

*General Counsel, Federal Retirement Thrift Investment Board.*

[FR Doc. 2022–08297 Filed 4–18–22; 8:45 am]

**BILLING CODE P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements contained in the Telemarketing Sales Rule (TSR or Rule). That clearance expires on September 30, 2022.

**DATES:** Comments must be received on or before June 21, 2022.

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Telemarketing Sales Rule; PRA Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Benjamin R. Davidson, Attorney, Bureau of Consumer Protection, (202) 326–3055, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

*Title:* Telemarketing Sales Rule (TSR or Rule), 16 CFR part 310.

*OMB Control Number:* 3084–0097.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* As required by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. 6101–6108 (the ''Telemarketing Act''), the TSR mandates certain disclosures for telephone sales and requires telemarketers to retain certain records regarding advertising, sales, and employees. The required disclosures provide consumers with information necessary to make informed purchasing decisions. The required records are to be made available for inspection by the Commission and other law enforcement personnel to determine compliance with the Rule. Required records may also yield information helpful to measuring and redressing consumer injury stemming from Rule violations.

*Likely Respondents:* Telemarketers to consumers.

*Estimated Annual Hours Burden:* 1,228,050 hours.

- *Disclosures (for live telemarketing calls and prerecorded calls):* 1,215,946 hours (which is derived from 826,389 hours for pre-sales disclosures + 363,048 hours for general sales disclosures + 26,509 hours for specific sales disclosures).
- *Reporting:* 219 hours.
- *Recordkeeping:* 11,885 hours.

*Estimated Annual Labor Cost Burden:* $18,367,441 (which is derived from $441,169 (recordkeeping) + $17,923,044 (disclosure) + $3,228 (reporting).[1]

*Estimated Annual Non-Labor Cost:* $4,619,156 (which is derived from $241,750 (office supplies) + $4,377,406 (telephone charges)).

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the TSR.

**Burden Estimates**

Brief description of the need for and proposed use of the information.

**Estimated Annual Hours Burden: 1,228,050 Hours**

The estimated burden for recordkeeping compliance is 11,885 hours for all industry members affected by the Rule. The estimated burden for the requisite disclosures for both live telemarketing calls and prerecorded calls is 1,215,946 hours for all affected industry members. Estimated burden for reporting requirements is 219 hours. Thus, the total PRA burden is 1,228,050 hours. These estimates are explained below.

*Number of Respondents:*

In calendar year 2021, 11,756 telemarketing entities accessed the Do Not Call Registry; however, 536 were ''exempt'' entities obtaining access to data.[2] Of the 11,220 non-exempt entities, 8,034 sellers and 3,186 telemarketers accessed the Registry. Of those, however, 4,843 sellers and 1,992 telemarketers obtained data for just one state. Staff assumes that these 6,835 entities are operating solely intrastate, and thus would not be subject to the TSR.[3] Therefore, Staff estimates that

[1] The hourly wage rates for sales and related workers are based on mean hourly wages found at *https://www.bls.gov/news.release/ocwage.t01.htm* (''Occupational Employment and Wages–May 2021,'' U.S. Department of Labor, released March 2022, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021'').

[2] An exempt entity is one that, although not subject to the TSR, voluntarily chooses to scrub its calling lists against the data in the Registry.

[3] These entities would nonetheless likely be subject to the Federal Communications Commission's (''FCC'') Telephone Consumer Protection Act regulations, including the

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4,385 telemarketing entities are currently subject to the TSR, of which 3,191 (8,034 − 4,843) are sellers and 1,194 (3,186 − 1,992) are telemarketers.[4]

*(a) Recordkeeping Hours*

Staff estimates that the 4,385 telemarketing entities subject to the Rule each require approximately one hour per year to file and store records required by the TSR for an annual total of 4,385 burden hours. The Commission staff also estimates that 75 new entrants per year would need to spend 100 hours each developing a recordkeeping system that complies with the TSR for an annual total of 7,500 burden hours. These figures, based on prior estimates, are consistent with staff's current knowledge of the industry. Thus, the total estimated annual recordkeeping burden for new and existing telemarketing entities[5] is 11,885 hours.

*(b) Disclosure Hours*

Staff believes that in the ordinary course of business, a substantial majority of sellers and telemarketers make the disclosures the Rule requires because to do so constitutes good business practice. To the extent this is so, the time and financial resources needed to comply with disclosure requirements do not constitute ''burden.'' 5 CFR 1320.3(b)(2). Moreover, many state laws require the same or similar disclosures as the Rule mandates. Thus, the disclosure hours burden attributable solely to the Rule is far less than the total number of hours associated with the disclosures overall. As when the FTC last sought OMB clearance, staff estimates that most of the Rule disclosures would be made in at least 75 percent of telemarketing calls even absent the Rule.[6] Accordingly, staff has continued to estimate that the hours of burden for most of the Rule's disclosure requirements is 25 percent of the total hours.

Pre-Sale Disclosures

Consistent with its past practice, staff necessarily has made additional assumptions in estimating burden. Based on industry data and further FTC extrapolations,[7] staff estimates that 2.3 billion outbound telemarketing calls are subject to FTC jurisdiction and attributable to direct orders, that 450 million of these calls result in direct sales,[8] and that there are 1.8 billion inbound calls that result in direct sales. Staff retains its longstanding estimate that, in a telemarketing call involving the sale of goods or services, it takes 7 seconds[9] for telemarketers to recite the required pre-sale disclosures plus 3 additional seconds[10] to disclose the information required in the case of an upsell.[11] Staff also retains its longstanding estimates that at least 60 percent of sales calls result in ''hang-ups'' before the telemarketer can make all the required disclosures and that ''hang-up'' calls allow for only 2 seconds of disclosures.[12]

Staff bases all ensuing upsell calculations on the volume of additional sales after an initial sale, with the assumption that a consumer is unlikely to be predisposed to an upsell if he or she rejects an initial offer—whether through an outbound or an inbound call. Using industry information, staff assumes an upsell conversion rate of 40% for inbound calls as well as outbound calls.[13] Moreover, staff assumes that consumers who agree to an upsell will not terminate an upsell before the seller or telemarketer makes the full required disclosures.

Based on the above, staff estimates that the total time associated with these pre-sale disclosure requirements is 826,389 hours per year: [(2.3 billion outbound calls × 40% lasting the duration × 7 seconds of full pre-sale disclosures ÷ 3,600 (conversion of minutes to hours) × 25% burden = 447,222 hours) + (2.3 billion outbound calls × 60% terminated prematurely × 2 seconds of disclosures ÷ 3,600 × 25% burden = 191,667 hours) + (450 million outbound calls resulting in direct sales × 40% upsell conversions × 3 seconds of related disclosures ÷ 3,600 × 25% burden = 37,500 hours) + (1.8 billion inbound calls × 40% upsell conversions × 3 seconds ÷ 3,600 × 25% burden = 150,000 hours)] = 826,389 hours).

General Sales Disclosures

The TSR also requires several general sales disclosures in telemarketing calls before the customer pays for goods or services.[14] These disclosures, which FTC staff estimates takes eight seconds, include the total costs of the offered goods or services, all material restrictions, and all material terms and conditions of the seller's refund, cancellation, exchange, or repurchase policies (if a representation about such a policy is a part of the sales offer).

Staff estimates that the general sales disclosures for telemarketing calls require 351,680 hours annually. This figure includes the burden for written disclosures (672 inbound telemarketing entities estimated to use direct mail[15] ×

requirement that entities engaged in intrastate telephone solicitations access the Registry.

[4] For purposes of these calculations, staff assumes that telemarketers making prerecorded calls download telephone numbers listed on the Registry, rather than conduct online searches, because the latter may consume much more time. Other telemarketers not placing the high-volume of automated prerecorded calls may elect to search online, rather than to download.

[5] The recordkeeping requirements for prerecorded calls are de minimis, and are subsumed within the PRA estimates above for existing and new telemarketing entities. As in its prior estimates, staff continues to believe that any ongoing incremental burden on sellers to create and retain electronic records of written agreements by new customers to receive prerecorded calls should not be material since the agreements may be obtained and recorded electronically pursuant to the Electronic Signatures In Global and National Commerce Act (commonly, ''E–SIGN''). Although telemarketers (and telefunders) that place prerecorded calls on behalf of sellers or charities must capture and transmit to the seller any requests they receive to place a consumer's telephone number on the seller's entity-specific do-not-call list, this obligation extends both to live and prerecorded telemarketing calls, and is also subsumed within the PRA estimates above.

[6] 84 FR at 22,845.

[7] Staff employs the methodology, assumptions, and studies it has consistently used since their development for the 2003 TSR amendments to determine, indirectly from external sales data and the relative percentages of inbound and outbound calls, the number of telemarketing calls and resulting number of sales because no call or sales number totals are otherwise available. Staff relies on its own prior estimates that of the $134.7 billion of sales from outbound calls to consumers in 2012 (DMA 2013 Statistical Fact Book, at 5), 92.8% of those sales, or $125 billion, are subject to FTC jurisdiction, with the average value of a sale being $85 and 20% of outbound calls resulting in a sale.

[8] For staff's PRA burden calculations, only direct sales orders by telephone are relevant. That is, sales generated through leads or customer traffic are excluded from these calculations because such sales are not subject to the TSR's recordkeeping and disclosure provisions. The direct sales transactions total of 450 million is based on an estimated 1.5 billion sales transactions from outbound calls being subject to FTC jurisdiction reduced by an estimated 30 percent attributable to direct orders. This percentage estimate is derived from the only known available outside direct sales data for telephone marketing to consumers. *See* DMA Statistical Fact Book (2001), p. 301.

[9] *See, e.g.,* 60 FR 32,682, 32,683 (June 23, 1995); 63 FR 40,713, 40,714 (July 30, 1998); 66 FR 33,701, 33,702 (June 25, 2001); 71 FR 28,698, 28,700 (May 17, 2006); 74 FR 11,952, 11,955 (Mar. 20, 2009); 78 FR 19,483 19,485 (Apr. 1, 2013); 84 FR at 22,845 (May 20, 2019).

[10] *See, e.g.,* 71 FR 3302, 3304 (Jan. 20, 2006); 71 FR at 28,700; 78 FR at 19,485; 84 FR at 22,845.

[11] Upselling is when a seller or telemarketer ''solicit[s] the purchase of goods or services following an initial transaction during a single telephone call.'' 16 CFR 310.2(hh).

[12] *See, e.g.,* 60 FR at 32,683; 78 FR at 19,485; 84 FR at 22,845.

[13] This assumption originated with industry response to the Commission's 2003 Final Amended TSR. *See* 68 FR 4580, 4597 n.183 (Jan. 29, 2003). Although the comment provided an estimate specifically regarding inbound calls, FTC staff will continue to apply this assumption to outbound calls as well, absent the receipt of any information to the contrary.

[14] 16 CFR 310.3(a)(1)(i)–(iii).

[15] Based on previous assumptions, staff estimates that of the 4,385 telemarketing entities, 2,015 conduct inbound telemarketing. Consistent with its previous analyses, staff estimates that, of the 2,015 entities that conduct inbound telemarketing, approximately one-third (672) will choose to incorporate written disclosures in their direct mail solicitations. Because it is likely that industry

10 hours [16] per year × 25% burden = 1,680), as well as oral disclosures [(450 million outbound calls × 8 seconds ÷ 3,600 × 25% burden = 250,000 hours) + (450 million outbound calls × 40% upsell attempts × 20% sales conversion × 8 seconds ÷ 3,600 × 25% burden =20,000 hours) + (1.8 billion inbound calls × 40% upsell attempts × 20% sales conversion × 8 seconds ÷ 3,600 × 25% burden = 80,000 hours)] = 351,680 hours.[17]

Disclosures for Debt Relief Services

To estimate the time required to provide the general sales disclosures for calls offering debt relief services, staff employs different assumptions and calculations.[18] Employing that analysis, as modified in response to a public comment to account for inbound debt relief sales,[19] staff continues to assume that outbound calls to sell and inbound calls to buy debt relief services are made only to consumers who are delinquent on one or more credit cards.[20] Staff further assumes that each such consumer will receive one outbound call and place one inbound call for these services.

To estimate the number of consumers who are delinquent on one or more credit cards, staff assumes that couples constitute a single decision-making unit, as do single adults (widowed, divorced, separated, never married) within each household. According to the most current U.S. Census Bureau data available, there are 167,360,000 decision-making units.[21] Of these, 120,833,920 have one or more credit cards,[22] and there are 2,984,598 decision-making units with at least one delinquent credit card account.[23]

Accordingly, allowing for the above-stated FTC staff estimate of eight seconds per general sales disclosures, staff estimates further that the general sales disclosure burden for inbound debt relief calls is 1,658 hours (2,984,598 inbound debt relief calls to decision-making units with at least one delinquent credit card account × 8 seconds ÷ 3,600 × 25% burden).

Disclosures for Non-Exempt Inbound Calls

The TSR general sales disclosures must also be made by sellers and telemarketers for inbound calls in response to ads for investment opportunities, certain business opportunities, credit card loss protection (''CCLP''),[24] credit repair,[25] loss recovery services,[26] and advance fee loans.[27]

Staff's estimate for each of these types of non-exempt inbound calls is determined by comparing the number of complaints reported to the FTC's Consumer Sentinel system in the most recent complete year to the total number of reported fraud complaints for that year. In 2021, there were 2,789,161 fraud complaints.[28] The resulting percentage of total fraud complaints must be adjusted to reflect the fact that only a relatively small percentage of telemarketing calls are fraudulent. To extrapolate the percentage of fraudulent telemarketing calls, staff divides a Congressional estimate of annual consumer injury from telemarketing fraud ($40 billion) [29] by available data on total consumer and business-to-business telemarketing sales ($310.0 billion projected for 2016),[30] or 13%. The two percentages are then multiplied together to determine the percentage of the 1.8 billion annual inbound telemarketing calls represented by each type of fraud complaint. That number is then rounded to the nearest ten.

Thus, for the 4,678 Sentinel complaints in 2021 about investment opportunities covered by the TSR,[31] the general sales disclosure burden is 870 hours (1.8 billion inbound calls × the percentage of fraud complaints for investment opportunities (4,678/2,789,161) × the percentage of telemarketing calls that are estimated to be fraudulent (.13) × the length of the disclosures (8 seconds per disclosure) ÷ 3,600 to convert to hours). Likewise, the burden for business opportunity sales (23,274 complaints), including complaints for multi-level marketing/pyramids/chain letters) [32] is 4,340 hours

members make the requisite disclosures in direct mail solicitation in an effort to qualify for a Rule exemption, Commission staff believes it is appropriate to include those written disclosures in the burden hour calculation.

[16] FTC staff believes a typical firm will spend approximately 10 hours per year engaged in activities ensuring compliance with this provision of the Rule; this, too, has been stated in prior FTC notices inviting comment on PRA estimates. No comments were received, and staff believes this estimate remains reasonable.

[17] The percentage and unit of time measurements are FTC staff estimates. (For more information regarding the 25% apportionment appearing above *see supra* note 12 and surrounding text.)

[18] 75 FR at 48,504–05.

[19] Debt relief sales in outbound calls have always been subject to the general sales disclosure requirements, and are subsumed in the outbound general sales disclosure totals.

[20] By extension, upsells on these initial calls would not be applicable. Moreover, staff believes that few, if any, upsells on initial outbound and inbound calls would be for debt relief.

[21] U.S. Census Bureau, *Income and Poverty in the United States: 2020* (September 2021), Table A1, *available at https://www.census.gov/library/publications/2021/demo/p60-273.html* reflecting 129,931,000 households in 2021); U.S. Census Bureau, *Sharing a Household: Household Composition and Economic Well Being: 2007–2010* (June 2012), Table 2, p. 4, *available at https://www2.census.gov/library/publications/2012/demo/p60-242.pdf* (reflecting 37,429,000 adults living with a householder who is neither a spouse nor cohabiting partner in 2010 and includes adults enrolled in school). Commission staff was unable to locate more current data for the latter source.

[22] The estimated number of consumers with one or more credit cards is derived by multiplying the estimated decision making units (167,360,000) by the percentage of consumers with one or more credit cards: 72.2%. The percentage of consumers with one or more credit card is based on a study conducted by the Federal Reserve Bank of Boston. *See* Federal Reserve Bank of Boston, Consumer Payments Research Center, *The 2009 Survey of Consumer Payment Choice* (April 2011), screen pp. 8, 48 *available at www.bostonfed.org/economic/ppdp/2011/ppdp1101.pdf.* Commission staff have not found percentage updates of a comparable nature. Later versions of such data differ in how they present consumer adoption of payment instruments, *e.g.,* combining, rather than presenting as separate percentages, consumer purchases through credit and charge card use.

[23] The estimated number of consumers with a delinquent account is derived by multiplying the estimate of consumers with one or more credit cards (120,833,920) by the delinquency rate for credit cards (2.47%). Board of Governors of the Federal Reserve System, *Charge Off and Delinquency Rates on Loans and Leases at Commercial Banks, available at https://www.federalreserve.gov/releases/chargeoff/delallsa.htm* (reporting a 2.47% delinquency rate for credit cards for the second quarter of 2018).

[24] 16 CFR 310.3(a)(1)(vi).

[25] 16 CFR 310.4(a)(2).

[26] 16 CFR 310.4(a)(3).

[27] 16 CFR 310.4(a)(4).

[28] *See* FTC, Consumer Sentinel Network Data Book 2021 (February 2022) (''Sentinel Data'') at 9, available at *https://www.ftc.gov/system/files/ftc_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf.*

[29] *House Committee on Government Operations, The Scourge of Telemarketing Fraud: What Can Be Done Against It,* H.R. Rep. 421, 102nd Cong., 1st Sess. at 7 (Dec. 18, 1991). The FBI believes that this estimate overstates telemarketing fraud losses as a result of its investigations and closings of once massive telemarketing boiler room operations. *See* FBI, *A Byte Out of History: Turning the Tables on Telemarketing Fraud* (Dec. 8, 2010), *available at https://www.fbi.gov/news/stories/2010/december/telemarketing_120810/telemarketing_120810. See also* internet Crime Complaint Center, 2020 Annual Report on internet Crime (citing $4.1 billion of losses claimed in consumer complaints for 2020), available at *https://www.ic3.gov/Media/PDF/AnnualReport/2020_IC3Report.pdf.*

[30] DMA 2013 Statistical Fact Book (January 2013) projection up through 2016, p. 5 (no associated DMA updates made or otherwise found thereafter).

[31] *See* FTC, Consumer Sentinel Network Data Book 2021 (February 2022) (''Sentinel Data''), Appendix B3, p. 86, available at *https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf.* The figure above tallies the number of complaints under the subcategories ''Advice, Seminars'' and ''Art\Gems\Rare Coins.'' The remaining subcategories under the ''Investment Related'' category are not covered by either the FTC Act or the TSR.

[32] Sentinel Data at 85. While this total excludes ''Franchises/Distributorships'' covered by the Franchise Rule and thus not subject to the TSR, the data cannot additionally be segregated to omit ''Work-At-Home'' opportunities now covered by the Business Opportunity Rule and thus also not

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(1.8 billion × [23,274/2,789,161] × 0.13 × 8 seconds ÷ 3,600); for advance fee loan sales (20,540 complaints) [33] is 3,830 hours (1.8 billion × [20,540/2,789,161] × 0.13 × 8 seconds ÷ 3,600); for credit repair sales (3,151 complaints) [34] is 590 hours (1.8 billion × [3,151/2,789,161] × 0.13 × 8 seconds ÷ 3,600); 60 hours for loss recovery services (339 complaints) [35] (1.8 billion × [339/2,789,161] × 0.13 × 8 seconds ÷ 3,600); and 20 hours for CCLP sales (124 complaints) [36] (1.8 billion × [124/2,789,161] × .13 × 8 seconds ÷ 3,600). The exceptions to the TSR's inbound call exemptions add an additional 9,710 hours to the general sales disclosure burden.

Altogether, the general sales disclosure burden is 363,048 hours (351,680 hours for outbound sales + 1,658 hours for debt relief inbound sales + 9,710 hours for non-exempt inbound sales).

Specific Transaction Disclosures

Additional specific disclosures are required if the call involves a prize promotion,[37] the sale of credit card loss protection products,[38] an offer with a negative option feature,[39] or the sale of a debt relief service.[40] Staff estimates that the specific sales disclosures other than for debt relief services will require 22,363 hours annually [(450 million direct sales transactions from outbound calls × 5% [estimate of percentage of sales transactions involving prize promotions] × 3 seconds ÷ 3,600 × 25% burden = 4,688 hours) + (450 million direct sales transactions from outbound calls × 0.1% [estimate of percentage of sales transactions involving CCLP] × 4 seconds ÷ 3,600 × 25% burden = 125 hours) + (450 million sales transactions from outbound calls × 40% attempted upsell conversions × 20% sales conversions × 0.1% [estimate of percentage of outbound calls involving CCLP upsells] × 4 seconds × 25% burden ÷ 3,600 = 10 hours) + (1.8 billion inbound calls × 40% attempted upsell conversions × 20% sales conversions × 0.1% [estimate of percentage of inbound calls involving CCLP upsells] × 4 seconds × 25% burden ÷ 3,600 = 40 hours) + (450 million sales transactions from outbound calls × 10% [estimate of percentage of outbound calls involving negative options] × 4 seconds ÷ 3,600 × 25% burden = 12,500 hours) + (450 million sales transactions from outbound calls × 40% attempted upsell conversions × 20% sales conversions × 10% [estimate of percentage of outbound calls involving negative option upsells] × 4 seconds × 25% burden ÷ 3,600 = 1,000 hours) + (1.8 billion inbound calls × 40% attempted upsell conversions × 20% sales conversions × 10% [estimate of percentage of inbound calls involving negative option upsells] × 4 seconds ÷ 3,600 × 25% burden = 4,000 hours).

Staff estimates that reciting the specific sales disclosures in each debt relief sales call will take ten seconds, and therefore the disclosure burden associated with the debt relief disclosures is 4,146 hours (2,984,598 outbound debt relief calls × 10 seconds ÷ 3,600 × 25% burden = 2,073 hours) + (2,984,598 inbound debt relief calls × 10 seconds ÷ 3,600 × 25% burden = 2,073 hours). Thus, the total specific transaction disclosure burden is 26,509 hours annually (22,363 for non-debt-relief calls) + 4,146 (for debt relief calls).

Cumulatively, therefore, the total annual burden for all of the disclosures is 1,215,946 (826,389 hours pre-sales disclosures + 363,048 hours general sales disclosures + 26,509 hours specific sales disclosures).

*(c) Reporting Hours*

Finally, any entity that accesses the Registry must submit minimal identifying information to the operator of the Registry. This basic information includes the name, address, and telephone number of the entity; a contact person for the organization; and information about the manner of payment. The entity also must submit a list of the area codes for which it requests information and certify that it is accessing the Registry solely to comply with the provisions of the TSR. If the entity is accessing the Registry on behalf of other seller or telemarketer clients, it has to submit basic identifying information about those clients, a list of the area codes for which it requests information on their behalf, and a certification that the clients are accessing the Registry solely to comply with the TSR.

As it has since the Commission's initial proposal to implement user fees under the TSR, FTC staff estimates that affected entities will require no more than two minutes for each entity to submit this basic information, and anticipates that each entity will have to submit the information annually.[41] Based on the number of entities accessing the Registry that are subject to the TSR, this requirement will result in 146 burden hours (4,385 entities × 2 minutes per entity). In addition, FTC staff continues to estimate that up to one-half of those entities may need, during the course of their annual period, to submit their basic identifying information more than once in order to obtain additional area codes of data. Thus, this would result in an additional 73 burden hours. Accordingly, accessing the Registry will impose a total burden of approximately 219 hours per year.

Thus, total recordkeeping, disclosure, and reporting burden is 1,228,050 hours (11,885 hours + 1,215,946 hours + 219 hours).

**Estimated Annual Labor Cost: $18,367,441**

*(a) Recordkeeping Labor Cost*

As indicated above, staff estimates that existing telemarketing entities require 11,885 hours, cumulatively, to maintain compliance with the TSR's recordkeeping provisions. Applying a clerical wage rate of $18.75/hour,[42] recordkeeping maintenance for existing telemarketing entities would amount to an annual cost of approximately $222,844. Assuming also from the above a cumulative burden of 7,500 hours for 75 new telemarketing entities per year to set up compliant recordkeeping systems (75 new entrants/year × 100 hours each), and applying to that a skilled labor rate of $29.11/hour,[43] cumulative labor costs for them would approximate $218,325 yearly. Thus, the estimated labor cost for recordkeeping associated with the TSR for both new and existing telemarketing entities, including prerecorded and debt relief calls, is $441,169.

subject to the TSR. Staff therefore believes this total significantly overstates the opportunities subject to the TSR.

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] 16 CFR 310.3(a)(1)(iv)–(v).

[38] 16 CFR 310.3(a)(1)(vi). It is neither staff's understanding nor belief that CCLP sales occur through inbound calls. Staff anticipates, however, the potential for such sales in an upsell following an inbound call.

[39] 16 CFR 310.3(a)(1)(vii).

[40] 16 CFR 310.3(a)(1)(viii).

[41] *See* 67 FR 37366 (May 29, 2002). The two-minute estimate likely is conservative. The OMB regulation defining ''information'' under the PRA generally excludes disclosures that require persons to provide facts necessary simply to identify themselves, *e.g.,* the respondent, the respondent's address, and a description of the information the respondent seeks in detail sufficient to facilitate the request. *See* 5 CFR 1320.3(h)(1).

[42] This figure is derived from the mean hourly wage shown for Office Clerks, General. *See* ''Occupational Employment and Wages—May 2021,'' U.S. Department of Labor, released March 2022, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021''), *available at https://www.bls.gov/news.release/ocwage.t01.htm.*

[43] This figure is derived from the mean hourly wage shown for ''Computer Support Specialist.'' *See id.*

*(b) Disclosure Labor Cost*

The estimated annual labor cost for disclosures for all telemarketing entities is $17,923,044. This total is the product of applying an assumed hourly wage rate of $14.74 [44] to the earlier stated estimate of 1,215,946 hours pertaining to the pre-sale, general and specific disclosures.

*(c) Reporting Labor Cost*

Estimated labor cost supplying basic identifying information to the Registry operator is $3,228 (219 hours × $14.74 per hour).

Thus, cumulatively for both new and existing telemarketing entities total labor costs are $18,367,441 [($441,169 recordkeeping) + ($17,923,044 disclosure) + ($3,228 reporting)].

**Estimated Annual Non-Labor Cost: $4,642,347**

*(a) Recordkeeping*

Staff believes that the capital and start-up costs associated with the TSR's recordkeeping provisions are de minimis. Although staff believes that most affected entities would maintain the required records in the ordinary course of business, consistent with its prior analyses, staff estimates that the estimated 4,835 telemarketing entities subject to the Rule continue to spend an annual amount of $50 each on office supplies as a result of the Rule's recordkeeping requirements, for a total recordkeeping cost burden of $241,750.

*(b) Disclosure*

Applying the disclosure estimates of 1,215,946 hours to an estimated commercial calling rate of 6 cents per minute ($3.60 per hour), staff estimates a total of $4,377,406 in telephone charges.[45] Thus, total capital and/or other non-labor costs are $4,619,156 ($241,750 (office supplies)) + $4,377,406 (telephone charges)).

**Request for Comments**

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments 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 maintaining records and providing disclosures to consumers. All comments must be received on or before June 21, 2022.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before June 21, 2022. Write ''Telemarketing Sales Rule; PRA Comment: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Telemarketing Sales Rule; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential'' —as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before June 21, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

**Josephine Liu,**

*Assistant General Counsel for Legal Counsel.*

[FR Doc. 2022–08330 Filed 4–18–22; 8:45 am]

**BILLING CODE 6750–01–P**

[44] This figure is derived from the mean hourly wage shown for Telemarketers. *See supra* note 42. It is applied additionally to the ensuing calculation of reporting labor cost regarding the Registry operator.

[45] Staff believes that other non-labor costs would be incurred largely by affected entities in the ordinary course of business and, beyond that, would not materially exceed those ordinary costs.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0553]**

### Evaluating the Public Health Importance of Food Allergens Other Than the Major Food Allergens Listed in the Federal Food, Drug, and Cosmetic Act; Draft Guidance for FDA Staff and Stakeholders; Availability; Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a draft guidance for FDA staff and stakeholders entitled ''Evaluating the Public Health Importance of Food Allergens Other Than the Major Food Allergens Listed in the Federal Food, Drug, and Cosmetic Act.'' This draft guidance, when finalized, will explain our current thinking on the approach we generally intend to take when we evaluate the public health importance of a food allergen other than milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, soybean, and sesame (non-listed food allergen). (In April 2021, the Food Allergy Safety, Treatment, Education, and Research Act of 2021 amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) to add sesame to the definition of ''major food allergen.'' This statutory requirement goes into effect on January 1, 2023). We are also announcing an opportunity for public comment on our proposed collection of information. This draft guidance is not final nor is it in effect at this time.

**DATES:** Submit either electronic or written comments on the draft guidance by August 17, 2022 to ensure that we consider your comment on this draft guidance before we begin work on the final version of the guidance. Submit electronic or written comments on the proposed collection of information in the draft guidance by August 17, 2022.

**ADDRESSES:** You may submit comments on any guidance at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions)*: Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2021–N–0553 for ''Evaluating the Public Health Importance of Food Allergens Other Than the Major Food Allergens Listed in the Federal Food, Drug, and Cosmetic Act.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

*Docket:* For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Compliance Policy Staff, Office of Compliance (HFS–605), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:**

*With regard to the draft guidance:* Stefano Luccioli, Office of Compliance (HFS–605), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1283, *CFSANCompliancepolicy@fda.hhs.gov;* or Alexandra Jurewitz, Office of Regulations and Policy (HFS–024), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2378.

*With regard to the proposed collection of information:* Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

Food allergy can be broadly defined as an adverse health effect arising from a specific immune response that occurs reproducibly on exposure to a given food. A food allergen is the food or component(s) (often a protein) of a food that elicits specific immunologic reactions. While many different types of food allergies have been identified, food allergies that are most studied and understood clinically are those due to immunoglobulin E antibodies (IgE) that cause the body to release inflammatory chemicals. The most severe and immediately life-threatening food allergies are those that are mediated by

IgE and are capable of triggering anaphylaxis, which can be fatal. The focus of the draft guidance is IgE-mediated food allergy.

In general, the regulatory framework of the FD&C Act and our regulations implementing the FD&C Act broadly apply to the production of food that is or contains a food allergen through statutory and regulatory provisions regarding: (1) Food labeling; (2) food production (*e.g.,* manufacturing, processing, packing, and holding food); and (3) the safety of substances added to food. The Food Allergen Labeling and Consumer Protection Act of 2004 amended the FD&C Act to provide us with additional, specific authority regarding the labeling of a food (other than a raw agricultural commodity) that bears or contains a ''major food allergen.'' Under section 403(w) of the FD&C Act (21 U.S.C. 343(w)), a food is misbranded if it contains a major food allergen and fails to declare that major food allergen as specified on its label using the major food allergen's common or usual name. Section 201(qq)(1) of the FD&C Act (21 U.S.C. 321(qq)(1)) defines a ''major food allergen,'' in part, as any of the following: Milk, eggs, fish (*e.g.,* bass, flounder, or cod), Crustacean shellfish, tree nuts (*e.g.,* almonds, pecans, or walnuts), wheat, peanuts, and soybean. In April 2021, the Food Allergy Safety, Treatment, Education, and Research Act of 2021 amended section 201(qq) of the FD&C Act to add sesame to the definition of ''major food allergen.'' This amendment applies to ''any food that is introduced or delivered for introduction into interstate commerce on or after January 1, 2023'' (Pub. L. 117–11).

We are announcing the availability of a draft guidance for FDA staff and stakeholders entitled ''Evaluating the Public Health Importance of Food Allergens Other Than the Major Food Allergens Listed in the Federal Food, Drug, and Cosmetic Act.'' We are issuing the draft guidance consistent with our good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on this topic. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

The draft guidance discusses: (1) The scientific factors that we would generally intend to consider when evaluating the public health importance of a non-listed food allergen; (2) other information, relevant to the labeling and production of food containing the food allergen, that we would generally intend to consider when evaluating the public health importance of a non-listed food allergen; and (3) our tentative recommendations for how to identify and evaluate the body of evidence applicable to an evaluation of the public health importance of a non-listed food allergen.

## II. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (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 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.

### Evaluating the Public Health Importance of Food Allergens Other Than the Major Food Allergens Listed in the Federal Food, Drug, and Cosmetic Act

*OMB Control Number 0910–0191—Revision*

The draft guidance, when finalized, will describe our current thinking on the approach we generally intend to take when we evaluate the public health importance of a non-listed food allergen. Respondents who are interested in asking FDA to evaluate a food or component of food as a food allergen of public health importance may submit information relevant to their request in accordance with § 10.30 (21 CFR 10.30). We recommend that the submitted information include data demonstrating that the food allergy is IgE-mediated and data for prevalence, severity, and potency, as described in the draft guidance.

*Description of respondents:* The respondents to this collection of information are any persons who file citizen petitions under 21 CFR 10.30, which may include manufacturers and packers of packaged foods sold in the United States that may contain a non-listed food allergen and individuals and organizations interested in evaluating a food or component of food as a food allergen of public health importance. Respondents are from the private sector (for-profit businesses and non-profit entities).

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

| Activity; 21 CFR section | Number of respondents | Number of responses per respondent | Total annual responses | Avg. burden per response | Total hours |
|---|---|---|---|---|---|
| Submitting data for evidence of IgE-mediated food allergy, prevalence, severity, and potency; 10.30 | 1 | 1 | 1 | 80 | 80 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base these estimates on our experience with reviewing and evaluating data for food allergens. We estimate that one respondent will spend approximately 80 hours developing and

submitting the information to FDA each year.

This draft guidance also refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 10 have been approved under OMB control number 0910–0191. The collections of information in 21 CFR part 101 have been approved under OMB control number 0910–0381. The collections of information in section 403(w) of the FD&C Act have been approved under OMB control number 0910–0792. The collections of information in 21 CFR part 117 have been approved under OMB control number 0910–0751. The collections of information for Form FDA 3800 have been approved under OMB control number 0910–0645. The collections of information for Form FDA 3500 have been approved under OMB control number 0910–0291. The collections of information in 21 CFR 70.25, 71.1, 170.36, 171.1, 172, 173, 179, and 180 have been approved under OMB control number 0910–0016.

### III. Electronic Access

Persons with access to the internet may obtain the draft guidance at either *https://www.fda.gov/FoodGuidances*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents*, or *https://www.regulations.gov*. Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: April 13, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–08303 Filed 4–18–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2022–N–0030]**

### Fresenius Kabi USA, LLC, et al.; Withdrawal of Approval of Five Abbreviated New Drug Applications; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** on February 28, 2022. The document announced the withdrawal of approval of five abbreviated new drug applications (ANDAs) from multiple applicants as of March 30, 2022. The document indicated that FDA was withdrawing approval of the following ANDA after receiving a withdrawal request from Jiangsu Hengrui Pharmaceuticals Co., Ltd., U.S. Agent, Venus Pharmaceutical Laboratories Inc., 506 Carnegie Center, Suite 100, Princeton, NJ 08540: ANDA 091008, Gabapentin Capsules, 100 milligrams (mg), 300 mg, and 400 mg. Before FDA withdrew the approval of this ANDA, Jiangsu Hengrui Pharmaceuticals Co., Ltd., informed FDA that it did not want the approval of the ANDA withdrawn. Because Jiangsu Hengrui Pharmaceuticals Co., Ltd., timely requested that approval of this ANDA not be withdrawn, the approval of ANDA 091008 is still in effect.

**FOR FURTHER INFORMATION CONTACT:** Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1676, Silver Spring, MD 20993–0002, 240–402–6980, *Martha.Nguyen@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of February 28, 2022 (87 FR 11079), appearing on page 11079 in FR Doc. 2022–04153, the following correction is made:

On page 11079, in the table, the entry for ANDA 091008 is removed.

Dated: April 13, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–08299 Filed 4–18–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2021–N–0317]**

### Yvelice Villaman-Bencosme: Final Debarment Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) permanently debarring Yvelice Villaman-Bencosme from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Yvelice Villaman-Bencosme was convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of a drug product under the FD&C Act. Ms. Villaman-Bencosme was given notice of the proposed permanent debarment and was given an opportunity to request a hearing to show why she should not be debarred. As of December 13, 2021 (30 days after receipt of the notice), Ms. Villaman-Bencosme had not responded. Ms. Villaman-Bencosme's failure to respond and request a hearing constitutes a waiver of her right to a hearing concerning this action.

**DATES:** This order is applicable April 19, 2022.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, *debarments@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 306(a)(2)(A) of the FD&C Act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual from providing services in any capacity to a person that has an approved or pending drug product application if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act. On March 19, 2021, Ms. Villaman-Bencosme was convicted as defined in section 306(l)(1) of the FD&C Act when judgment was entered against her in the U.S. District Court for the Southern District of Florida-Miami Division, after her plea of guilty, to one count of Conspiracy to Commit Wire Fraud in violation of 18 U.S.C. 1349.

The factual basis for this conviction is as follows: Ms. Villaman-Bencosme was a licensed medical doctor who served as a clinical investigator at Unlimited Medical Research, LLC from about September 2013 through June 2016. Ms. Villaman-Bencosme conspired with others to unlawfully enrich herself by making materially false representations about clinical trials; fabricating data and the participation of subjects in those clinical trials; concealing from FDA, sponsors, and contract research organizations the fact that the data and participation of subjects had been

fabricated; and inducing sponsors and contract research organizations to pay money for Ms. Villaman-Bencosme and her co-conspirators' own benefit. On or about October 25, 2013, Ms. Villaman-Bencosme entered into a contract with a Contract Research Organization retained by a drug manufacturer (Sponsor) to serve as a clinical investigator for a clinical trial initiated by the Sponsor. The study was for an investigational drug intended to treat pediatric asthma in children between the ages of 4 and 11 years. As the clinical investigator Ms. Villaman-Bencosme was responsible for all aspects of the study to include ensuring that subjects provided informed consent and understood the risks of participating in the study, reporting adverse events to the Sponsor, and maintaining honest and accurate records known as ''case histories.'' Instead, Ms. Villaman-Bencosme used personal identification information from pediatric patient medical records maintained at her private medical practice to falsify case histories. This included a number of false details. Ms. Villaman-Bencosme made it appear that: The study subjects satisfied the eligibility criteria to participate in the study; the subjects received a physical examination from her; the patients received the study drug at the study site; the patients returned the study drug to the study site; and the patients received payment for visits to the study site.

As a result of this conviction, FDA sent Ms. Villaman-Bencosme by certified mail on November 3, 2021, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) of the FD&C Act, that Ms. Villaman-Bencosme was convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act. The proposal also offered Ms. Villaman-Bencosme an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted an election not to use the opportunity for a hearing and a waiver of any contentions concerning this action. Ms. Villaman-Bencosme received the proposal on November 13, 2021. She did not request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and any contentions concerning her debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(a)(2)(A) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Ms. Villaman-Bencosme has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process of development or approval, of any drug product under the FD&C Act.

As a result of the foregoing finding, Ms. Villaman-Bencosme, is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application, effective (see **DATES**) (see sections 306(a)(2)(A) and 306(c)(2)(A)(ii) of the FD&C Act). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Ms. Villaman-Bencosme, in any capacity during her debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Villaman-Bencosme provides services in any capacity to a person with an approved or pending drug product application during her period of debarment, she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug application from Ms. Villaman-Bencosme during her period of debarment, other than in connection with an audit under section 306 of the FD&C Act (section 306(c)(1)(B) of the FD&C Act). Note that, for purposes of sections 306 and 307 of the FD&C Act, a ''drug product'' is defined as a ''drug subject to regulation under section 505, 512, or 802 of this Act [(21 U.S.C. 355, 360b, 382)] or under section 351 of the Public Health Service Act [(42 U.S.C. 262)]'' (section 201(dd) of the FD&C Act (21 U.S.C. 321(dd)).

Any application by Ms. Villaman-Bencosme for special termination of debarment under section 306(d)(4) of the FD&C Act should be identified with Docket No. FDA–2021–N–0317 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: April 12, 2022.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2022–08302 Filed 4–18–22; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Announcement of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders Meeting

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders

**ACTION:** Notice of meeting.

**SUMMARY:** As required by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders will hold a meeting on May 12, 2022. The meeting is the second in a series of federal advisory committee meetings regarding the development of recommendations to promote equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander (AA and NHPI) communities. The meeting is open to the public and will be live streamed. Registration is required through the following link: *https://www.eventbrite.com/e/meeting-of-the-presidents-advisory-commission-on-aa-and-nhpis-registration-311578077417.* The Commission, co-chaired by HHS Secretary Xavier Becerra and the U.S. Trade Representative Ambassador Katherine Tai, will advise the President on: (i) The development, monitoring, and coordination of executive branch efforts to advance equity, justice, and opportunity for AA and NHPI communities in the United States, including efforts to close gaps in health, socioeconomic, employment, and educational outcomes; (ii) policies to address and end anti-Asian bias, xenophobia, racism, and nativism, and opportunities for the executive branch to advance inclusion, belonging, and public awareness of the diversity and accomplishments of AA and NHPI people, cultures, and histories; (iii) policies, programs, and initiatives to prevent, report, respond to, and track anti-Asian hate crimes and hate incidents; (iv) ways in which the Federal Government can build on the capacity and contributions of AA and

NHPI communities through equitable Federal funding, grantmaking, and employment opportunities; (v) policies and practices to improve research and equitable data disaggregation regarding AA and NHPI communities; (vi) policies and practices to improve language access services to ensure AA and NHPI communities can access Federal programs and services; and (vii) strategies to increase public-and private-sector collaboration, and community involvement in improving the safety and socioeconomic, health, educational, occupational, and environmental well-being of AA and NHPI communities.

**DATES:** The Commission will meet on May 12, 2022 from 12:30 p.m. to approximately 5:30 p.m. Eastern Time (ET). The confirmed time and agenda will be posted on the website for the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders: *https://www.hhs.gov/about/whiaanhpi/commission/index.html* when this information becomes available.

**LOCATION:** The meeting will be live streamed. Registration is required through the following link: *https://www.eventbrite.com/e/meeting-of-the-presidents-advisory-commission-on-aa-and-nhpis-registration-311578077417.*

**FOR FURTHER INFORMATION CONTACT:** Larissa Bungo, Designated Federal Officer, President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, U.S. Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, Hubert H. Humphrey Building, Room 515F, 200 Independence Ave. SW, Washington, DC 20201; email: *whiaanhpi@hhs.gov;* telephone: (202) 619–0403, fax: (202) 619–3818.

**SUPPLEMENTARY INFORMATION:** Information is available on the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders website at *https://www.hhs.gov/about/whiaanhpi/commission/index.html.* The names of the 25 members of the President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders are available at *https://www.hhs.gov/about/whiaanhpi/commission/commissioners/index.html.*

*Purpose of Meeting:* The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders, authorized by Executive Order 14031, will meet to discuss full and draft recommendations by the Commission's six Subcommittees on ways to advance equity, justice, and opportunity for Asian American, Native Hawaiian, and Pacific Islander communities. The Subcommittees are: Belonging, Inclusion, Anti-Asian Hate, Anti-Discrimination; Data Disaggregation; Language Access; Economic Equity; Health Equity; and Immigration and Citizenship Status.

*Background:* Asian American, Native Hawaiian, and Pacific Islander individuals and communities have molded the American experience, and the contributions and achievements of AA and NHPI communities make the United States stronger and more vibrant. The richness of America's multicultural democracy is strengthened by the diversity of AA and NHPI communities and the many cultures and languages of AA and NHPI individuals in the United States, who collectively constitute the fastest growing racial group in the Nation and make rich contributions to our society, our economy, and our culture.

Systemic barriers to equity, justice, and opportunity put the American dream out of reach of many AA and NHPI communities. Many AA and NHPI individuals face persistent disparities in socioeconomic, health, and educational outcomes. Linguistic isolation and lack of access to language-assistance services continue to lock many AA and NHPI individuals out of opportunities. Data collection practices fail to measure and reflect the diversity of AA and NHPI populations. Failure to disaggregate data contributes to enduring stereotypes about Asian Americans as a ''model minority'' and obscures disparities within AA and NHPI communities.

Tragic acts of anti-Asian violence have increased during the COVID–19 pandemic, casting a shadow of fear and grief over many AA and NHPI communities, in particular East Asian communities. Long before this pandemic, AA and NHPI communities in the United States, including South Asian and Southeast Asian communities, have faced persistent xenophobia, religious discrimination, racism, and violence. At the same time, AA and NHPI communities are overrepresented in the pandemic's essential workforce in healthcare, food supply, education, and childcare, with more than four million AA and NHPIs manning the frontlines throughout the pandemic. Additionally, while they make up just four percent of registered nurses in the U.S., Filipino nurses accounted for 32 percent of nurse lives lost to COVID–19 in 2020.

Many AA and NHPI communities, and in particular Native Hawaiian and Pacific Islander communities, have also been disproportionately burdened by the COVID–19 public health crisis. Evidence suggests that Native Hawaiians and Pacific Islanders are three times more likely to contract COVID–19 compared to white people and nearly twice as likely to die from the disease. On top of these health inequities, many AA and NHPI workers, families, and small businesses have faced devastating economic losses during this crisis, which must be addressed.

*Public Participation at Meeting:* Members of the public are invited to view the Commission meeting. Registration is required through the following link: *https://www.eventbrite.com/e/meeting-of-the-presidents-advisory-commission-on-aa-and-nhpis-registration-311578077417.* Please note that there will be no opportunity for oral public comments during the meeting of the Commission. However, written comments are welcomed throughout the development of the Commission's recommendations to promote equity, justice, and opportunity for Asian Americans, Native Hawaiians, and Pacific Islanders and may be emailed to *AANHPICommission@hhs.gov.*

*Authority:* Executive Order 14031. The President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders (Commission) is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. app.), which sets forth standards for the formation and use of federal advisory committees.

**Krystal Ka'ai,**

*Executive Director, White House Initiative on Asian Americans, Native Hawaiians, and Pacific Islanders and President's Advisory Commission on Asian Americans, Native Hawaiians, and Pacific Islanders.*

[FR Doc. 2022–08118 Filed 4–18–22; 8:45 am]

**BILLING CODE 4153–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more

information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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.

**Proposed Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Final Rule, 42 CFR Part 51 (OMB No. 0930–0172)—Extension**

These regulations meet the directive under 42 U.S.C. 10826(b) requiring the Secretary to promulgate final regulations to carry out the PAIMI Act (42 U.S.C. 10801 *et seq.*). The regulations contain information collection requirements. The Act authorizes funds to support activities on behalf of individuals with significant (severe) mental illness (adults) or significant (severe) emotional impairment (children/youth) as defined by the Act at 42 U.S.C. 10802(4) and 10804(d). Only entities designated by the governor of each State, including the American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, U.S. Virgin Islands, District of Columbia (Mayor), and the tribal councils of the American Indian Consortium (the Hopi Tribe and the Navajo Nation located in the Four Corners region of the Southwest), to protect and advocate the rights of persons with developmental disabilities are eligible to receive PAIMI Program grants [ibid at 42 U.S.C. at 10802(2)]. These grants are based on a formula prescribed by the Secretary [ibid at 42 U.S.C. at 10822(a)(1)(A)].

On January 1, each eligible state protection and advocacy (P&A) system is required to prepare an annual PAIMI Program Performance Report (PPR). Each annual PPR describes a P&A system's activities, accomplishments and expenditures to protect the rights of individuals with mental illness supported with payments from PAIMI program allotments during the most recently completed fiscal year. Each P&A system transmit a copy of its annual report to the Secretary (via SAMHSA) and to the State Mental Health Agency where the system is located per the PAIMI Act at 42 U.S.C. 10824(a). Each annual PPR must provide the Secretary with the following information:

- The number of (PAIMI-eligible) individuals with mental illness served;
- A description of the types of activities undertaken;
- A description of the types of facilities providing care or treatment to which such activities are undertaken;
- A description of the manner in which the activities are initiated;
- A description of the accomplishments resulting from such activities;
- A description of systems to protect and advocate the rights of individuals with mental illness supported with payments from PAIMI program allotments;
- A description of activities conducted by states to protect and advocate such rights;
- A description of mechanisms established by residential facilities for individuals with mental illness to protect such rights;
- A description of the coordination among such systems, activities, and mechanisms;
- Specification of the number of public and nonprofit P&A systems established with PAIMI program allotments; and
- Recommendations for activities and services to improve the protection and advocacy of the rights of individuals with mental illness and a description of the need for such activities and services that were not met by the state P&A systems established under the PAIMI Act due to resource or annual program priority limitations.

Each PAIMI grantee's annual PPR must include a separate section, prepared by its PAIMI Advisory Council (PAC), that describes the council's activities and its assessment of the state P&A system's operations per the PAIMI Act at 42 U.S.C. 10805(7).

In 2017, SAMHSA included the annual PAIMI PPR in the Web-based Block Grant Application System (WebBGAS). WebBGAS, SAMHSA's electronic data system, is used to collect grantee information for the following reasons:

(1) To meet the OMB requirements for data collection for mandatory (formula) grant programs;

(2) To comply with the annual program reporting requirements of the PAIMI Act, 42 U.S.C. 10801 *et seq.* and the PAIMI Rules 42 CFR part 51;

(3) To simplify the submission of PAIMI Program data by the state P&A systems;

(4) To meet the Government Performance and Results Act (GPRA) requirements;

(5) To comply with the Government Accountability Office (GAO) evaluation recommendations that SAMHSA obtain information that closely measures the actual outcomes of the programs it funds;

(6) To reduce the grantee data collection burden by removing information that did not facilitate evaluation of a PAIMI grantee's programmatic and financial management systems;

(7) To provide immediate access to the PAIMI program data used to prepare a section of the Secretary's biennial report to the President, Congress, and National Council on Disability in accordance with the *Developmental Disabilities Assistance Act of 2000* at 42 U.S.C. 15005. Reports of the Secretary;

(8) To improve SAMHSA's ability to create reports, analyze trends, and provide timely feedback to the P&A grantees when PPR revisions are needed.

On June 12, 2020, OMB approved SAMHSA's PPR and Advisory Council Report (Control No. 0930–0169, Expiration Date June 30, 2023). The burden estimate for the annual state P&A system reporting requirements for these regulations is as follows:

| 42 CFR citation | Number of respondents | Responses per respondent | Burden per response (hrs.) | Total annual burden |
|---|---|---|---|---|
| 51.8(a)(2) Program Performance Report | 57 | 1 | 20 | [1] 1,140 |
| 51.8(a)(8) Advisory Council Report | 57 | 1 | 10 | [1] 570 |
| 51.10 Remedial Actions: Corrective Action Plans Implementation Status Report | 5 | 2 | 8 | 80 |
| | 5 | 3 | 2 | 30 |
| 51.23(c) Reports, materials and fiscal data provided to the PAC | 57 | 1 | 1 | 57 |
| 51.25(b)(2) Grievance Procedures | 57 | 1 | .5 | 28.5 |

| 42 CFR citation | Number of respondents | Responses per respondent | Burden per response (hrs.) | Total annual burden |
|---|---|---|---|---|
| Total | 57 | | 41.5 | 195.5 |

[1] Burden hours associated with these reports are approved under OMB Control No. 0930–0169.

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, MD 20857 OR email him a copy at *carlos.graham@samhsa.hhs.gov*. Written comments should be received by June 21, 2022.

**Carlos Graham,**

*SAMHSA Reports Clearance Officer.*

[FR Doc. 2022–08298 Filed 4–18–22; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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.

**Project: Center for Substance Abuse Prevention's (CSAP) ''Talk. They Hear You.'' Screen 4 Success Instruments and Consent Form. (Office of Management [OMB] No. 0930–XXXX)**

SAMHSA is requesting approval for its ''Talk. They Hear You.'' media campaign's ''Screen 4 Success'' Consent Form and Screener. The ''Talk. They Hear You.'' campaign aims to reduce underage drinking and substance use among youths under the age of 21 by providing parents and caregivers with information and resources they need to address alcohol and other drug use with their children early. The new ''Talk. They Hear You.'' campaign's ''Screen 4 Success'' mobile app is an interactive tool to help parents and caregivers, educators, and communities get informed, be prepared, and take action to prevent underage drinking and other drug use. Specifically, it provides these groups with the ability to self-screen and self-manage referrals as a prevention service. Parents have a significant influence in their children's decisions to experiment with alcohol and other drugs.

SAMHSA and its Centers will use the data for annual reporting: (1) Reporting results of the campaign's performance, (2) evaluating the effectiveness of the application and its utility and (3) assessing the accountability and performance of this component and the overall media campaign, including a focus on health equity.

The tools reflect CSAP's desire to elicit pertinent participant level data that can be used to not only guide future programs and practice, but also respond to stakeholder, congressional and agency inquiries. For a more in-depth review of the screener and consent form, please see Attachments A–C.

This information will be used by SAMHSA to help improve the accountability and performance of its ''Talk. They Hear You.'' program and social media campaign (each of which refer to this component and other resources). Specifically, the program evaluators will use the information collected through this request to generate annual performance reports that assess the impact of this SAMHSA program outcomes. This information will also be used to inform recommendations regarding future programming should the program continue to be funded.

The information collected from these forms is captured by the ''Screen 4 Success'' mobile app and made available to the ''Talk. They Hear You.'' media campaign evaluators in real time. Approval of this data collection activity will allow SAMHSA to continue to assist those under the age of 21, and parents to screen themselves, the parents and client in identifying individuals that may need further assessment or intervention for the alcohol use, drug use, suicide prevention, and other mental health needs. Many of these issues occur at the same time in youth and require referral to co-occurring programs so there is significant value in screening quickly for all of them at the same time. By implementing this screener, we hope to be able to divert individuals who might be at risk of alcohol dependence and these other problems to effective programs and services.

| SAMHSA tool | Number of respondents | Responses per respondent | Total number of responses | Burden hours per response | Total burden hours | Estimated hourly wage [1] | Total hour cost |
|---|---|---|---|---|---|---|---|
| Parent/Guardian Consent | 100,000 | 1 | 100,000 | 0.04 | 10,000 | $26.92 | $107,680 |
| Youth Assent Forms | 100,000 | 1 | 100,000 | 0.04 | 10,000 | 26.92 | 107,680 |
| Screener | 100,000 | 1 | 100,000 | 0.30 | 60,000 | 26.92 | 807,600 |
| CSAP Total | 300,000 | | 300,000 | | 38,000 | 26.92 | 1,022,960 |

[1] The information is collected via and online application and does not require project staff to administer the consent or screener. The application has internal checks to ensure appropriate completion. The hourly wage estimate is $26.92 based on the Occupational Employment and Wages, Mean Hourly Wage Rate for 19–4061 Social Science Research Assistants as of 10/21/2021. (*http://www.bls.gov/oes/current/oes211011.htm.* Accessed on October 21, 2021.)

Send comments to Carlos D. Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, Maryland 20857, *OR* email a copy to *Carlos.Graham@samhsa.hhs.gov.* Written comments should be received by June 21, 2022.

**Carlos Graham,**

*Reports Clearance Officer.*

[FR Doc. 2022–08301 Filed 4–18–22; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

**[Docket No. ICEB–2022–0006]**

**RIN 1653–ZA26**

## Employment Authorization for Ukrainian F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Ongoing Armed Conflict in Ukraine

**AGENCY:** U.S. Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Ukraine, regardless of country of birth (or individuals having no nationality who last habitually resided in Ukraine), and who are experiencing severe economic hardship as a direct result of the ongoing armed conflict in Ukraine. The Secretary is taking action to provide relief to these Ukrainian students who are lawful F–1 nonimmigrant students, so the students may request employment authorization, work an increased number of hours while the school is in session and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student who receives employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

**DATES:** This F–1 notice is effective April 19, 2022, through October 19, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

**SUPPLEMENTARY INFORMATION:**

### What action is DHS taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Ukraine, regardless of country of birth (or individuals having no nationality who last habitually resided in Ukraine), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the ongoing armed conflict in Ukraine. Effective with this publication, suspension of the employment limitations is available through October 19, 2023, for those who are in lawful F–1 nonimmigrant status. DHS will deem an F–1 nonimmigrant student granted employment authorization through this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

### Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Ukraine regardless of country of birth (or an individual having no nationality who last habitually resided in Ukraine);

(2) Were lawfully present in the United States in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i), on the date of publication of this notice;

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP) certified for enrollment for F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the ongoing armed conflict in Ukraine.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school in grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

### Why is DHS taking this action?

DHS has reviewed country conditions in Ukraine. Based on this review, and in consultation with the Department of State (DOS), the Secretary has determined that an 18-month designation is warranted due to ongoing armed conflict and emergent circumstances described below.

*Overview*

On February 24, 2022, Russia massively expanded its unprovoked military invasion of Ukraine, marking the largest conventional military action in Europe since World War II.[2] Millions of Ukrainian nationals and other residents of Ukraine have fled the country with millions more displaced internally as Russian forces have continued to engage in significant, sustained bombardment of major cities across the country, including attacks on Ukraine's capital, Kyiv.[3] This ongoing

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of October 19, 2023, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to U.S. Immigration and Customs Enforcement (ICE) Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Mar. 4, 2022).

[2] ''Russia invades Ukraine on multiple fronts in 'brutal act of war','' *PBS,* Feb. 24, 2022, available at: *https://www.pbs.org/newshour/world/russia-invades-ukraine-on-multiple-fronts-in-brutal-act-of-war* (last visited Mar. 1, 2022); Natalia Zinets and Aleksandar Vasovic, ''Missiles rain down around Ukraine,'' *Reuters,* Feb. 24, 2022, available at: *https://www.reuters.com/world/europe/putin-orders-military-operations-ukraine-demands-kyiv-forces-surrender-2022-02-24/* (last visited Mar. 1, 2022).

[3] Ukraine: Humanitarian Impact Situation Report No. 1, United Nations Office for the Coordination of Humanitarian Affairs, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Mar. 1, 2022).

armed conflict poses a serious threat to the personal safety of nationals returning to Ukraine. Emergent circumstances, including destroyed infrastructure, scarce resources, and lack of access to healthcare, prevent Ukrainian nationals from returning to their homeland in safety.

*Ongoing Armed Conflict and Human Rights Abuses*

Russia's further military invasion of Ukraine has placed civilians at significant risk of physical harm throughout the country.[4] Aerial bombardment in and around major cities have been reported as Russian forces continue to target critical infrastructure.[5] In the city of Mariupol, Russian forces reportedly have shelled the city, killing civilians with strikes on homes, schools, hospitals and shelters, while blocking routes for humanitarian aid and civilian evacuation.[6]

The scale of attacks harming infrastructure has dramatically increased, resulting in numerous civilian casualties.[7] The Prosecutor of the International Criminal Court in The Hague stated that there is a reasonable basis to believe that both alleged war crimes and crimes against humanity have been committed in Ukraine during the past eight years, so his Office will ''proceed with opening an investigation into the Situation in Ukraine'' from 21 November 2013 onwards, thereby encompassing within its scope any past and present allegations of war crimes, crimes against humanity or genocide committed on any part of the territory of Ukraine . . .[8] Based on information currently available, the U.S. government has assessed that members of Russian forces have committed war crimes in Ukraine.[9]

*Humanitarian Situation*

The war against Ukraine continues to result in civilian deaths and generate further population displacement, damage civilian infrastructure, and exacerbate humanitarian needs across the country.[10] As of March 31, 2022 the Office of the United Nations High Commissioner for Human Rights recorded 3,167 civilian casualties in the country: 1,232 killed and 1,935 injured; caused by the use of explosive weapons, shelling from heavy artillery and multiple launch rocket systems, and missile and air strikes.[11]

Destruction of Infrastructure and Scarce Resources

Since February 24, significant infrastructural damage in Ukraine from Russian air strikes has ''left hundreds of thousands of people without electricity or water, while bridges and roads damaged by shelling have left communities cut off from markets for food and other basic supplies.''[12] Amid air raid sirens, civilians have sought safety underground in subway stations, basements, and bunkers.[13] Food security has been an ongoing concern in Ukraine with 1.1 million Ukrainians in need of food assistance—more than a third of these being severely and moderately food insecure.[14] The impact on women has been more pronounced and ''all available data show that female-headed households are an estimated 1.3 times more often experiencing food insecurity, compared to the overall population.''[15] Prior to Russia's February 24 expansion of the invasion, in February 2022, UNOCHA estimated that 2.5 million Ukrainians were in need of water, sanitation and hygiene assistance.[16] Those without access to alternative water sources have been most heavily impacted.[17]

Lack of Access to Healthcare

Shortly after Russia began this offensive in 2022, UNOCHA reported that in Ukraine, the ''most pressing humanitarian needs are emergency medical services, critical medicines, health supplies and equipment, safe water for drinking and hygiene, and shelter and protection for those displaced from their home.''[18] Ukraine's health care system already had major deficiencies including shortages of medications and supplies, poor infrastructure, and understaffing.[19]

Challenges within Ukraine's health care system have been exacerbated by the massive expansion of armed conflict amidst a pandemic.[20] Strikes hitting medical facilities have resulted in injuries and deaths, including among health care workers, and have resulted in critical shortages of medical supplies in some areas.[21] Kyiv city authorities reported over 80 babies were born in

[4] *Press briefing notes on Ukraine,* United Nations Office of the High Commissioner Human Rights, Mar. 1, 2022, available at: *https://www.reuters.com/world/europe/putins-nuclear-move-could-make-situation-much-much-more-dangerous-us-official-2022-02-27/* (last visited Mar. 1, 2022).

[5] ''Russia's invasion of Ukraine in maps—latest updates'', *Financial Times,* Mar. 1, 2022, available at: *https://www.ft.com/content/4351d5b0-0888-4b47-9368-6bc4dfbccbf5* (last visited Mar. 1, 2022).

[6] ''What is happening in Mariupol, the Ukrainian city under Russian siege?'' *The Washington Post,* Mar. 21, 2022, available at: *https://www.washingtonpost.com/world/2022/03/21/ukraine-mariupol-seige-russia-faq/* (last visited Mar. 25, 2022).

[7] *Russian Offensive Campaign Assessment,* The Institute for the study of War, p. 1 & p. 5, Feb. 28, 2022, available at: *https://www.understandingwar.org/sites/default/files/Russian%20Operations%20Assessments%20Feb28_1.pdf* (last visited Mar. 1, 2022); ''Ukraine conflict: Russia bombs Kharkiv's Freedom Square and opera house'', *BBC,* Mar. 1, 2022, available at: *https://www.bbc.com/news/world-europe-60567162* (last visited Mar. 1, 2022).

[8] *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: 'I have decided to proceed with opening an investigation.',* International Criminal Court, Feb. 28, 2022, available at: *https://www.icc-cpi.int/Pages/item.aspx?name=20220228-prosecutor-statement-ukraine* (last visited Mar. 1, 2022); *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation,* Mar. 2, 2022, available at *https://www.icc-cpi.int/Pages/item.aspx?name=2022-prosecutor-statement-referrals-ukraine* (last visited Apr. 4, 2022).

[9] *War Crimes by Russia's Forces in Ukraine, Press Statement,* U.S. Secretary of State Antony J. Blinken, Mar. 23, 2022, available at: *https://www.icc-cpi.int/Pages/item.aspx?name=2022-prosecutor-statement-referrals-ukraine.* (last visited April 1, 2022).

[10] *Ukraine—Complex Emergency,* U.S. Agency for International Development, Mar. 25, 2022, available at: *https://www.usaid.gov/sites/default/files/documents/2022-03-25_USG_Ukraine_Complex_Emergency_Fact_Sheet_8.pdf.*

[11] Ukraine: Civilian casualty update 31 March 2022, United Nations Human Rights Office of the High Commissioner, Mar. 31, 2022, available at: *https://www.ohchr.org/en/press-releases/2022/03/ukraine-civilian-casualty-update-31-march-2022.*

[12] *Ukraine: Humanitarian Impact, Situation Report No. 01,* OCHA Ukraine, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Mar. 1, 2022).

[13] ''Fear, darkness and newborn babies: inside Ukraine's underground shelters'', *The Guardian,* Feb. 26, 2022, available at: *https://www.theguardian.com/world/2022/feb/26/fear-darkness-and-newborn-babies-inside-ukraine-underground-shelters* (last visited Mar. 1, 2022).

[14] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 79, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[15] *Id.* p. 51.

[16] *Id.* p. 73.

[17] *Id.* p. 39.

[18] *Ukraine: Humanitarian Impact, Situation Report No. 01,* OCHA Ukraine, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Mar. 1, 2022).

[19] *Exploring Access to health care services in Ukraine: A protection and health perspective,* Protection Cluster Ukraine/Health Cluster Ukraine, Jul. 2019, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/2019/07/2019-07-Exploring-access-to-health-care-services-in-Ukraine_ENG.pdf* (last visited Mar. 1, 2022).

[20] *Impact of Health Reform on the Primary Healthcare Level in Conflict-Affected Areas of Donetsk and Luhansk Oblasts,* Médicos del Mundo, June 2021, available at: *https://reliefweb.int/report/ukraine/impact-healthcare-reform-primary-healthcare-level-conflict-affected-areas-donetsk-and* (last visited Mar. 1, 2022).

[21] *Emergency in Ukraine: External Situation Report #3,* World Health Organization, Mar. 17, 2022, available at: *https://www.who.int/publications/i/item/WHO-EURO-2022-5152-44915-63936* (last visited Mar. 25, 2022).

bomb shelters in the first two nights.[22] The COVID–19 pandemic already put significant strain on Ukraine's health care system by stretching its limited capacity.[23] Since January 3, 2020, there have been over 5 million confirmed cases of COVID–19 with 107,957 deaths the number of deaths topping 100,000.[24] Hospitals have struggled with the volume of COVID cases and Ukraine has one of the lowest vaccination rates in Europe.[25]

Displacement

Prior to Russia's full-scale military invasion into Ukraine on February 24, 2022, a large number of Ukrainian citizens had already been internally displaced by the Russia-backed conflict in the Donbas and Russia's occupation of Crimea since 2014.[26] As of March 5, 2021, well before the onset of the 2022 invasion by Russia, the Ukrainian Ministry of Social Policy had already registered 1,461,770 individuals as internally displaced persons (IDPs).[27] Among these nearly 1.5 million IDPs, 195,320 were children, 724,786 were elderly and 51,478 were persons with disabilities.[28] Moreover, life in Ukraine for many IDPs was dire with an estimated 300,000 IDPs having been identified as in need of livelihood assistance and food assistance for the year 2022, even before the onset of the February 2022 Russian invasion.[29]

The newly intensified and widespread conflict has caused more than four million people to exit Ukraine for Poland, Hungary, Slovakia, Romania, Moldova, and beyond.[30] The United Nations notes that women and girls face higher risks of human rights violations and sexual exploitation and abuse, including transactional sex, survival sex and conflict-related sexual violence.[31]

As of February 28, 2022, approximately 2,604 F–1 nonimmigrant students from Ukraine (or individuals having no nationality who last habitually resided in Ukraine) are in the United States and enrolled at SEVP-certified U.S. academic institutions. Given the extent of the ongoing war in Ukraine, affected students whose primary means of financial support comes from Ukraine may need to be exempt from the normal student employment requirements to continue their studies in the United States. The ongoing armed conflict has made it unfeasible for many students to safely return to Ukraine for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

**What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?**

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term.[32] A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v).

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education towards satisfying this minimum course load requirement, unless the course of study is in an English language study program.[33] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

**May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?**

Yes. An F–1 nonimmigrant student who is a Ukrainian citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Ukraine), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that the designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and

[22] ''Fear, darkness and newborn babies: Inside Ukraine's underground shelters'', *The Guardian,* Feb. 26, 2022, available at: *https://www.theguardian.com/world/2022/feb/26/fear-darkness-and-newborn-babies-inside-ukraine-underground-shelters* (last visited Mar. 1, 2022).

[23] ''*We are devoted to this work because the health and lives of people are at stake*'', United Nations Office of the High Commissioner Human Rights, Aug. 16, 2022, available at: *https://www.ohchr.org/EN/NewsEvents/Pages/Ukraine-and-COVID-19.aspx* (last visited Apr. 1, 2022).

[24] *WHO Health Emergency Dashboard, WHO (COVID–19) Homepage—Ukraine,* WHO, available at: *https://covid19.who.int/region/euro/country/ua* (last visited Apr. 1, 2022).

[25] *WHO Health Emergency Dashboard, WHO (COVID–19) Homepage—Ukraine,* WHO, available at: *https://covid19.who.int/region/euro/country/ua* (last visited Apr. 1, 2022).

[26] 2022 Humanitarian Needs Overview—Ukraine, UNOCHA, p. 34, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Apr. 1, 2022).

[27] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 34, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Apr. 1, 2022).

[28] *Registration of Internal Displacement,* UNHCR, Apr. 1, 2021, available at: *https://app.powerbi.com/view?r=eyJrIjoiY2RhMmExMjgtZWRlMS00YjcwLWI0MzktNmEwNDkwYzdmYTM0IiwidCI6ImU1YzM3OTgxLTY2NjQtNDEzNC04YTBjLTY1NDNkMmFmODBiZSIsImMiOjh9* (last visited Mar. 1, 2022).

[29] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 34, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[30] *Operational Data Portal,* UNHCR, Mar. 6, 2022, available at: *https://data2.unhcr.org/en/situations/ukraine* (last visited Mar. 31, 2022).

[31] Rapid Gender *Analysis of Ukraine: Secondary data review,* UNHCR, Mar. 29, 2022, *https://data2.unhcr.org/en/documents/details/91723* (last visited Apr. 4, 2022)

[32] Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

[33] DHS considers students who are compliant with ICE Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such COVID–19 guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, *https://www.ice.gov/coronavirus* (last visited Mar. 4, 2022).

reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].

**Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?**

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [34] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term.[35] *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

**Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible to apply for employment authorization?**

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, as required under 8 CFR 214.2(f)(15)(i).

**Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry into the United States after the effective date of this notice in the Federal Register?**

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are citizens of Ukraine, regardless of country of birth (or individuals having no nationality who last habitually resided in Ukraine);

(2) Were lawfully present in the United States in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i) on the date of publication of this notice;

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the ongoing armed conflict in Ukraine.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the ongoing armed conflict in Ukraine).

**Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?**

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly endorsed the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa in order to continue their educational program in the United States.

**Does this notice apply to elementary school, middle school, and high school students in F–1 status?**

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Ukraine enrolled in private kindergarten through grade 12, or public high school grades 9 through 12. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress towards graduation, as required under 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students covered by this notice who are enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

*On-Campus Employment Authorization*

**Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?**

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I–20:

> Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the ongoing armed conflict in Ukraine. An F–1 nonimmigrant student authorized by the student's DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply, as required under 8 CFR 214.2(f)(9)(i).

**Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain their F–1 nonimmigrant status?**

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [36] for the purpose of maintaining their F–1 nonimmigrant

[34] *See* 8 CFR 214.2(f)(6).

[35] Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

[36] *See* 8 CFR 214.2(f)(6).

student status for the duration of the on-campus employment if the student satisfies the minimum course load requirement described in this notice, as required under 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.[37]

**Off-Campus Employment Authorization**

**What regulatory requirements does this notice temporarily suspend relating to off-campus employment?**

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant status for one full academic year in order to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

**Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?**

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [38] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, as required under 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[39]

**How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?**

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the ongoing armed conflict in Ukraine. Filing instructions are located at: *https://www.uscis.gov/i-765.*

*Fee considerations.* Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See www.uscis.gov/feewaiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c).

*Supporting documentation.* An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to the DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the ongoing armed conflict in Ukraine.

If the DSO agrees that the F–1 nonimmigrant student should receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on the student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765, according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

*DSO recommendation.* In making a recommendation that a F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [40] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Ukraine, regardless of country of birth (or an individual having no nationality who last habitually resided in Ukraine), and is experiencing severe economic hardship as a direct result of the ongoing armed conflict in Ukraine, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of 8 CFR 214.2(f)(5)(v) and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the ongoing armed conflict in Ukraine.

*Processing.* To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes all of the following documents:

(1) A completed Form I–765;

(2) The required fee or properly documented fee waiver request, as defined in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the

[37] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[38] *See* 8 CFR 214.2(f)(6).

[39] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[40] *See* 8 CFR 214.2(f)(6).

front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

**Temporary Protected Status Considerations**

**Can an F–1 nonimmigrant student apply for temporary protected status (TPS) and for benefits under this notice at the same time?**

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[41] under this notice has two options.

Under the first option, the nonimmigrant student may file the TPS application according to the instructions in the USCIS notice announcing the designation of Ukraine for TPS published elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new EAD based on their TPS application that is valid through October 19, 2023, and to be eligible for automatic EAD extensions that may be available to EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or submit a Request for Fee Waiver (Form I–912)). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that the student's DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains the student's TPS, then the student maintains F–1 nonimmigrant status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing the Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the TPS application according to the instructions provided in the **Federal Register** Notice announcing the designation of Ukraine for TPS. The F–1 nonimmigrant student already has applied for employment authorization under Special Student Relief and may choose not to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code. The nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS related EAD is being requested. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS status and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [42] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for language students). Once approved for Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter credit hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter credit hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

**How does a student who has received a TPS-related employment authorization document then apply for authorization to take a reduced course load under this notice?**

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current crisis in Ukraine. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

**Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?**

Yes. Current regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

**How long will this notice remain in effect?**

This notice grants temporary relief until October 19, 2023 [43] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Ukraine. Should the special provisions authorized by this notice need modification or extension, DHS will

[41] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited Mar. 4, 2022).

[42] *See* 8 CFR 214.2(f)(6).

[43] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of October 19, 2023, provided the student satisfies the minimum course load requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Mar. 4, 2022).

announce such changes in the **Federal Register**.

**Paperwork Reduction Act (PRA)**

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the ongoing armed conflict in Ukraine must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

**Alejandro Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2022–08357 Filed 4–18–22; 8:45 am]

**BILLING CODE 9111–28–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

**[Docket No. ICEB–2022–0005]**

**RIN 1653–ZA25**

## Employment Authorization for Sudanese F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Current Crisis in Sudan

**AGENCY:** U.S. Immigration and Customs Enforcement; Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Secretary of Homeland Security (Secretary) has suspended certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is the Republic of Sudan (Sudan), regardless of country of birth (or individuals having no nationality who last habitually resided in Sudan), and who are experiencing severe economic hardship as a direct result of the current crisis in Sudan. The Secretary is taking action to provide relief to Sudanese students who are lawful F–1 nonimmigrant students so they may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student who receives employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

**DATES:** This F–1 notice is effective April 19, 2022 through October 19, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

**SUPPLEMENTARY INFORMATION:**

**What action is DHS taking under this notice?**

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Sudan, regardless of country of birth (or individuals having no nationality who last habitually resided in Sudan), who are present in the United States in lawful F–1 nonimmigrant student status on the date of publication of this notice, and who are experiencing severe economic hardship as a direct result of the current crisis in Sudan. Effective with this publication, suspension of the employment limitations is available through October 19, 2023, for Sudanese students in lawful F–1 nonimmigrant status. DHS will deem an F–1 nonimmigrant student granted employment authorization through the notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

**Who is covered by this notice?**

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

(1) Are a citizen of Sudan regardless of country of birth (or an individual having no nationality who last habitually resided in Sudan);

(2) Were lawfully present in the United States in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i), on the date of publication of this notice;

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of October 19, 2023, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to ICE Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Mar. 2022).

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Sudan.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school in grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

**Why is DHS taking this action?**

DHS is taking this action to provide relief to Sudanese F–1 nonimmigrant students experiencing severe economic hardship as a result of the crisis in Sudan. After reviewing country conditions in Sudan and receiving input from the U.S. Department of State (DOS), DHS is taking action to allow eligible F–1 nonimmigrant students from Sudan to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

The political instability, violence, and human rights abuses; ongoing intercommunal violence in several regions of the country; and a humanitarian crisis linked to the political instability, unprecedented floods, food and clean water shortages, and internal displacement have impacted millions of individuals in Sudan.[2] On December 20, 2021, DOS issued a Level 4 travel advisory for Sudan, warning people not to travel to Sudan due to ''civil unrest'' and ''crime, terrorism, kidnapping, and armed conflict.'' [3] DHS is taking action to provide relief to Sudanese F–1 nonimmigrant students because of the conditions described below.

*Political Situation*

In April 2019, Sudan's President Omar al-Bashir was overthrown following months of popular protests, ending his 30-year rule.[4] In August 2019, a civilian-led transitional government made up of a Sovereign Council (whose civilian, armed group and military representatives formed a collective head of state), a civilian Prime Minister, and a Council of Ministers, was established.[5] Throughout 2021, Sudan continued to face rising political tensions between civilian leaders and the military members of the Sovereign Council as well as growing protests.[6] In October 2021, Lt. General Abdel Fattah al Burhan launched a military takeover that brought an end to the civilian-led transitional government.[7]

Since the October 2021 military takeover, protests have continued throughout Sudan.[8] Hundreds have reportedly been arrested, including activists, passersby, journalists, and an Al Jazeera bureau chief, who was released several days later.[9] Security forces have reportedly used ammunition and tear gas on protestors.[10] In addition to the arrests, at least 92 protesters have been killed with thousands more injured by security forces.[11]

Following the military takeover, in November 2021, civilian and military leaders made a power-sharing agreement, reinstating Prime Minister Abdalla Hamdok. However, ''[p]rotests continued even after Mr. Hamdok had returned to office, with some demonstrators saying that his reinstatement was helping to legitimatise the military takeover.'' [12] With violence against civilian protesters continuing, Prime Minister Hamdok resigned on January 2, 2022.[13] Protests continue, as does the use of excessive forcevoice by security forces. The U.S. government sanctioned the Central Reserve Police, a militarized police unit, for serious human rights abuse under E.O. 13818 on March 21, 2022.

*Armed Conflict and Civil Unrest*

In 2020, the civilian-led transitional government signed a peace agreement—Juba Peace Agreement [14]—with various oppositions groups, including groups from Darfur and the South Kordofan and Blue Nile (AKA the ''Two Areas'') regions of Sudan.[15] However, one Darfuri opposition group which did not sign this peace agreement, the Sudan Liberation Army/Movement—Abdul Wahid (SLA/AW), continues to be engaged in clashes with the government forces, including with the Sudanese Armed Forces (SAF).[16]

In January 2021, the United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that instability, including intercommunal tensions, remained in several parts of the country.[17] In July 2021, the Secretary General for the United Nations (U.N.) asserted that the primary security concern in Sudan remains ''the increasing frequency of intercommunal violence.'' [18] Additionally, the withdrawal of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) in June 2021 [19] has ''left a security and

[2] Sudan Complex Crisis—Overview, Assessment Capacities Project (ACAPS), Aug. 3, 2021, available at *https://www.acaps.org/country/sudan/crisis/complex-crisis;* U.S. Dep't of State, *2020 Country Reports on Human Rights Practices: Sudan* (Mar. 30, 2021). *https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sudan/.*

[3] Sudan Travel Advisory, U.S. Dep't of State (Dec. 20, 2021), *https://travel.state.gov/content/travel/en/traveladvisories/traveladvisories/sudan-travel-advisory.html.*

[4] Sudan Complex Crisis—Overview, Assessment Capacities Project (ACAPS) (Aug. 3, 2021), *https://www.acaps.org/country/sudan/crisis/complex-crisis* (last visited Mar. 2022).

[5] *Id.*

[6] The Forces for the Declaration of Freedom and Change, or FDFC, is the main coalition of opposition groups that has been stepping up calls for the military to hand leadership over to civilians in the government. It is comprised of various anti-al-Bashir political parties, professional movements and opposition groups. It has also called for restructuring the military and security agencies and ensure that al-Bashir loyalists are removed from these agencies, and to absorb the various opposition armed groups into Sudan's security agencies. *See* Samy Magdy and Lee Keath, EXPLAINER: How months of tensions led to Sudan's coup, AP News (Oct. 26, 2021), *https://apnews.com/article/explaining-what-led-to-sudan-coup-8e3609d1f573b6dd0383ed7a09f0d4aa* (last visited Mar. 2022).

[7] *U.S. Relations With Sudan Bilateral Relations Fact Sheet,* U.S. Dept. of State, Feb. 4, 2022, available at *https://www.state.gov/u-s-relations-with-sudan/#:~:text=The%20Sovereign%20Council%20%E2%80%93%20a%20body,a%20collective%20head%20of%20state.*

[8] Sudanese forces shoot 14 in deadliest day since military coup, The Guardian (Nov. 17, 2021), *https://www.theguardian.com/world/2021/nov/17/sudanese-forces-shoot-dead-at-least-14-protesters-against-coup* (last visited Mar. 1, 2022).

[9] *Id.*

[10] Michael Atit, Sudan Journalists Protest Media Crackdown Since Coup, Voice of America (Nov. 17, 2021), *https://www.voanews.com/a/sudan-journalists-protest-media-crackdown-since-coup/6317029.html* (last visited Mar. 2022).

[11] The Guardian, *supra* note 10.

[12] Sudan coup: Prime Minister Abdalla Hamdok resigns after mass protests, *BBC.com* (Jan. 3, 2022), *https://www.bbc.com/news/world-africa-59855246* (last visited Mar. 2022).

[13] Yassir Abdullah, Nima Elbagir, and Hamdi Alkhshali, Sudanese Prime Minister's resignation triggered by military reneging on deal, sources say, CNN (Jan. 4, 2022), *https://www.cnn.com/2022/01/03/africa/sudan-pm-resignation-details-intl/index.html* (last visited Mar. 2022).

[14] U.S. Dep't of State, *supra* note 2, at 2.

[15] *Id.* at 1.

[16] Durable Solutions & Baseline Analysis for the U.N. Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Nertiti locality, Central Darfur, U.N. Refugee Agency (UNHCR), 14 (Aug. 2021), *https://data2.unhcr.org/en/documents/download/88364* (last visited Mar. 2022).

[17] Sudan: Humanitarian Response Plan 2021, UNOCHA, 12 (Jan. 2021), *https://www.ecoi.net/en/file/local/2045900/SDN_2021HRP.pdf* (last visited Mar. 2022).

[18] Review of the situation in Darfur—Report of the Secretary General, SCOR, 4 (July 31, 2021), *https://undocs.org/pdf?symbol=en/S/2021/696* (last visited Mar. 2022).

[19] Withdrawal of Hybrid Peacekeeping Operation in Darfur Completed by 30 June Deadline, Under-Secretary-General Tells Security Council, Outlining Plans to Liquidate Assets, UN News (July 27, 2021),

programmatic vacuum, which has yet to be filled by the transitional government or state-level authorities.'' [20]

i. Civil Unrest in Darfur

In July 2021, the U.N. reported that intercommunal violence ''has increased in frequency and scale over the past year, in particular in West, North and South Darfur.'' [21] Since 2019, West Darfur has seen an escalation of intercommunal violence between two key ethnic groups in their region—the ''Arab armed groups and [the] Masalit [Darfuri ethnic group].'' [22] An escalation of violence in April 2021 resulted in a reported 144 people killed and 232 injured. Because heavy weapons were reportedly used, homes, a hospital, a U.N. compound, and a camp for internally displaced persons were destroyed or damaged. Also, ''a power plant—the only source of electricity in El Geneina—was damaged, resulting in a critical disruption to most of the town's communication facilities, in addition to electricity and water supplies in some areas.'' [23] A few months later, in July 2021, UNOCHA reported that ''around 500 armed men attached [a town] leaving more than 60 people dead, . . . and another 60 injured.'' [24]

In 2019, UNOCHA assessed that intercommunal violence was the main driver of protection needs in North Darfur.[25] In 2021, the European Asylum Support Office (EASO) reported on a series of clashes in the region.[26]

Central Darfur is also considered a hotspot due to the strong presence of the SLA/AW in this area, and throughout the Jebel Marra mountains.[27] Widespread insecurity and regular clashes between SLA/AW forces and the SAF has resulted in counter retaliation attacks, with civilians reportedly attacked for collaborating with either of the forces.[28] In September 2021, the U.N. reported on continued fighting between SLA/AW and government forces in Central Darfur,[29] including on May 18, when a clash reportedly resulted in the displacement of 1,284 people.[30]

In South Darfur, fighting in May 2020 over land grazing rights between an indigenous group, the Fellata/Fallata, and the Rizeigat reportedly resulted in the death of 30 civilians.[31] In January 2021, deadly clashes between these groups resumed, reportedly leaving 60 dead and 40 wounded.[32] In July 2021, intercommunal violence persisted between the Fallata and Ta'isha tribes, reportedly leaving 48 dead and displacing 185 people.[33]

Similar intercommunal tensions in East Darfur are rooted in a long history of tensions ''between the Rizeigat (pastoralists) and Ma'aliya (sedentary farmers) and Rizeigat (pastoralists) against Misseriya (pastoralists).'' [34] These legacy disputes are ''driven by control of land, tribal leadership and wider political power plus access to pasture and water.'' [35]

ii. Civil Unrest in Other Regions

The security situation in the Two Areas remains tense.[36] In 2017, the main opposition group in this region—the Sudan People's Liberation Movement/Army-North (SPLM/A–N)—splintered into two factions, resulting in several months of violence between the two groups.[37] Both groups were reportedly also involved in area fighting between Arab nomads and Nuban farmers in which a dozen or more people were killed.[38] Similar ''deadly clashes'' [39] in the region included security forces who joined and aligned with civilians fighting along ethnic lines.[40]

In January 2019, Sudan's Eastern State (the ''Red Sea State''), also saw renewed intercommunal violence between the main Arab and non-Arab ethnic groups in the region.[41] In September 2021, the U.N. assessed that the ''security situation in the eastern Red Sea State remained volatile.'' [42]

In the Abyei region disputed between Sudan and South Sudan, the U.N. reported that the security situation remained tense with renewed intercommunal violence between the two main ethnic groups in the region—the Misseriya and Ngok Dinka communities.[43] In April 2021, the U.N. reported that the ''general security situation in the Abyei Area has been relatively calm, yet tense and

*https://www.un.org/press/en/2021/sc14587.doc.htm* (last visited Mar. 2022).

[20] Review of the situation in Darfur and benchmarks to assess the measures on Darfur; Report of the Secretary-General [S/2021/696], SCOR, 4 (July 2021), *https://www.ecoi.net/en/file/local/2058498/S_2021_696_E.pdf* (last visited Mar. 2022).

[21] *Id.*

[22] Durable Solutions & Baseline Analysis for the U.N. Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Jebel Moon Locality, West Darfur, UNHCR, 15 (Aug. 2021), *https://data2.unhcr.org/en/documents/download/88361* (last visited Mar. 2022).

[23] Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan; Report of the Secretary-General [S/2021/470], SCOR, 5–6 (May 17, 2021), *https://www.ecoi.net/en/file/local/2052225/S_2021_470_E.pdf* (last visited Mar. 2022).

[24] UNOCHA, *Sudan: Escalation of Violence in Darfur—Flash Update No. 2,* 1 (July 27, 2020), *https://www.ecoi.net/en/file/local/2035090/Situation+Report+-+Sudan+-+23+Jul+2020+%284%29.pdf* (last visited Mar. 1, 2022).

[25] UNHCR, *Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Tawila locality, North Darfur,* 14 (Aug. 2021), *https://data2.unhcr.org/en/documents/download/88365* (last visited Mar. 2022).

[26] EASO, *Political developments and security situation in Sudan between 1 Sept. 2020–31 Aug. 2021,* 12 (Oct. 20, 2021), *https://www.ecoi.net/en/file/local/2062609/2021_09_Q31_EASO_COI_QUERY_RESPONSE_SUDAN_SECURITY_SITUATION.pdf* (last visited Mar. 2022).

[27] UNHCR, *supra* note 19, at 14.

[28] *Id.*

[29] Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, SCOR, 4 (Sept. 1, 2021), *https://www.ecoi.net/en/file/local/2059931/S_2021_766_E.pdf* (last visited Mar. 2022).

[30] *Id.*

[31] Reliefweb, *30 people killed in intercommunal violence in South Darfur* (May 6, 2020), *https://reliefweb.int/report/sudan/30-people-killed-intercommunal-violence-south-darfur* (last visited Mar. 1, 2022).

[32] Associated Press, *Samy Magdy, Tribal clashes leave dozens dead in 2 Sudanese provinces* (Jan. 18, 2021), reported by abcNEWS, *https://abcnews.go.com/International/wireStory/sudanese-bury-victims-darfur-violence-death-toll-129-75322312* (last visited Mar. 2022).

[33] SCOR, Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, 4 (Sept.1, 2021), *https://www.ecoi.net/en/file/local/2059931/S_2021_766_E.pdf* (last visited Mar. 2022).

[34] UNHCR, *Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Assalaya, Yassin and Sheiria localities, East Darfur,* 15 (Aug. 2021), *https://data2.unhcr.org/en/documents/download/88358* (last visited Mar. 2022).

[35] *Id.*

[36] Asylum Research Centre, *Sudan: Country Report; The situation in South Kordofan and Blue Nile—An Update (3rd edition with addendum),* 20 (Mar. 2021), *https://www.ecoi.net/en/file/local/2045013/Final_01.03.2021.pdf* (last visited Mar. 2022).

[37] Enough, *A Question of Leadership: Addressing a Dangerous Crisis in Sudan SPLM–N,* 2 (Jul. 2017), *https://enoughproject.org/reports/a-question-of-leadership* (last visited Mar. 2022).

[38] U.S. Dep't of State, *supra* note 2, at 9.

[39] Asylum Research Centre, *supra* note 39, at 22.

[40] UNHCR, *Report of the Independent Expert on the situation of human rights in the Sudan,* 13 (Jul. 30, 2020), *https://reliefweb.int/report/sudan/report-independent-expert-situation-human-rights-sudan-ahrc4553-enar* (last visited Mar. 2022); *Id.* at 22–23.

[41] U.S. Dep't of State, *2019 Country Reports on Human Rights Practices: Sudan,* 9 (Mar. 30, 2020), *https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sudan/* (last visited Mar. 2022).

[42] SCOR, *Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan,* 5 (Sept. 1, 2021), *https://www.ecoi.net/en/file/local/2059931/S_2021_766_E.pdf* (last visited Mar. 2022).

[43] SCOR, *The situation in Abyei; Report of the Secretary-General [S/2020/1019]* (Oct. 15, 2020), *https://www.ecoi.net/en/file/local/2039488/S_2020_1019_E.pdf* (last visited Mar. 2022).

unpredictable.'' [44] The ''most prevalent threats to security were shooting incidents, the increased presence of unidentified armed groups, armed attacks on civilians and violent confrontations between the communities.'' [45]

*Humanitarian Crisis*

Sudan also continues ''to suffer from one of the world's largest protracted humanitarian crises'' due to conflict and displacement, deteriorating economic conditions, limited access to basic services, and several disease outbreaks, including the COVID–19 pandemic.[46] Since 2018, Sudan has also faced severe economic challenges.[47] National poverty levels have risen drastically,[48] and incomes, wages, and purchasing power have fallen, ''driving 9.6 million people—almost a quarter of the entire population of Sudan—to severe food insecurity.'' [49] This economic crisis has reportedly ''degraded the already weak, underdeveloped and heavily underfunded primary healthcare system,'' including by the end of 2020, reducing the number of healthcare facilities by 40 percent across the country.[50] The COVID–19 pandemic has further ''compounded the already dire public health situation.'' [51]

During the rainy season in 2020, flooding affected ''close to 900,000 people across the country and farmland, livestock, shelter and other infrastructure.'' [52] Other areas suffered droughts.[53] Many of the flood areas have very limited access to clean water.[54] Water supply sources have been affected by overflow of the Blue Nile River destroying nearby latrines, resulting in increased risk of water contamination and the outbreak of waterborne diseases.[55] The health situation in Sudan has continued to deteriorate due to flooding causing ''stagnant and contaminated water.'' [56]

Sudan's worsening economy and protracted health emergencies have resulted in an increase of the number of people without access to basic health services.[57] Sudan has experienced disease outbreaks including cholera, malaria, dengue, chikungunya, viral hemorrhagic fevers and polio.[58] In 2020 alone, thirteen out of Sudan's eighteen states experienced one or more outbreaks of chikungunya, dengue fever, rift valley fever, or diphtheria.[59] The COVID–19 pandemic has ''further strained the capacity of the health care system due to nationwide lockdowns, re-allocation of health resources, and disruption of global supply chains that impacted availability of medicines and medical supplies.'' [60]

In Sudan, ''[w]omen and girls suffer the most due to insecurity, violations of basic human rights, low economic status, lack of livelihood opportunities, and lack of community awareness on women's rights.'' [61] The United Nations Children's Fund (UNICEF) has also noted that ''[c]hildren throughout Sudan are already bearing the brunt of decades of conflict, chronic underdevelopment and poor governance,[62] with 64 percent of children below 14 years of age experiencing various forms of violence.'' [63]

According to UNOCHA, ''Sudan has seen an increase in the number of people in need of humanitarian assistance from 5.8 million people in 2016 to 13.4 million in 2021.'' [64] It is estimated that among the 13.4 million people in need,[65] 9.8 million are severely food insecure.[66] Yet, access to humanitarian assistance is uncertain. In 2021, the Assessments Capacities Project (ACAPS) reported that armed opposition groups in some areas created ''barriers to the delivery of humanitarian aid.'' [67] Intercommunal clashes in other areas have also affected humanitarian operations.[68] The UNAMID drawdown and closure has also resulted in increased looting and impacted ''people's ability to move and reach needed aid.'' [69] In July 2021, the U.N. reported that ''since January 2021, 11 of the 14 UNAMID team sites, which have been handed over to civilian authorities, have been looted.'' [70]

As of February 28, 2022, approximately 324 F–1 nonimmigrant students from Sudan (or individuals having no nationality who last habitually resided in Sudan) are in the United States and enrolled in courses at SEVP-certified U.S. academic institutions. Given the extent of the current crisis in Sudan, affected students whose primary means of financial support comes from Sudan may need to be exempt from the normal student employment requirements to continue their studies in the United States. The current crisis has made it unfeasible for many students to safely return to Sudan for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

**What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?**

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term.[71] A graduate-level F–1

[44] The situation in Abyei; Report of the Secretary-General [S/2021/383], SCOR, 2 (Apr. 20, 2021), *https://reliefweb.int/report/sudan/situation-abyei-report-secretary-general-s2021383-enar* (last visited Mar. 2022).

[45] *Id.*

[46] Sudan Humanitarian impact of multiple protracted crises, ACAPS, 2 (Nov. 24, 2021), *https://www.acaps.org/sites/acaps/files/products/files/20201124_acaps_briefing_note_sudan_impact_of_multiple_crises.pdf* (last visited Mar. 2022).

[47] Sudan Economic Crisis, ACAPS, 1 (Feb. 2019), *https://www.acaps.org/sites/acaps/files/products/files/20190213_acaps_briefing_note_sudan_economic_crisis.pdf* (last visited Mar. 2022).

[48] Child Protection Annual Report 2020, UN Children's Fund (UNICEF), 6 (Mar. 2021), *https://www.unicef.org/sudan/media/6091/file/Child%20Protection%20.pdf* (last visited Mar. 2022).

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] UNOCHA, *Sudan: Humanitarian Response Plan 2021,* 12 (Feb. 21, 2021), *https://reliefweb.int/report/sudan/sudan-humanitarian-response-plan-2021-january-2021-enar* (last visited Mar. 2022).

[53] SCOR, *supra* note 47, at 5.

[54] International Federation of Red Cross and Red Crescent Societies, *Sudan: Floods—Operation Update—Emergency Appeal* (Mar. 25, 2021), *https://reliefweb.int/report/sudan/sudan-floods-operation-update-emergency-appeal-n-mdrsd028-24-march-2021* (last visited Mar. 2022).

[55] *Id.*

[56] *Id.*

[57] Sudan Situation Report, 31 May 2021, UNOCHA, 46 (May 31, 2021), *https://www.ecoi.net/en/file/local/2055652/Situation+Report+-+Sudan+-+12+May+2021.pdf* (last visited Mar. 2022).

[58] UNOCHA, *supra* note 55.

[59] UNICEF, *Sudan Health Annual Report 2020,* 5, *https://www.unicef.org/sudan/media/6141/file/Health.pdf* (last visited Mar. 2022).

[60] UNOCHA, *supra* note 55, at 46.

[61] *Id.*

[62] UNICEF, *Children killed, injured, detained and abused amid escalating violence and unrest in Sudan* (June 11, 2019), *https://www.unicef.org/press-releases/children-killed-injured-detained-and-abused-amid-escalating-violence-and-unrest* (last visited Mar. 2022).

[63] UNICEF, Child Protection Annual Report 2020, 7 (Mar. 2021), *https://www.unicefusa.org/about/publications/annual-report-2020?gclid=EAIaIQobChMI9p2M0uD39AIVMv7jBx3c2gHbEAAYASAAEgKHN_D_BwE* (last visited Mar. 2022).

[64] UNOCHA, *supra* note 55, at 10.

[65] UNOCHA, *Sudan Key Figures, https://m.reliefweb.int/country/220/sdn* (last visited on Nov. 23, 2021).

[66] UNOCHA, *Sudan Situation Report* (Sep. 27, 2021), *https://reliefweb.int/report/sudan/sudan-situation-report-29-sep-2021* (last visited Mar. 2022).

[67] ACAPS, *Humanitarian Access Overview,* 12 (July 2021), *https://www.acaps.org/sites/acaps/files/products/files/20210719_acaps_humanitarian_access_overview_july_2021.pdf* (last visited Mar. 2022).

[68] *Id.*

[69] *Id.*

[70] SCOR, *Review of the situation in Darfur and benchmarks to assess the measures on Darfur; Report of the Secretary-General [S/2021/696],* 4 (July 2021), *https://www.ecoi.net/en/file/local/2058498/S_2021_696_E.pdf* (last visited Mar. 2022).

[71] Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must

nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the course of study is in an English language study program.[72] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

**May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?**

Yes. An F–1 nonimmigrant student who is a Sudan citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Sudan), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that the designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

> Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].

**Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?**

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [73] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term.[74] *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

**Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible to apply for employment authorization?**

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status. *See* 8 CFR 214.2(f)(15)(i).

**Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry in the United States after the effective date of this notice in the Federal Register?**

No. The suspension of the applicability of the standard regulatory requirements only applies to F–1 nonimmigrant students who meet the following conditions:

(1) Are citizens of Sudan, regardless of country of birth (or individuals having no nationality who last habitually resided in Sudan);

(2) Were lawfully present in the United States in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i), on the date of publication of this notice;

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the current crisis in Sudan.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the current crisis in Sudan).

**Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?**

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa in order to continue their educational program in the United States.

**Does this notice apply to elementary school, middle school, and high school students in F–1 status?**

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Sudan enrolled in private kindergarten through grade 12, or public high school grades 9 through 12. Such students must maintain the minimum number of hours

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register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

[72] DHS considers students who are compliant with ICE Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such COVID–19 guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, *https://www.ice.gov/coronavirus* (last visited Feb. 2022).

[73] *See* 8 CFR 214.2(f)(6).

[74] Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

of class attendance per week prescribed by the academic institution for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Sudan covered by this notice who are enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

**On-Campus Employment Authorization**

**Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?**

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session, if the DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I–20:

Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the current crisis in Sudan. An F–1 nonimmigrant student authorized by the student's DSO to engage in on-campus employment by means of this notice does not need to file an application with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply. *See* 8 CFR 214.2(f)(9)(i).

**Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain their F–1 nonimmigrant status?**

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [75] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment if the student satisfies the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.[76]

**Off-Campus Employment Authorization**

**What regulatory requirements does this notice temporarily suspend relating to off-campus employment?**

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant status for one full academic year in order to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

**Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?**

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [77] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[78]

**How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?**

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the current crisis in Sudan. Filing instructions are located at: *http://www.uscis.gov/i-765.*

*Fee considerations.* Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See www.uscis.gov/feewaiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c).

*Supporting documentation.* An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to the DSO:

(1) This employment is necessary to avoid severe economic hardship; and

[75] *See* 8 CFR 214.2(f)(6).

[76] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[77] *See* 8 CFR 214.2(f)(6).

[78] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

(2) The hardship is a direct result of the current crisis in Sudan.

If the DSO agrees that the F–1 nonimmigrant student should receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on the student's Form I–20:

Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765, according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

*DSO recommendation.* In making a recommendation that a F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [79] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a Sudan citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Sudan), and is experiencing severe economic hardship as a direct result of the current crisis in Sudan, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of 8 CFR 214.2(f)(5)(v) and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the current crisis in Sudan.

*Processing.* To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes all of the following documents:

(1) A completed Form I–765;

(2) The required fee or properly documented fee waiver request, as described in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

**Temporary Protected Status Considerations**

**Can an F–1 nonimmigrant student apply for temporary protected status (TPS) and for benefits under this notice at the same time?**

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or other relief that reduce the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[80] under this notice has two options.

Under the first option, the nonimmigrant student may file the TPS application according to the instructions in the USCIS notice announcing the designation of Sudan for TPS published elsewhere in this issue of the **Federal Register**. All TPS applicants must file a Form I–821, Application for Temporary Protected Status with the appropriate fee (or request a fee waiver). Although not required to do so, if an F–1 nonimmigrant student wants to obtain a new EAD based on their TPS application that is valid through October 19, 2023, and to be eligible for automatic EAD extensions that may be available to certain EADs with an A–12 or C–19 category code, they must file Form I–765 and pay the Form I–765 fee (or submit a Request for a Fee Waiver (Form I–912)). After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that the student's DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains the student's TPS, then the student maintains F–1 nonimmigrant status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing the Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the TPS application according to the instructions provided in the **Federal Register** Notice announcing the designation of Sudan for TPS. The F–1 nonimmigrant student already has applied for employment authorization under Special Student Relief and may choose not to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of automatic extensions that may be available to certain EADs with an A–12 or C–19 category code. The nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

**When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?**

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [81] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for language students). Once approved for

[79] *See* 8 CFR 214.2(f)(6).

[80] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited Feb. 2022).

[81] *See* 8 CFR 214.2(f)(6).

Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter credit hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter credit hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), 214.2(f)(6), and 214.2(f)(9)(i) and (ii).

**How does a student who has received a TPS-related employment authorization document then apply for authorization to take a reduced course load under this notice?**

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the current crisis in Sudan. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

**Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?**

Yes. Current regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

**How long will this notice remain in effect?**

This notice grants temporary relief until October 19, 2023 [82] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Sudan. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

**Paperwork Reduction Act (PRA)**

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the current crisis in Sudan must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

**Alejandro Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

[FR Doc. 2022–08362 Filed 4–18–22; 8:45 am]

**BILLING CODE 9111–28–P**

[82] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of October 19, 2023, provided the student satisfies the minimum course load requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited Mar. 2022).

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2710–21; DHS Docket No. USCIS–2014–0003]**

**RIN 1615–ZB92**

### Designation of Sudan for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**ACTION:** Notice of Temporary Protected Status (TPS) designation.

**SUMMARY:** Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) has designated Sudan for Temporary Protected Status (TPS) for eighteen months, from April 19, 2022, through October 19, 2023. This designation allows eligible Sudanese nationals (and individuals having no nationality who last habitually resided in Sudan) who have continuously resided in the United States since March 1, 2022, and who have been continuously physically present in the United States since April 19, 2022 to apply for TPS.

**DATES:** *Designation of Sudan for TPS:* The eighteen-month designation of Sudan for TPS is effective on April 19, 2022 and will remain in effect for eighteen months, through October 19, 2023. The registration period for eligible individuals to submit TPS applications begins April 19, 2022 and will remain in effect through October 19, 2023.

**FOR FURTHER INFORMATION CONTACT:** Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

**ADDRESSES:** For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *uscis.gov/tps*. You can find specific information about Sudan's TPS designation by selecting ''Sudan'' from the menu on the left side of the TPS web page.

If you have additional questions about TPS, please visit *uscis.gov/tools*. Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find

your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov,* or visit the USCIS Contact Center at *uscis.gov/contactcenter*.

Further information will also be available at local USCIS offices upon publication of this Notice.

**SUPPLEMENTARY INFORMATION:**

## Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

## Purpose of this Action (TPS)

Through this Notice, DHS sets forth procedures necessary for eligible beneficiaries whose TPS has been continued pursuant to court orders, as described in 86 FR 50725 (Sept. 10, 2021), to newly apply for TPS.[1] This Notice also sets forth procedures for other eligible nationals of Sudan (or individuals having no nationality who last habitually resided in Sudan) to submit an initial registration application under the designation of Sudan for TPS and apply for an EAD. Under the designation, individuals must submit an initial Form I–821, Application for Temporary Protected Status, and they may also submit a Form I–765, Application for Employment Authorization, during the registration period that runs from April 19, 2022, through October 19, 2023.[2] Under section 244(b)(1)(C) of the Immigration and Nationality Act (INA), 8 U.S.C. 1245a(b)(1)(C), the Secretary is authorized to designate a foreign state (or any part thereof) for TPS upon finding that extraordinary and temporary conditions in the foreign state prevent its nationals from returning safely, unless permitting the foreign state's nationals to remain temporarily in the United States is contrary to the national interest of the United States.

In addition to demonstrating continuous residence in the United States since March 1, 2022, and meeting other eligibility criteria, applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since April 19, 2022, the effective date of this designation of Sudan, for USCIS to grant them TPS.[3]

DHS estimates that approximately 3,090 individuals are eligible to file applications for TPS under the designation of Sudan.

## What Is TPS?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- The granting of TPS does not result in or lead to lawful permanent resident status.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

## Is Sudan's previous designation for TPS still in effect?

On November 4, 1997, the Attorney General designated Sudan for TPS due to: (1) An ongoing armed conflict, and that because of such conflict, requiring the return of nationals to Sudan would pose a serious threat to their personal safety; and (2) extraordinary and temporary conditions within Sudan preventing nationals from returning to Sudan in safety.[4] Since the initial designation, the Attorney General and, later, the Secretary, have extended TPS and/or redesignated Sudan for TPS. Sudan's most recent redesignation for TPS was in 2013, when the Secretary both extended Sudan's designation and redesignated Sudan for TPS for eighteen months. Sudan's TPS designation was extended in 2016 (for eighteen months through November 2, 2017), and again

[1] Since its first litigation compliance **Federal Register** notice, DHS has repeatedly emphasized and reserved its statutory authority to conduct re-registration of beneficiaries, including those under the Sudan TPS designation, whose TPS is presently continued under the preliminary injunctions issued in *Ramos, et al.* v. *Nielsen, et. al.,* No. 18–cv–01554 (N.D. Cal. Oct. 3, 2018) (''*Ramos*''), *on appeal* 975 F.3d 872 (9th Cir. 2020), *petition for en banc rehearing* filed Nov. 30, 2020 (No. 18–16981); *Saget, et. al.,* v. *Trump, et. al.,* No. 18–cv–1599 (E.D.N.Y. Apr. 11, 2019) (''*Saget*'') *appeal filed,* No. 19–1685 (2d Cir.); and *Bhattarai* v. *Nielsen,* No. 19–cv–00731 (N.D. Cal. Mar. 12, 2019) (''*Bhattarai*''). *See* 85 FR at 79209–10; 84 FR 59403, 59406 (Nov. 4, 2019); 84 FR 7103, 7105 (Mar. 1, 2019); 84 FR 45764, 45765–66 (Oct. 31, 2018). *See* also *infra* for discussion of these lawsuits.

[2] In general, individuals must be given an initial registration period of no less than 180 days to register for TPS, but the Secretary has discretion to provide for a longer registration period. *See* 8 U.S.C. 1254a(c)(1)(A)(iv). In keeping with the humanitarian purpose of TPS and advancing the goal of ensuring ''the Federal Government eliminates . . . barriers that prevent immigrants from accessing government services available to them'' under *Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,* 86 FR 8277 (Feb. 5, 2021), the Secretary has recently exercised his discretion to provide for TPS initial registration periods that coincide with the full period of a TPS country's initial designation or redesignation. *See, e.g.,* 86 FR 41863 (Aug. 3, 2021) (providing 18-mos. registration period under new TPS designation of Haiti); 86 FR 41986 (Aug. 4, 2021) (''Extension of Initial Registration Periods for New Temporary Protected Status Applicants Under the Designations for Venezuela, Syria and Burma). For the same reasons, the Secretary is similarly exercising his discretion to provide applicants under this TPS designation of Sudan with an 18-month initial registration period.

[3] The ''continuous physical presence date'' (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The ''continuous residence date'' (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA § 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (discussing CR and CPP date requirements).

[4] *See* Designation of Sudan Under Temporary Protected Status, 62 FR 59737 (Nov. 4, 1997).

in 2017 (for 12 months). On October 11, 2017, former Acting Secretary of Homeland Security Elaine Duke provided notice in the **Federal Register** that she was terminating Sudan's TPS designation, effective November 2, 2018.[5]

The termination of Sudan's TPS designation is being challenged in a lawsuit, *Ramos* v. *Wolf,* with the result that TPS for Sudan remains in effect pending further court order.[6] On Sept. 14, 2020, the U.S. Court of Appeals for the Ninth Circuit vacated the federal district court's preliminary injunction prohibiting DHS from terminating TPS for El Salvador, Haiti, Nicaragua and Sudan. However, because the Ninth Circuit has not issued its directive to the district court to make that ruling effective, the injunction remains in place. Under the injunction, DHS must continue TPS and TPS-related documentation for eligible beneficiaries under the previous designations, including Sudan's, while the litigation proceeds. In addition, the plaintiffs have sought *en banc* rehearing of the appellate panel's decision. Proceedings are stayed while the case is in mediation.

DHS has also published a series of **Federal Register** notices to maintain compliance with the existing injunction in *Ramos* and the related case of *Bhattarai* v. *DHS.*[7] The latest such notice continues TPS and TPS-related documentation for eligible beneficiaries of the six affected countries through December 31, 2022.[8]

There are approximately 700 beneficiaries currently receiving TPS benefits under Sudan's previous designation. These beneficiaries maintain their status and work authorization at least through December 31, 2022, so long as they remain otherwise eligible for TPS. If the *Ramos* preliminary injunction continues in effect beyond December 31, 2022, DHS will continue to issue notices that will continue the validity of TPS-related documentation for all affected beneficiaries. USCIS will take appropriate measures to ensure continued compliance with any relevant court injunctions or other orders affecting Sudan's TPS that may continue or exist as of that date.

**Why was Sudan designated for TPS?**

DHS and the Department of State (DOS) have reviewed conditions in Sudan. Based on this review and after consulting with DOS, the Secretary has determined that an eighteen-month designation is warranted because of the extraordinary and temporary conditions described below.

*Overview*

Sudan is enduring a humanitarian crisis in which millions of individuals are exposed to violence, illness, and internal displacement. Political instability, civil unrest, and scarcity of resources are key contributors to the situation. In October 2021, the military removed the civilian-led transitional government, and declared a national state of emergency. Civil unrest and violent clashes rooted in tribal and inter-communal tensions occur across the country. An economic downturn and severe flooding have resulted in shortages of food and clean water and outbreaks of disease.

*Political Situation*

In April 2019, after a 30-year rule, Sudan's former President Omar al-Bashir was removed from power following a popular uprising.[9] In August 2019, a civilian-led transitional government was established, made up of a Sovereign Council whose military, civilian, and armed group representatives served as a collective head of state, a civilian Prime Minister as head of government, and a Council of Ministers.[10] Throughout 2021, Sudan continued to face rising political tensions and growing protests between different elements of the transition.[11] On October 25, 2021, a military takeover led by Lieutenant General Abdel Fattah Al Burhan brought an end to the civilian-led transitional government.[12]

Since the October 2021 military takeover protests have continued throughout Sudan.[13] Hundreds have reportedly been arrested, including activists, passersby, and journalists; while some of these individuals have subsequently been released, new arrests continue.[14] Security forces have reportedly used excessive force and violence, including live ammunition and tear gas on protestors.[15] In addition to the arrests, by November 17, 2021, a reported 38 protesters had been killed with hundreds more injured by security forces.[16]

Following the military takeover, in November 2021, military leadership reinstated Prime Minister Abdalla Hamdok in an attempt to quell the protests. However, ''[p]rotests continued even after Mr. Hamdok had returned to office, with some demonstrators saying that his reinstatement was helping to legitimatise the military takeover.'' [17] With violence against civilian protesters continuing, Prime Minister Hamdok resigned on January 2, 2022.[18] The U.S.

[5] For general history of TPS designations, redesignations and extensions for Sudan, *see* 81 FRN 4045 (Jan. 25, 2016). *See also* Termination of the Designation of Sudan for Temporary Protected Status, 82 FR 47228 (Oct. 11, 2017).

[6] *See Ramos, et al.* v. *Nielsen, et al.,* 336 F.Supp.3d, 1075 (ND Cal. Oct. 3, 2018), *vacated on appeal, Ramos* v. *Wolf,* 975 F.3d 872(9th Cir. Sept. 14, 2020); *petition for en banc rehearing* filed Nov. 30, 2021(No. 18–16981).

[7] *See Bhattarai* v. *DHS,* 19–cv–731 (N.D. Cal.). This case challenges the terminations of TPS for Honduras and Nepal. The current stay in the case is contingent on what happens in the appeal of *Ramos,* which is currently stayed, as well.

[8] *See* 86 FR 50725 (Sept. 10, 2021).

[9] Sudan Complex Crisis-Overview, Assessment Capacities Project (ACAPS), Aug. 3, 2021, available at: *https://www.acaps.org/country/sudan/crisis/complex-crisis* (last visited Mar. 1, 2022).

[10] Sudan Complex Crisis-Overview, ACAPS, Aug. 3, 2021, available at: *https://www.acaps.org/country/sudan/crisis/complex-crisis* (last visited Mar. 1, 2022).

[11] The Forces for the Declaration of Freedom and Change, or FDFC, is the main coalition of opposition groups that has been stepping up calls for the military to hand leadership over to civilians in the government. It is comprised of various anti-al-Bashir political parties, professional movements and opposition groups. It has also called for restructuring the military and security agencies and ensure that al-Bashir loyalists are removed from these agencies, and to absorb the various opposition armed groups into Sudan's security agencies. *See* Samy Magdy and Lee Keath, EXPLAINER: How months of tensions led to Sudan's coup, AP News, Oct. 26, 2021, available at: *https://apnews.com/article/explaining-what-led-to-sudan-coup-8e3609d1f573b6dd0383ed7a09f0d4aa* (last visited Mar. 1, 2022).

[12] Miriam Berger and Sammy Westfall, Sudan's military has taken over, Here's what to know about who's charge, The Washington Post, last updated Oct. 26, 2021, available at: *https://www.washingtonpost.com/world/2021/10/25/sudan-coup-military-takeover-why-who/* (last visited Mar. 1, 2022).

[13] Sudanese forces shoot 14 in deadliest day since military coup, The Guardian, Nov. 17, 2021, available at: *https://www.theguardian.com/world/2021/nov/17/sudanese-forces-shoot-dead-at-least-14-protesters-against-coup* (last visited Mar. 1, 2022).

[14] Sudanese forces shoot 14 in deadliest day since military coup, The Guardian, Nov. 17, 2021, available at: *https://www.theguardian.com/world/2021/nov/17/sudanese-forces-shoot-dead-at-least-14-protesters-against-coup* (last visited Mar. 1, 2022).

[15] Michael Atit, Sudan Journalists Protest Media Crackdown Since Coup, Voice of America, Nov. 17, 2021, available at: *https://www.voanews.com/a/sudan-journalists-protest-media-crackdown-since-coup/6317029.html* (last visited Mar. 1, 2022). *See also* U.S. Department of Treasury, Press Releases: Treasury Sanctions Sudanese Central Reserve Police for Serious Human Rights Abuse, March 21, 2022, available at: *https://home.treasury.gov/news/press-releases/jy0668* (last visited Apr. 5, 2022).

[16] Sudanese forces shoot 14 in deadliest day since military coup, The Guardian, Nov. 17, 2021, available at: *https://www.theguardian.com/world/2021/nov/17/sudanese-forces-shoot-dead-at-least-14-protesters-against-coup* (last visited Mar. 1, 2022).

[17] Sudan coup: Prime Minister Abdalla Hamdok resigns after mass protests, BBC.com, Jan. 3, 2022, available at: *https://www.bbc.com/news/world-africa-59855246* (last visited Mar. 1, 2022).

[18] Yassir Abdullah, Nima Elbagir, and Hamdi Alkhshali, Sudanese Prime Minister's resignation triggered by military reneging on deal, sources say,

government sanctioned the Central Reserve Police, a militarized police unit, for serious human rights abuse under E.O. 13818 on March 21, 2022.

*Armed Conflict and Civil Unrest*

In 2020, the civilian-led transitional government signed a peace agreement—the Juba Peace Agreement [19]—with various opposition groups, including groups from Darfur and the ''Two Areas'' (South Kordofan and Blue Nile) regions of Sudan.[20] However, one Darfuri opposition group which did not sign this peace agreement; the Sudan Liberation Army/Movement, led by Abdul Wahid (SLA/AW), continues to be engaged in clashes with government forces, including with the Sudanese Armed Forces (SAF).[21]

In January 2021, United Nations Office of the Coordination of Humanitarian Affairs (UNOCHA) reported that instability, including intercommunal tensions, remained in several parts of the country.[22] In July 2021, the Secretary General for the United Nations (UN) asserted that the primary security concern in Sudan remains ''the increasing frequency of intercommunal violence.'' [23] Additionally, the withdrawal of the African Union-United Nations Hybrid Operation in Darfur (UNAMID) in June 2021 [24] has ''left a security and programmatic vacuum, which has yet to be filled by the transitional government or state-level authorities.'' [25]

i. Civil Unrest in Darfur

In July 2021, the UN reported that intercommunal violence has increased in frequency and scale over the past year, in particular in West, North and South Darfur.[26] Since 2019, West Darfur has seen an escalation of intercommunal violence between two key ethnic groups in their region — the ''Arab armed groups and [the] Masalit [Darfuri ethnic group].'' [27] An escalation of violence in April 2021 reportedly resulted in 144 people killed and 232 injured. Heavy weapons were reportedly used, and homes, a hospital, a UN compound, and a camp for internally displaced persons were destroyed or damaged. Also, ''a power plant—the only source of electricity in El Geneina—was damaged, resulting in a critical disruption to most of the town's communication facilities, in addition to electricity and water supplies in some areas.'' [28] A few months later, in July 2021, UNOCHA reported that ''around 500 armed men attacked [a town] leaving more than 60 people dead, . . . and another 60 injured.'' [29]

Central Darfur is also considered a hotspot for violent clashes due to the strong presence of the SLA/AW in this area, and throughout the Jebel Marra mountains.[30] Widespread insecurity and regular clashes between SLA/AW forces and the SAF has resulted in counter retaliation attacks and reported attacks on civilians for collaborating with either of the forces.[31] In September 2021, the UN reported on continued fighting between SLA/AW and government forces in Central Darfur,[32] including on May 18, when a clash reportedly resulted in the displacement of 1,284 people.[33]

In South Darfur, fighting in May 2020 over land grazing rights between an indigenous group, the Fellata/Fallata, and the Rizeigat reportedly resulted in the death of 30 civilians.[34] In January 2021, deadly clashes between these groups resumed, reportedly leaving 60 dead and 40 wounded.[35] In July 2021, intercommunal violence persisted between the Fallata and Ta'isha tribes, reportedly leaving 48 dead and displacing 185 people.[36]

Similar intercommunal tensions in East Darfur are rooted in a long history of tensions, ''conflict between the Rizeigat (pastoralists) and Ma'aliya (sedentary farmers) and Rizeigat (pastoralists) against Misseriya (pastoralists).'' [37] These legacy disputes

CNN, Jan. 4, 2022, available at: *https://www.cnn.com/2022/01/03/africa/sudan-pm-resignation-details-intl/index.html* (last visited Mar. 1, 2022).

[19] 2020 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, Mar. 30, 2021, pg. 2, available at: *https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sudan/* (last visited Mar. 1, 2022).

[20] 2020 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, Mar. 30, 2021, pg. 1, available at: *https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sudan/* (last visited Mar. 1, 2022).

[21] Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Nertiti locality, Central Darfur, UN Refugee Agency (UNHCR), Aug. 2021, pg. 14, available at: *https://data2.unhcr.org/en/documents/download/88361* (last visited Mar. 1, 2022).

[22] Sudan: Humanitarian Response Plan 2021, UNOCHA, Jan. 2021, pg. 12, available at: *https://www.ecoi.net/en/file/local/2045900/SDN_2021HRP.pdf* (last visited Mar. 1, 2022).

[23] Review of the situation in Darfur—Report of the Secretary General, UN Security Council, Jul. 31, 2021, pg. 4, available at: *https://undocs.org/pdf?symbol=en/S/2021/696* (last visited Mar. 1, 2022).

[24] Withdrawal of Hybrid Peacekeeping Operation in Darfur Completed by 30 June Deadline, Under-Secretary-General Tells Security Council, Outlining Plans to Liquidate Assets, UN News, Jul. 27, 2021, available at: *https://www.un.org/press/en/2021/sc14587.doc.htm* (last visited Mar. 1, 2022).

[25] Review of the situation in Darfur and benchmarks to assess the measures on Darfur; Report of the Secretary-General [S/2021/696], UN Security Council, Jul. 2021, pg. 4, available at: *https://www.ecoi.net/en/file/local/2058498/S_2021_696_E.pdf* (last visited Mar. 1, 2022).

[26] Review of the situation in Darfur and benchmarks to assess the measures on Darfur; Report of the Secretary-General [S/2021/696], UN Security Council, Jul. 2021, pg. 4 (footnote 9 and 10), available at: *https://www.ecoi.net/en/file/local/2058498/S_2021_696_E.pdf* (last visited Mar. 1, 2022).

[27] Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Jebel Moon Locality, West Darfur, UNHCR, Aug. 2021, pg. 15, available at: *https://data2.unhcr.org/en/documents/download/88361* (last visited Mar. 1, 2022).

[28] Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan; Report of the Secretary-General [S/2021/470], UN Security Council, May 17, 2021, pg. 5–6, available at: *https://www.ecoi.net/en/file/local/2052225/S_2021_470_E.pdf* (last visited Mar. 1, 2022).

[29] Sudan: Escalation of Violence in Darfur—Flash Update No. 2, UNOCHA, Jul. 27, 2020, pg. 1, available at: *https://www.ecoi.net/en/file/local/2035090/Situation+Report+-+Sudan+-+23+Jul+2020+%284%29.pdf* (last visited Mar. 1, 2022).

[30] Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Nertiti locality, Central Darfur, UNHCR, Aug. 2021, pg. 14, available at: *https://data2.unhcr.org/en/documents/download/88361* (last visited Mar. 1, 2022).

[31] Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Nertiti locality, Central Darfur, UNHCR, Aug. 2021, pg. 14, available at: *https://data2.unhcr.org/en/documents/download/88361* (last visited Mar. 1, 2022).

[32] Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, UN Security Council, Sept. 1, 2021, pg. 4, available at: *https://www.ecoi.net/en/file/local/2059931/S_2021_766_E.pdf* (last visited Mar. 1, 2022).

[33] Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, UN Security Council, Sept. 1, 2021, pg. 4, available at: *https://www.ecoi.net/en/file/local/2059931/S_2021_766_E.pdf* (last visited Mar. 1, 2022).

[34] 30 people killed in intercommunal violence in South Darfur, Reliefweb, May 6, 2020, available at: *https://reliefweb.int/report/sudan/30-people-killed-intercommunal-violence-south-darfur* (last visited Mar. 1, 2022).

[35] Samy Magdy, Tribal clashes leave dozens dead in 2 Sudanese provinces, Associated Press, Jan. 18, 2021, reported by abcNEWS, available at: *https://abcnews.go.com/International/wireStory/sudanese-bury-victims-darfur-violence-death-toll-129-75322312* (last visited Mar. 1, 2022).

[36] Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, UN Security Council, Sept. 1, 2021, pg. 4, available at: *https://www.ecoi.net/en/file/local/2059931/S_2021_766_E.pdf* (last visited Mar. 1, 2022).

[37] Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Assalaya, Yassin and

Continued

are ''driven by control of land, tribal leadership and wider political power plus access to pasture and water.'' [38]

ii. Civil Unrest in Other Regions

The security situation in the Two Areas remains tense.[39] In 2017, the main opposition group in this region—the Sudan People's Liberation Movement/Army-North (SPLM/A–N)—splintered into two factions, resulting in several months of violence between the two groups.[40] Both groups were reportedly also involved in area fighting between Arab nomads and Nuban farmers in which a dozen or more people were killed.[41] Similar ''deadly clashes'' [42] in the region included security forces who joined and aligned with civilian fighting along ethnic lines.[43]

In January 2019, Sudan's Eastern State (the ''Red Sea State''), also saw renewed inter-communal violence between the main Arab and non-Arab ethnic groups in the region.[44] In September 2021, the UN assessed that the ''security situation in the eastern Red Sea State remained volatile.'' [45]

In the Abyei region disputed between Sudan and South Sudan, the U.N. reported that the security situation remained tense with renewed intercommunal violence between the two main ethnic groups in the region—the Misseriya and Ngok Dinka communities.[46] In April 2021, the U.N. reported that the ''general security situation in the Abyei Area has been relatively calm, yet tense and unpredictable.'' [47] The ''most prevalent threats to security were shooting incidents, the increased presence of unidentified armed groups, armed attacks on civilians and violent confrontations between the communities.'' [48] As of March 2022, more than 50,000 people have been displaced due to hostilities in Abyei.[49]

*Humanitarian Crisis*

Sudan also continues ''to suffer from one of the world's largest protracted humanitarian crises'' due to conflict and displacement, deteriorating economic conditions, limited access to basic services, and several disease outbreaks, including the COVID–19 pandemic.[50] Since 2018, Sudan has also faced severe economic challenges.[51] National poverty levels have risen drastically,[52] and incomes, wages, and purchasing power have fallen, ''driving 9.6 million people—almost a quarter of the entire population of Sudan—to severe food insecurity.'' [53] This economic crisis has reportedly ''degraded the already weak, underdeveloped and heavily underfunded primary healthcare system,'' including by the end of 2020, reducing the number of healthcare facilities by 40 percent across the country.[54] The COVID–19 pandemic has further ''compounded the already dire public health situation.'' [55]

During the rainy season in 2020, flooding affected ''close to 900,000 people across the country and farmland, livestock, shelter and other infrastructure.'' [56] Other areas suffered droughts. [57] Many of the flood areas have very limited access to clean water.[58] Water supply sources have been affected by overflow of the Blue Nile River destroying nearby latrines, resulting in increased risk of water contamination and the outbreak of waterborne diseases.[59] The health situation in Sudan has continued to deteriorate due to flooding causing ''stagnant and contaminated water.'' [60]

Sudan's worsening economy and protracted health emergencies have resulted in an increase in the number of

Sheiria localities, East Darfur, UNHCR, Aug. 2021 pg. 15, available at: *https://data2.unhcr.org/en/documents/download/88361* (last visited Mar. 1, 2022).

[38] Durable Solutions & Baseline Analysis for the UN Peacebuilding Fund and the Durable Solutions Working Group in Sudan; Key obstacles to durable solutions and peacebuilding for the displacement-affected communities in Assalaya, Yassin and Sheiria localities, East Darfur, UNHCR, Aug. 2021 pg. 15, available at: *https://data2.unhcr.org/en/documents/download/88361* (last visited Mar. 1, 2022).

[39] Sudan: Country Report; The situation in South Kordofan and Blue Nile—An Update (3rd edition with addendum), Asylum Research Centre, Mar. 2021, pg. 20, available at: *https://www.ecoi.net/en/file/local/2045013/Final_01.03.2021.pdf* (last visited Mar. 1, 2022).

[40] A Question of Leadership: Addressing a Dangerous Crisis in Sudan SPLM–N, Enough, Jul. 2017, pg. 2, available at: *https://enoughproject.org/reports/a-question-of-leadership* (last visited Mar. 1, 2022).

[41] 2020 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, Mar. 30, 2021, pg. 9, available at: *https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/sudan/* (last visited Mar. 1, 2022).

[42] Sudan: Country Report; The situation in South Kordofan and Blue Nile—An Update (3rd edition with addendum), Asylum Research Centre, Mar. 2021, pg. 22, available at: *https://www.ecoi.net/en/file/local/2045013/Final_01.03.2021.pdf* (last visited Mar. 1, 2022).

[43] Situation of human rights in the Sudan Report of the Independent Expert on the situation of human rights in the Sudan, UN Human Rights Council, Jul. 30, 2020, pg. 13, available at: *https://reliefweb.int/report/sudan/report-independent-expert-situation-human-rights-sudan-ahrc4553-enar* (last visited Mar. 1, 2022); Sudan: Country Report; The situation in South Kordofan and Blue Nile—An Update (3rd edition with addendum), Asylum Research Centre, Mar. 2021, pg. 22–23, available at: *https://www.ecoi.net/en/file/local/2045013/Final_01.03.2021.pdf* (last visited Mar. 1, 2022).

[44] 2019 Country Reports on Human Rights Practices: Sudan, U.S. Department of State, Mar. 30, 2020, pg. 9, available at: *https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/sudan/* (last visited Mar. 1, 2022).

[45] Situation in the Sudan and the activities of the United Nations Integrated Transition Assistance Mission in the Sudan, UN Security Council, Sept. 1, 2021, pg. 5, available at: *https://www.ecoi.net/en/file/local/2059931/S_2021_766_E.pdf* (last visited Mar. 1, 2022).

[46] The situation in Abyei; Report of the Secretary-General [S/2020/1019], UN Security Council, Oct. 15, 2020, available at: *https://www.ecoi.net/en/file/local/2039488/S_2020_1019_E.pdf* (last visited Mar. 1, 2022).

[47] The situation in Abyei; Report of the Secretary-General [S/2021/383], UN Security Council, Apr. 20, 2021, pg. 2, available at: *https://reliefweb.int/report/sudan/situation-abyei-report-secretary-general-s2021383-enar* (last visited Mar. 1, 2022).

[48] The situation in Abyei; Report of the Secretary-General [S/2021/383], UN Security Council, Apr. 20, 2021, pg. 2, available at: *https://reliefweb.int/report/sudan/situation-abyei-report-secretary-general-s2021383-enar* (last visited Mar. 1, 2022).

[49] Abyei Clashes Flash Update No. 2—As of 09 March 2022, OCHA, Mar. 9, 2022, available at: *https://reliefweb.int/report/south-sudan/abyei-clashes-flash-update-no-2-09-march-2022* (last visited Apr. 4, 2022).

[50] Sudan Humanitarian impact of multiple protracted crises, ACAPS, Nov. 24, 2021, pg. 2, available at: *https://www.acaps.org/sites/acaps/files/products/files/20201124_acaps_briefing_note_sudan_impact_of_multiple_crises.pdf* (last visited Mar. 1, 2022).

[51] Sudan Economic Crisis, ACAPS, Feb. 2019, pg. 1, available at: *https://www.acaps.org/sites/acaps/files/products/files/20190213_acaps_briefing_note_sudan_economic_crisis.pdf* (last visited Mar. 1, 2022).

[52] Child Protection Annual Report 2020, UN Children's Fund (UNICEF), Mar. 2021, pg. 6, available at: *https://www.unicef.org/sudan/media/6091/file/Child%20Protection%20.pdf* (last visited Mar. 1, 2022).

[53] Child Protection Annual Report 2020, UNICEF, Mar. 2021, pg. 6, available at: *https://www.unicef.org/sudan/media/6091/file/Child%20Protection%20.pdf* (last visited Mar. 1, 2022).

[54] Child Protection Annual Report 2020, UNICEF, Mar. 2021, pg. 6, available at: *https://www.unicef.org/sudan/media/6091/file/Child%20Protection%20.pdf* (last visited Mar. 1, 2022).

[55] Child Protection Annual Report 2020, UNICEF, Mar. 2021, pg. 6, available at: *https://www.unicef.org/sudan/media/6091/file/Child%20Protection%20.pdf* (last visited Mar. 1, 2022).

[56] Sudan: Humanitarian Response Plan 2021, UNOCHA, Feb. 21, 2021, pg. 12, available at: *https://reliefweb.int/report/sudan/sudan-humanitarian-response-plan-2021-january-2021-enar* (last visited Mar. 1, 2022).

[57] The situation in Abyei; Report of the Secretary-General [S/2021/383], UN Security Council, Apr. 20, 2021, pg. 5, available at: *https://www.ecoi.net/en/document/2050368.html* (last visited Mar. 1, 2022).

[58] Sudan: Floods—Operation Update—Emergency Appeal, International Federation of Red Cross and Red Crescent Societies, Mar. 25, 2021, available at: *https://reliefweb.int/report/sudan/sudan-floods-operation-update-emergency-appeal-n-mdrsd028-24-march-2021* (last visited Mar. 1, 2022).

[59] Sudan: Floods—Operation Update—Emergency Appeal, International Federation of Red Cross and Red Crescent Societies, Mar. 25, 2021, available at: *https://reliefweb.int/report/sudan/sudan-floods-operation-update-emergency-appeal-n-mdrsd028-24-march-2021* (last visited Mar. 1, 2022).

[60] Sudan: Floods—Operation Update—Emergency Appeal, International Federation of Red Cross and Red Crescent Societies, Mar. 25, 2021, available at: *https://reliefweb.int/report/sudan/sudan-floods-operation-update-emergency-appeal-n-mdrsd028-24-march-2021* (last visited Mar. 1, 2022).

people without access to basic health services.[61] Sudan has experienced disease outbreaks including cholera, malaria, dengue, chikungunya, viral hemorrhagic fevers and polio.[62] In 2020 alone, thirteen out of Sudan's eighteen states experienced one or more outbreaks of chikungunya, dengue fever, rift valley fever or diphtheria.[63] The COVID–19 pandemic has ''further strained the capacity of the health care system due to nationwide lockdowns, re-allocation of health resources, and disruption of global supply chains that impacted availability of medicines and medical supplies.'' [64]

According to UNOCHA, in Sudan, ''[w]omen and girls suffer the most due to insecurity, violations of basic human rights, low economic status, lack of livelihood opportunities, and lack of community awareness on women's rights.'' [65] The United Nations Children's Fund (UNICEF) has also noted that ''[c]hildren throughout Sudan are already bearing the brunt of decades of conflict, chronic underdevelopment and poor governance,[66] with 64 percent of children below 14 years of age experiencing various forms of violence.'' [67]

According to UNOCHA, ''Sudan has seen an increase in the number of people in need of humanitarian assistance from 5.8 million people in 2016 to 13.4 million in 2021.'' [68] It is estimated that among the 13.4 million people in need,[69] 9.8 million are severely food insecure.[70] Yet, access to humanitarian assistance is uncertain. In 2021, the Assessments Capacities Project (ACAPS) reported that armed opposition groups in some areas created ''barriers to the delivery of humanitarian aid.'' [71] Intercommunal clashes in other areas have also affected humanitarian operations.[72] The UNAMID drawdown and closure has also resulted in increased looting and impacted ''people's ability to move and reach needed aid.'' [73] In July 2021, the UN reported that ''since January 2021, 11 of the 14 UNAMID team sites, which have been handed over to civilian authorities, have been looted.'' [74]

**What authority does the Secretary have to designate Sudan for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary,[75] after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[76] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, or termination of or extension of a designation. *See* INA section 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A).[77] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state meets the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, twelve or eighteen months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

**Notice of the Designation of Sudan for TPS**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Sudan's designation for TPS on the basis of extraordinary and temporary conditions in Sudan that prevent the safe return of its nationals are met. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). I estimate approximately 3,090 individuals may be eligible for TPS under the designation of Sudan. On the

[61] Sudan Situation Report, 31 May 2021, UNOCHA, May 31, 2021, pg. 46, available at: *https://www.ecoi.net/en/file/local/2055652/Situation+Report+-+Sudan+-+12+May+2021.pdf* (last visited Mar. 1, 2022).

[62] Sudan: Humanitarian Response Plan, UNOCHA, Feb. 21, 2021, available at: *https://reliefweb.int/report/sudan/sudan-humanitarian-response-plan-2021-january-2021-enar* (last visited Mar. 1, 2022).

[63] Sudan Health Annual Report 2020, UNICEF, pg. 5, available at: *https://www.unicef.org/sudan/media/6141/file/Health.pdf* (last visited Mar. 1, 2022).

[64] Sudan: Humanitarian Response Plan, UNOCHA, Feb. 21, 2021, pg. 46, available at: *https://reliefweb.int/report/sudan/sudan-humanitarian-response-plan-2021-january-2021-enar* (last visited Mar. 1, 2022).

[65] Sudan: Humanitarian Response Plan, UNOCHA, Feb. 21, 2021, pg. 60, available at: *https://reliefweb.int/report/sudan/sudan-humanitarian-response-plan-2021-january-2021-enar* (last visited Mar. 1, 2022).

[66] Children killed, injured, detained and abused amid escalating violence and unrest in Sudan, UNICEF, Jun. 11, 2019, available at: *https://www.unicef.org/press-releases/children-killed-injured-detained-and-abused-amid-escalating-violence-and-unrest* (last visited Mar. 1, 2022).

[67] Child Protection Annual Report 2020, UNICEF, Mar. 2021, pg. 7, available at: *https://www.unicefusa.org/about/publications/annual-report-2020?gclid=EAIaIQobChMI9p2M0uD39AIVMv7jBx3c2gHbEAAYASAAEgKHN_D_BwE* (last visited Mar. 1, 2022).

[68] Sudan: Humanitarian Response Plan, UNOCHA, Feb. 21, 2021, pg. 10, available at: *https://reliefweb.int/report/sudan/sudan-humanitarian-response-plan-2021-january-2021-enar* (last visited Mar. 1, 2022).

[69] Sudan Key Figures, UNOCHA, available at: *https://m.reliefweb.int/country/220/sdn* (last visited on Nov. 23, 2021).

[70] Sudan Situation Report, UNOCHA, Sep. 27, 2021, available at: *https://reliefweb.int/report/sudan/sudan-situation-report-29-sep-2021* (last visited Mar. 1, 2022).

[71] Humanitarian Access Overview, ACAPS, Jul. 2021, pg. 12, available at: *https://www.acaps.org/sites/acaps/files/products/files/20210719_acaps_humanitarian_access_overview_july_2021.pdf* (last visited Mar. 1, 2022).

[72] Humanitarian Access Overview, ACAPS, Jul. 2021, pg. 12, available at: *https://www.acaps.org/sites/acaps/files/products/files/20210719_acaps_humanitarian_access_overview_july_2021.pdf* (last visited Mar. 1, 2022).

[73] Humanitarian Access Overview, ACAPS, Jul. 2021, pg. 12, available at: *https://www.acaps.org/sites/acaps/files/products/files/20210719_acaps_humanitarian_access_overview_july_2021.pdf* (last visited Mar. 1, 2022).

[74] Review of the situation in Darfur and benchmarks to assess the measures on Darfur; Report of the Secretary-General [S/2021/696], UN Security Council, Jul. 2021, pg. 4, available at: *https://www.ecoi.net/en/file/local/2058498/S_2021_696_E.pdf* (last visited Mar. 1, 2022).

[75] INA § 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135.

[76] INA § 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. *Id.,* at § 244(b)(1).

[77] This availability of judicial review is under consideration by the courts in the TPS litigation referenced supra.

basis of this determination, I am designating Sudan for TPS for eighteen months, from April 19, 2022 through October 19, 2023. *See* INA section 244(b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(C), and (b)(2).

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

## Eligibility and Employment Authorization for TPS

### Required Application Forms and Application Fees To Register for TPS

*ALL APPLICANTS, including individuals whose TPS under the previous designation of Sudan has been continued under a preliminary injunction issued by the Ramos court and 86 FR 50725 (Sept. 10, 2021), should follow these instructions:* You must submit a Form I–821, Application for Temporary Protected Status as a *new applicant* by selecting ''1.a This is my initial (first time) application for Temporary Protected Status (TPS). I do not currently have TPS,'' along with the required $50 fee for Form I–821 or request for fee waiver. If your TPS is currently continuing under the court orders in *Ramos,* checking this 1.a. box as an initial applicant under this new designation of Sudan does not affect the continuation of your TPS while those orders remain. However, if those orders are no longer in effect, applying for TPS under this **Federal Register** Notice will help ensure that you have TPS until the end of this eighteen-month designation on October 19, 2023, as long as you remain eligible. USCIS understands that you *do* currently have TPS if you are covered by the court orders and checking Box 1.a. will not be deemed a misrepresentation on your part.

You may request a fee waiver by submitting a Form I–912, Request for a Fee Waiver. You must also pay the biometric services fee if you are age 14 or older, unless USCIS grants a fee waiver. Please see additional information under the ''Biometric Services Fee'' section of this Notice. You are not required to submit Form I–765 or have an EAD but see below for more information if you want to work in the United States.

### How TPS Beneficiaries Can Obtain an Employment Authorization Document (EAD)

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are authorized to work incident to their TPS and they may apply for and obtain an EAD, which proves their legal right to work. TPS applicants who want to obtain an EAD valid through October 19, 2023, must file a Form I–765, Application for Employment Authorization and pay the Form I–765 fee (or request a fee waiver). TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps*. Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

### Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request

If you receive a denial of a fee waiver request, you must refile your Form I–821 for TPS along with the required fees during the registration period, which extends until October 19, 2023, in order to continue seeking initial TPS or to newly register to avoid losing protection in the event that the court injunctions are lifted. You may also file Form I–765 with payment of the fee along with your TPS application or at any later date you decide you want to request an EAD during the registration period.

### Filing Information

USCIS offers the option to applicants for TPS under Sudan's designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765 with their Form I–821.

*Online filing:* Forms I–821 and I–765 are available for filing online.[78] To file these forms online, you must first create a USCIS online account.[79]

*Mail filing:* Mail your application for TPS to the proper address in Table 1.

### Table 1—Mailing Addresses

Mail your completed Form I–821, Application for Temporary Protected Status, and Form I–765, Application for Employment Authorization, Form I–912, Request for Fee Waiver (if applicable), and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

| If you . . . | Mail to . . . |
|---|---|
| Are a beneficiary under the TPS designation for Sudan ..... | U.S. Postal Service (USPS), USCIS, Attn: TPS Sudan, P.O. Box 6943. Chicago, IL 60680–6943.<br>FedEx, UPS, or DHL: USCIS, Attn: TPS Sudan (Box 6943), 131 S Dearborn St. 3rd Floor, Chicago, IL 60603–5517. |

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please mail your Form I–765 application to the appropriate mailing address in Table 1. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

### Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (that is, registering) for TPS on the USCIS website at *uscis.gov/tps* under ''Sudan.''

### Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside the United States. If granted, travel authorization gives you permission to leave the United States

[78] Find information about online filing at Forms Available to File Online, *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[79] *https://myaccount.uscis.gov/users/sign_up.*

and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *www.uscis.gov/i-131*. You may file Form I–131 together with your Form I–821 or separately. When filing the Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for the Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

| If you . . . | Mail to . . . |
|---|---|
| Are filing Form I–131 together with a Form I–821, Application for Temporary Protected Status. | The address provided in Table 1. |
| Are filing Form I–131 based on a pending or approved Form I–821, you must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821. | USCIS Dallas Lockbox<br>U.S. Postal Service (USPS): U.S. Citizenship and Immigration Services, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.<br>FedEx, UPS, or DHL: U.S. Citizenship and Immigration Services, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067. |

**Biometric Services Fee for TPS**

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you demonstrate an inability to pay the biometric services fee, you may be able to have the fee waived. A fee waiver may be requested by submitting a Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps*. If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *dhs.gov/privacy*.

**General Employment-Related Information for TPS Applicants and Their Employers**

**How can I obtain information on the status of my TPS application and EAD request?**

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *uscis.gov,* or visit the USCIS Contact Center at *uscis.gov/contactcenter*. If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

**When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?**

You can find the Lists of Acceptable Documents on the last page of Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *uscis.gov/i-9-central/acceptable-documents*. Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. The TPS EADs that DHS automatically extended in the September 10, 2021, compliance notice will remain valid until at least December 31, 2022.[80] Employers may not reject a document based on the fact that it has been automatically extended, or due to a future expiration date. Individuals whose existing TPS-related documentation continues through December 31, 2022, in accordance with the court orders in *Ramos* and *Saget* and the DHS **Federal Register** notice at 86 FR 50725 (September 10, 2021), may present documentation as described in that notice to their employers for purposes of demonstrating employment eligibility through December 31, 2022. You can find additional information about Form I–9 on the I–9 Central web page at *uscis.gov/I–9Central*. An EAD is an acceptable document under List A.

[80] *See* Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal, 86 FR 50725 (Sep. 10, 2021).

**If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?**

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through October 19, 2023, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

**Can my employer require that I provide any other documentation such as evidence of my status or proof of my Sudanese citizenship or a Form I–797C showing that I registered for TPS for Form I–9 completion?**

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request proof of Sudanese citizenship or proof of registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. Refer to the ''Note to Employees'' section of this **Federal Register** notice

for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin. Employers can refer to the compliance notice that DHS published on September 10, 2021, for information on how to complete the Form I–9 with TPS EADs that DHS extended through December 31, 2022.[81]

**Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov*. USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov*.

**Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov*. USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *justice.gov/ier* and the USCIS and E-Verify websites at *uscis.gov/i-9-central* and *e-verify.gov*.

**Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)**

This **Federal Register** Notice does not invalidate the compliance notice DHS issued on September 10, 2021, which extended the validity of certain TPS documentation through December 31, 2022 and does not require individuals to present an I–797, Notice of Action. For Federal purposes, individuals approved for TPS may show their Form I–797, Notice of Action, indicating approval of their Form I–821 application, or their A12 EAD (including those that have been extended) to prove that they have TPS. USCIS can also confirm whether an individual has TPS if they show a C19 EAD, which indicates prima facie eligibility for TPS. While Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents they require you to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are covered under TPS or show you are authorized to work based on TPS. Examples of such documents are:

- Your new EAD with a category code of A12 or C19 for TPS, regardless of your country of birth;
- A copy of your Form I–94, Arrival/Departure Record; or
- Form I–797, the notice of approval, for a current Form I–821, if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept.

Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits. SAVE can verify when an individual has TPS based on the documents above. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *uscis.gov/save/save-casecheck,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and SAVE verification case number or an immigration identifier number that you provided to the benefit-granting agency. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the response is correct, please see the SAVE Records: Fast Facts For Benefit Applicants sheet under SAVE Resources at *https://www.uscis.gov/save/save-resources* for information about how to correct or update your immigration record.

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**BILLING CODE 9111–97–P**

[81] *See* Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal, 86 FR 50725 (Sep. 10, 2021).

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

**[CIS No. 2718–22; DHS Docket No. USCIS–2022–0003; 1615–ZB91]**

### Designation of Ukraine for Temporary Protected Status

**AGENCY:** U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

**ACTION:** Notice of Temporary Protected Status (TPS) designation.

**SUMMARY:** Through this Notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) has designated Ukraine for Temporary Protected Status (TPS) for 18 months, effective April 19, 2022, or later date if Secretary so determines], through October 19, 2023. This designation allows eligible Ukrainian nationals (and individuals having no nationality who last habitually resided in Ukraine) who have continuously resided in the United States since April 11, 2022, and who have been continuously physically present in the United States since April 19, 2022 to apply for TPS.

**DATES:**

*Designation of Ukraine for TPS:* The 18-month designation of Ukraine for TPS is effective on April 19, 2022 and will remain in effect for 18 months, through October 19, 2023.

*Registration:* The registration period for eligible individuals to submit TPS applications begins April 19, 2022 and will remain in effect through October 19, 2023.

**FOR FURTHER INFORMATION CONTACT:** René Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

**ADDRESSES:** For further information on TPS, including guidance on the registration process and additional information on eligibility, please visit the USCIS TPS web page at *uscis.gov/tps.* You can find specific information about Ukraine's TPS designation by selecting ''Ukraine'' from the menu on the left side of the TPS web page.

If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov,* or visit the USCIS Contact Center at *uscis.gov/contactcenter.*

Further information will also be available at local USCIS offices upon publication of this Notice.

**SUPPLEMENTARY INFORMATION:**

#### Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

#### Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for eligible nationals of Ukraine (or individuals having no nationality who last habitually resided in Ukraine) to submit an initial registration application under the designation of Ukraine for TPS and apply for an Employment Authorization Document (EAD). Under this designation, individuals must submit an initial Ukraine TPS application (Form I–821) and may also submit an application for Employment Authorization (Form I–765), during the 18-month initial registration period that runs from April 19, 2022, through October 19, 2023.[1] In addition to demonstrating continuous residence in the United States since April 11, 2022,[2] and meeting other eligibility criteria, initial applicants for TPS under this designation must demonstrate that they have been continuously physically present in the United States since April 19, 2022, the effective date of this designation of Ukraine, before USCIS may grant them TPS. DHS estimates that approximately 59,600 individuals may be eligible for TPS under the designation of Ukraine.

#### What is Temporary Protected Status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the Immigration and Nationality Act (INA), or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to obtain EADs so long as they continue to meet the requirements of TPS.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation,

[1] In general, individuals must be given an initial registration period of no less than 180 days to register for TPS, but the Secretary has discretion to provide for a longer registration period. *See* 8 U.S.C. 1254a(c)(1)(A)(iv). In keeping with the humanitarian purpose of TPS and advancing the goal of ensuring ''the Federal Government eliminates . . . barriers that prevent immigrants from accessing government services available to them'' under *Executive Order 14012, Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,* 86 FR 8277 (Feb. 5, 2021), the Secretary has recently exercised his discretion to provide for TPS initial registration periods that coincide with the full period of a TPS country's initial designation or redesignation. *See, e.g.,* 86 FR 41863 (Aug. 3, 2021) (providing 18-mos. registration period under new TPS designation of Haiti); 86 FR 41986 (Aug. 4, 2021) (''Extension of Initial Registration Periods for New Temporary Protected Status Applicants Under the Designations for Venezuela, Syria and Burma). For the same reasons, the Secretary is similarly exercising his discretion to provide applicants under this TPS designation of Ukraine with an 18-month initial registration period.

[2] The ''continuous physical presence date'' (CPP) is the effective date of the most recent TPS designation of the country, which is either the publication date of the designation announcement in the **Federal Register** or such later date as the Secretary may establish. The ''continuous residence date'' (CR) is any date established by the Secretary when a country is designated (or sometimes redesignated) for TPS. *See* INA § 244(b)(2)(A) (effective date of designation); 244(c)(1)(A)(i–ii) (discussing CR and CPP date requirements).

beneficiaries return to one of the following:

○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or

○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

**Why was Ukraine designated for TPS?**

DHS has reviewed country conditions in Ukraine. Based on this review, and in consultation with the Department of State (DOS), the Secretary has determined that an 18-month designation is warranted due to ongoing armed conflict and extraordinary and temporary conditions described below.

*Overview*

On February 24, 2022, Russia massively expanded its unprovoked military invasion of Ukraine, marking the largest conventional military action in Europe since World War II.[3] There is widespread fear and flight of Ukrainian nationals as Russia's forces have continued to engage in significant, sustained bombardment of major cities across the country, including attacks on Ukraine's capital, Kyiv.[4] This ongoing armed conflict poses a serious threat to the safety of nationals returning to Ukraine. Extraordinary and temporary conditions, including destroyed infrastructure, scarce resources, and lack of access to healthcare, prevent Ukrainian nationals from returning to their homeland in safety.

*Ongoing Armed Conflict and Human Rights Abuses*

Russia's expanded military invasion of Ukraine has placed civilians at significant risk of physical harm throughout the country.[5] As of late March 2022, Russia's forces have engaged in sustained shelling campaigns of cities and towns across Ukraine that have harmed, killed, and injured civilians and struck hospitals, schools, and apartment buildings, resulting in at least 3,039 reported civilian casualties according to the United Nations, with more casualties expected.[6]

Artillery attacks and air strikes by Russia's military forces have become regular occurrences in Kyiv and other cities across Ukraine since the start of the February 2022 invasion.[7] Aerial bombardments in and around major cities have been reported as Russia's forces continue to target critical infrastructure.[8] Russia's ground forces have been advancing on four primary axes: From Belarus in the North; from Russia in the Northeast; from the Russia-controlled Donbas region in the East; and Russia-occupied Crimea in the South.

The scale of attacks harming infrastructure in the city of Kharkiv, where a historic opera house, concert hall, and government building in the city's center were destroyed, has dramatically increased, resulting in numerous civilian casualties.[9] In the city of Mariupol, Russia's forces have shelled the city, killing civilians with strikes on homes, schools, hospitals and shelters, while preventing pathways for humanitarian aid and civilian evacuation.[10] Residents of the city ''have described a freezing hellscape riddled with dead bodies and destroyed buildings'' where thousands ''are cut off from the world in the besieged city.'' [11] The Prosecutor of the International Criminal Court in The Hague has stated that ''there is a reasonable basis to believe that both alleged war crimes and crimes against humanity have been committed in Ukraine'' during the past eight years, so his Office is proceeding with active investigations, and that its investigations will ''encompass any new alleged crimes falling within the jurisdiction of [the] Office'' that are committed in Ukraine.[12] Based on information currently available, the U.S. government has assessed that members of Russia's forces have committed war crimes in Ukraine.[13]

Ongoing human rights abuses in the Donbas region and in Russia-occupied Crimea demonstrate the risk to Ukraine's territories under control by Russia's forces and Russia's proxies. In 2014, armed groups began seizing government buildings and territory across the eastern Donbas region bordering Russia.[14] The Office of the U.N. High Commissioner for Human Rights indicated that torture, sexual violence, beatings, asphyxiation, electrocution, deprivation, isolation, and threats were used to extract confessions or information, and force cooperation during the 2014 hostilities.[15] Under a local occupation

[3] ''Russia invades Ukraine on multiple fronts in 'brutal act of war','' *PBS,* Feb. 24, 2022, available at: *https://www.pbs.org/newshour/world/russia-invades-ukraine-on-multiple-fronts-in-brutal-act-of-war* (last visited Mar. 1, 2022); Natalia Zinets and Aleksandar Vasovic, ''Missiles rain down around Ukraine,'' *Reuters,* Feb. 24, 2022, available at: *https://www.reuters.com/world/europe/putin-orders-military-operations-ukraine-demands-kyiv-forces-surrender-2022-02-24/* (last visited Mar. 1, 2022).

[4] Ukraine: Humanitarian Impact Situation Report No. 1, United Nations Office for the Coordination of Humanitarian Affairs, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Mar. 1, 2022).

[5] *Press briefing notes on Ukraine,* United Nations Office of the High Commissioner Human Rights, Mar. 1, 2022, available at: *https://www.reuters.com/world/europe/putins-nuclear-move-could-make-situation-much-much-more-dangerous-us-official-2022-02-27/* (last visited Mar. 1, 2022).

[6] ''Ukraine: UN chief calls for safe passage from conflict zones, rights body records 1,123 civilian casualties, WHO outlines health concerns,'' UN News, Mar. 6, 2022, available at: *https://news.un.org/en/story/2022/03/1113372* (last visited Mar. 8, 2022); *War Crimes by Russia's Forces in Ukraine, Press Statement,* U.S. Secretary of State Antony J. Blinken, Mar. 23, 2022, available at: *https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/* (last visited Mar. 25, 2022); UN Office of the High Commissioner for Human Rights, ''Ukraine: civilian casualty update 29 March 2022'', Mar. 29, 2022, available at: *https://www.ohchr.org/en/news/2022/03/ukraine-civilian-casualty-update-29-march-2022* (last visited Mar. 31, 2022).

[7] ''Fear, darkness and newborn babies: Inside Ukraine's underground shelters,'' *The Guardian,* Feb. 26, 2022, available at: *https://www.theguardian.com/world/2022/feb/26/fear-darkness-and-newborn-babies-inside-ukraine-underground-shelters* (last visited Mar. 1, 2022).

[8] ''Russia's invasion of Ukraine in maps—latest updates'', *Financial Times,* Mar. 1, 2022, available at: *https://www.ft.com/content/4351d5b0-0888-4b47-9368-6bc4dfbccbf5* (last visited Mar. 1, 2022).

[9] *Russian Offensive Campaign Assessment,* The Institute for the study of War, p. 1 & p. 5, Feb. 28, 2022, available at: *https://www.understandingwar.org/sites/default/files/Russian%20Operations%20Assessments%20Feb28_1.pdf* (last visited Mar. 1, 2022); ''Ukraine conflict: Russia bombs Kharkiv's Freedom Square and opera house'', *BBC,* Mar. 1, 2022, available at: *https://www.bbc.com/news/world-europe-60567162* (last visited Mar. 1, 2022).

[10] ''What is happening in Mariupol, the Ukrainian city under Russian siege?'' *The Washington Post,* Mar. 21, 2022, available at: *https://www.washingtonpost.com/world/2022/03/21/ukraine-mariupol-seige-russia-faq/* (last visited Mar. 25, 2022).

[11] ''What is happening in Mariupol, the Ukrainian city under Russian siege?'' *The Washington Post,* Mar. 21, 2022, available at: *https://www.washingtonpost.com/world/2022/03/21/ukraine-mariupol-seige-russia-faq/* (last visited Mar. 25, 2022).

[12] *Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: 'I have decided to proceed with opening an investigation.',* International Criminal Court, Feb. 28, 2022, available at: *https://www.icc-cpi.int/Pages/item.aspx?name=20220228-prosecutor-statement-ukraine* (last visited Mar. 1, 2022).

[13] *War Crimes by Russia's Forces in Ukraine, Press Statement,* U.S. Secretary of State Antony J. Blinken, Mar. 23, 2022, available at: *https://www.state.gov/war-crimes-by-russias-forces-in-ukraine/* (last visited Mar. 25, 2022).

[14] ''*Arbitrary Detention, Torture and Ill-treatment in the Context of Armed Conflict in Eastern Ukraine 2014–2021*'', Office of the United Nations High Commissioner for Human Rights (OHCHR), p. 6, 2021, available at: *https://www.ohchr.org/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf* (last visited Mar. 1, 2022).

[15] *Arbitrary Detention, Torture and Ill-treatment in the Context of Armed Conflict in Eastern Ukraine 2014–2021,* Office of the United Nations High Commissioner for Human Rights (OHCHR), p. 2–3, 2021, available at: *https://www.ohchr.org/Documents/Countries/UA/UkraineArbDetTorture_EN.pdf* (last visited Mar. 1, 2022); *see also, Amnesty International Report 2021/22: State of the World's*

authority installed by the Russian government, the human rights situation in Crimea deteriorated precipitously, with reports of ''members of Crimean Tatar community and their supporters, including journalists, bloggers, activists, and others being subjected to harassment, intimidation, threats, intrusive and unlawful searches of their homes, physical attacks, and enforced disappearances.'' [16]

*Humanitarian Situation*

The unprovoked war Russia has brought against Ukraine ''continues to result in civilian deaths and generate further population displacement, damage civilian infrastructure, and exacerbate humanitarian needs across the country.'' [17] After eight years of on ongoing conflict with Russia, 2.9 million people in Ukraine were ''projected to be in need of humanitarian assistance in 2022, the majority of whom, some 54 percent, are women and girls.'' [18] Older persons are among the most affected, as ''[t]hirty percent of people in need of humanitarian assistance are older than 60 years of age'' with women facing particular hardships.[19] Children and persons with disabilities have faced additional difficulties including access to health care and other services. In particular, ''[m]any older persons with disabilities do not have an official disability certificate, which does not allow them to receive a disability allowance from the Government of Ukraine.'' [20]

Destruction of Infrastructure and Scarce Resources

Since 2014, the armed conflict in the Donbas region has caused significant damage to systems and services in the affected areas, impacting transport and road infrastructure, energy, and water, with over 200,000 people living in areas now cut off from essential services and local markets.[21] Attacks harming infrastructure in the region have also affected access to essential services such as health care, transportation, utilities, and education. Prior to the 2022 invasion, UNOCHA estimated that approximately 1 million children would be impacted by the ongoing conflict in the Donbas region and that 380,000 of them would need assistance and protection.[22] More than 750 educational facilities have been damaged during the conflict [23] and ''over 250,000 children living near the contact line regularly experience shelling and exposure to landmines and explosive remnants of war, which has made them more prone to physical injuries and mental health issues''.[24]

Ukraine faced problems of aging infrastructure before the February 2022 invasion, which this invasion has exacerbated.[25] Since February 24, significant infrastructural damage in Ukraine from Russia's air strikes has ''left hundreds of thousands of people without electricity or water, while bridges and roads damaged by shelling have left communities cut off from markets for food and other basic supplies.'' [26] Amid air raid sirens, civilians have sought safety underground in subway stations, basements, and bunkers.[27] Also, on February 27, 2022, Russia's missiles hit a number of targets vital to Ukraine's infrastructure, including an oil facility near Kyiv, a gas pipeline in Kharkiv, and the Zhuliany Airport.[28]

Food security is a concern in Ukraine with 1.1 million Ukrainian nationals in need of food assistance—more than a third of these being severely and moderately food insecure.[29] The impact on women has been more pronounced and ''all available data show that female-headed households are an estimated 1.3 times more often experiencing food insecurity, compared to the overall population.'' [30] In February 2022, UNOCHA estimated that 2.5 million Ukrainian nationals were in need of water, sanitation and hygiene assistance.[31] Those without access to alternative water sources have been most heavily impacted.[32]

Lack of Access to Healthcare

Shortly after Russia began this offensive in 2022, UNOCHA reported that in Ukraine, the ''most pressing humanitarian needs are emergency medical services, critical medicines, health supplies and equipment, safe water for drinking and hygiene, and shelter and protection for those

*Human Rights,* Amnesty International, p. 375, 2021, available at: *https://www.amnesty.org/en/wp-content/uploads/2021/06/English.pdf* (last visited Mar. 1, 2022).

[16] *Crimea: Persecution of Crimean Tatars Intensifies,* Human Rights Watch, Nov. 14, 2017, available at: *https://www.hrw.org/news/2017/11/14/crimea-persecution-crimean-tatars-intensifies* (last visited Mar. 1, 2022).

[17] *Ukraine—Complex Emergency,* U.S. Agency for International Development, Mar. 25, 2022, available at: *https://www.usaid.gov/sites/default/files/documents/2022-03-25_USG_Ukraine_Complex_Emergency_Fact_Sheet_8.pdf* (last visited Apr.12, 2022).

[18] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 4, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[19] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 6, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[20] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 34, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[21] *Protection Monitoring in 98 communities in the 0–5 km zone from the ''contact line,''* UNHCR, Feb. 2021, available at: *https://app.powerbi.com/view?r=eyJrIjoiYzdhZTNjODYtZTFkZS00ODMxLTk5MGEtNDQwNDczOTU4Zjc4IiwidCI6ImU1YzM3OTgxLTY2NjQtNDEzNC04YTBjLTY1NDNkMmFmODBiZSIsImMiOjh9* (last visited Mar. 1, 2022).

[22] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 35, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[23] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 35, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[24] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 35, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[25] *Risk Assessment of the ''Voda Donbasu'' Water System,* UNICEF, Oct. 2019, available at: *https://www.unicef.org/ukraine/reports/VD-risk-assessment-2019* (last visited Mar. 1, 2022).

[26] *Ukraine: Humanitarian Impact, Situation Report No. 01,* OCHA Ukraine, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Mar. 1, 2022).

[27] ''Fear, darkness and newborn babies: Inside Ukraine's underground shelters'', *The Guardian,* Feb. 26, 2022, available at: *https://www.theguardian.com/world/2022/feb/26/fear-darkness-and-newborn-babies-inside-ukraine-underground-shelters* (last visited Mar. 1, 2022).

[28] *Russia hits Ukrainian oil and gas facilities in wave of attacks,* Al Jazeera, Feb. 27, 2022, available at: *https://www.aljazeera.com/news/2022/2/27/russia-ukraine-oil-gas-fuel-airport-attacks* (last visited Mar. 1, 2022).

[29] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 79, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[30] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 51, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[31] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 73, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[32] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 39, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

displaced from their home.'' [33] The need for humanitarian health care is high, and approximately 1.52 million Ukrainian nationals are in need of health care assistance.[34]

Challenges within Ukraine's health care system have been exacerbated by the massive expansion of armed conflict amidst a pandemic.[35] Strikes hitting medical facilities have resulted in injuries and deaths, including among health care workers, and have resulted in critical shortages of medical supplies in some areas.[36] Kyiv city authorities reported over 80 babies were born in bomb shelters in the first two nights.[37] The COVID–19 pandemic already put significant strain on Ukraine's health care system by stretching its limited capacity.[38] In February 2022, Ukraine experienced its worst wave of COVID–19 cases thus far, bringing the total number of cases over 5 million and the number of deaths topping 100,000.[39] Hospitals have struggled with the volume of COVID cases and Ukraine has one of the lowest vaccination rates in Europe.[40]

Displacement

Prior to Russia's full-scale military invasion into Ukraine on February 24, 2022, a large number of Ukrainian citizens had already been internally displaced by the Russia-backed conflict in the Donbas region and Russia's occupation of Crimea since 2014.[41] As of March 5, 2021, well before the onset of the 2022 invasion by Russia, the Ukrainian Ministry of Social Policy had already registered 1,461,770 individuals as internally displaced persons (IDPs).[42] Among these nearly 1.5 million IDPs, 195,320 were children, 724,786 were elderly and 51,478 were persons with disabilities.[43] Moreover, life in Ukraine for many IDPs was dire with an estimated 300,000 IDPs having been identified as in need of livelihood assistance and food assistance for the year 2022, even before the beginning of Russia's offensive in February.[44]

The newly intensified and widespread conflict has caused more than four million people to flee Ukraine for Poland, Hungary, Slovakia, Romania, Moldova, and beyond.[45] The United Nations notes that ''women and girls face higher risks of human rights violations and sexual exploitation and abuse, including transactional sex, survival sex and conflict-related sexual violence.'' [46]

**What authority does the Secretary have to designate Ukraine for TPS?**

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary,[47] after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[48] The decision to designate any foreign state (or part thereof) is a discretionary decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA section 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A).[49] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

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[33] *Ukraine: Humanitarian Impact, Situation Report No. 01,* OCHA Ukraine, Feb. 26, 2022, available at: *https://reliefweb.int/report/ukraine/ukraine-humanitarian-impact-situation-report-no-1-500-pm-26-february-2022* (last visited Mar. 1, 2022).

[34] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 87, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[35] *Impact of Health Reform on the Primary Healthcare Level in Conflict-Affected Areas of Donetsk and Luhansk Oblasts,* Médicos del Mundo, June 2021, available at: *https://reliefweb.int/report/ukraine/impact-healthcare-reform-primary-healthcare-level-conflict-affected-areas-donetsk-and* (last visited Mar. 1, 2022).

[36] *Emergency in Ukraine: External Situation Report #3,* World Health Organization, Mar. 17, 2022, available at: *https://www.who.int/publications/i/item/WHO-EURO-2022-5152-44915-63936* (last visited Mar. 25, 2022).

[37] ''Fear, darkness and newborn babies: Inside Ukraine's underground shelters'', *The Guardian,* Feb. 26, 2022, available at: *https://www.theguardian.com/world/2022/feb/26/fear-darkness-and-newborn-babies-inside-ukraine-underground-shelters* (last visited Mar. 1, 2022).

[38] ''*We are devoted to this work because the health and lives of people are at stake*'', United Nations Office of the High Commissioner Human Rights, Aug. 16, 2022, available at: *https://www.ohchr.org/EN/NewsEvents/Pages/Ukraine-and-COVID-19.aspx* (last visited Mar. 1, 2022).

[39] *WHO Health Emergency Dashboard, WHO (COVID–19) Homepage—Ukraine,* WHO, available at: *https://covid19.who.int/region/euro/country/ua* (last visited Mar. 1, 2022).

[40] *WHO Health Emergency Dashboard, WHO (COVID–19) Homepage—Ukraine,* WHO, available at: *https://covid19.who.int/region/euro/country/ua* (last visited Mar. 1, 2022).

[41] 2022 Humanitarian Needs Overview—Ukraine, UNOCHA, p. 34, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[42] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 34, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[43] *Registration of Internal Displacement,* UNHCR, Mar. 5, 2021, available at: *https://app.powerbi.com/view?r=eyJrIjoiY2RhMmExMjgtZWRlMS00YjcwLWI0MzktNmEwNDkwYzdmYTM0IiwidCI6ImU1YzM3OTgxLTY2NjQtNDEzNC04YTBjLTY1NDNkMmFmODBiZSIsImMiOjh9* (last visited Mar. 1, 2022).

[44] *2022 Humanitarian Needs Overview—Ukraine,* UNOCHA, p. 34, Feb. 11, 2022, available at: *https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_2022_hno_eng_2022-02-11.pdf* (last visited Mar. 1, 2022).

[45] Operational Data Portal, UNHCR, Mar. 30, 2022, available at: *https://data2.unhcr.org/en/situations/ukraine* (last visited Mar. 31, 2022).

[46] *Rapid Gender Analysis of Ukraine: Secondary data review,* UNHCR, Mar. 29, 2022, *https://data2.unhcr.org/en/documents/details/91723* (last visited Apr. 4, 2022).

[47] INA § 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135.

[48] INA § 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. *Id.,* at § 244(b)(1).

[49] This issue of judicial review is the subject of litigation. *See, e.g., Ramos* v. *Wolf,* 975 F.3d 872 (9th Cir. 2020), *petition for en banc rehearing* filed Nov. 30, 2020 (No. 18–16981); *Saget* v. *Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

**Notice of the Designation of Ukraine for TPS**

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Ukraine's designation for TPS on the basis of ongoing armed conflict and extraordinary and temporary conditions are met. *See* INA section 244(b)(1)(A) and (C), 8 U.S.C. 1254a(b)(1)(A) and (C). I estimate approximately 59,600 individuals are eligible to apply for TPS under the designation of Ukraine. On the basis of this determination, I am designating Ukraine for TPS for 18 months, from April 19, 2022 through October 19, 2023. See INA section 244(b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(C), and (b)(2).

**Alejandro N. Mayorkas,**

*Secretary, U.S. Department of Homeland Security.*

**Eligibility and Employment Authorization for TPS**

**Required Application Forms and Application Fees To Register for TPS**

To register for TPS based on the designation of Ukraine, you must submit a Form–821, Application for Temporary Protected Status and pay the filing fee or request a fee waiver, by submitting Form I–912, Request for Fee Waiver. You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

You are not required to submit Form I–765 or have an EAD but see below for more information if you want to work in the United States.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

**How can TPS beneficiaries obtain an employment authorization document (EAD)?**

Everyone must provide their employer with documentation showing that they have the legal right to work in the United States. TPS beneficiaries are eligible to obtain an EAD, which proves their legal right to work. TPS applicants who want to obtain an EAD must file a Form I–765, Application for Employment Authorization and pay the Form I–765 fee or request a fee waiver, by submitting Form I–912, Request for Fee Waiver. TPS applicants may file this form along with their TPS application, or at a later date, provided their TPS application is still pending or has been approved.

**Refiling an Initial TPS Registration Application After Receiving a Denial of a Fee Waiver Request**

If you receive a denial of a fee waiver request, you must refile your Form I–821 for TPS along with the required fees during the registration period, which extends until October 19, 2023. You may also file for your Employment Authorization Document on Form I–765 with payment of the fee along with your TPS application or at any later date you decide you want to request an EAD during the registration period.

**Filing Information**

USCIS offers the option to applicants for TPS under Ukraine's designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765, Request for Employment Authorization, with their Form I–821.

*Online filing:* Form I–821 and I–765 are available for concurrent filing online.[50] To file these forms online, you must first create a USCIS online account.[51]

*Mail filing:* Mail your application for TPS to the proper address in Table 1.

*Table 1—Mailing Addresses*

Mail your completed Application for Form I–821, Temporary Protected Status and Form I–765, Application for Employment Authorization, Form I–912, Request for Fee Waiver, if applicable, and supporting documentation to the proper address in Table 1.

[50] Find information about online filing at Forms Available to File Online, *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[51] *https://myaccount.uscis.gov/users/sign_up.*

TABLE 1—MAILING ADDRESSES

| If you . . . | Mail to . . . |
|---|---|
| Are a beneficiary under the TPS designation for Ukraine and you live in the following states:<br>• Alabama<br>• Alaska<br>• American Samoa<br>• Arizona<br>• Arkansas<br>• Colorado<br>• Connecticut<br>• Delaware<br>• District of Columbia<br>• Florida<br>• Georgia<br>• Guam<br>• Hawaii<br>• Idaho<br>• Illinois<br>• Indiana<br>• Iowa<br>• Kansas<br>• Kentucky<br>• Louisiana<br>• Maine<br>• Maryland<br>• Massachusetts<br>• New York<br>• Ohio | USCIS Chicago Lockbox.<br>*U.S. Postal Service (USPS):* U.S. Citizenship and Immigration Services, Attn: TPS Ukraine, P.O. Box 4464, Chicago, IL 60680–4464.<br>*FedEx, UPS, or DHL:* U.S. Citizenship and Immigration Services, Attn: TPS Ukraine (Box 4464), 131 S Dearborn St., 3rd Floor, Chicago, IL 60603–5517. |
| Are a beneficiary under the TPS designation for Ukraine and you live in the following states:<br>• California<br>• New Jersey<br>• Michigan<br>• Minnesota<br>• Mississippi<br>• Missouri<br>• Montana<br>• Nebraska<br>• Nevada<br>• New Hampshire<br>• New Mexico<br>• North Carolina<br>• North Dakota<br>• Northern Mariana Islands<br>• Oklahoma<br>• Oregon<br>• Pennsylvania<br>• Puerto Rico<br>• Rhode Island<br>• South Carolina<br>• South Dakota<br>• Tennessee<br>• Texas<br>• Utah<br>• Vermont<br>• Virgin Islands<br>• Virginia<br>• Washington<br>• West Virginia<br>• Wisconsin<br>• Wyoming | USCIS Phoenix Lockbox.<br>*U.S. Postal Service (USPS):* U.S. Citizenship and Immigration Services, Attn: TPS Ukraine, P.O. Box 24047, Phoenix, AZ 85074–4047.<br>*FedEx, UPS, or DHL:* U.S. Citizenship and Immigration Services, Attn: TPS Ukraine (Box 24047), 1820 E Skyharbor Circle S, Suite 100, Phoenix, AZ 85034–4850. |

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please mail your Form I–765 application to the appropriate mailing address in Table 1. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

**Supporting Documents**

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (*i.e.,* registering) for TPS on the USCIS website at *uscis.gov/tps* under ''Ukraine.''

**Travel**

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside the United States. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing the Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for the Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

| If you . . . | Mail to . . . |
|---|---|
| Are filing Form I–131 together with a Form I–821, Application for Temporary Protected Status. | The address provided in Table 1. |
| Are filing Form I–131 based on a *pending or approved* Form I–821, you must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821. | USCIS Dallas Lockbox.<br>*U.S. Postal Service (USPS):*<br>U.S. Citizenship and Immigration Services, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.<br>*FedEx, UPS, or DHL:* U.S. Citizenship and Immigration Services, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067. |

**Biometric Services Fee for TPS**

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometric screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *dhs.gov/privacy.*

**General Employment-Related Information for TPS Applicants and Their Employers**

**How can I obtain information on the status of my TPS application and EAD request?**

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at *uscis.gov*, or visit the USCIS Contact Center at *uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

**When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?**

You can find the Lists of Acceptable Documents on the last page of Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *uscis.gov/I–9Central.* An EAD is an acceptable document under List A.

**If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?**

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through October 19, 2023, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

**Can my employer require that I provide any other documentation such as evidence of my status or proof of my Ukrainian citizenship or a Form I–797C showing that I registered for TPS for Form I–9 completion?**

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request proof of Ukrainian citizenship or proof of registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

**Note to All Employers**

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not

supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

**Note to Employees**

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *justice.gov/ierandtheUSCISandE-Verifywebsitesatuscis.gov/i-9-central* and *e-verify.gov*.

**Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)**

For Federal purposes, individuals approved for TPS may show their Form I–797, Notice of Action, indicating approval of their Form I–821 application, or their A12 or C19 EAD to prove that they have TPS. However, while Federal Government agencies must follow the guidelines laid out by the Federal Government, state and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, state, or local government benefit, you may need to provide the government agency with documents that show you are covered under TPS or show you are authorized to work based on TPS. Examples of such documents are:

- Your new EAD with a category code of A12 or C19 for TPS, regardless of your country of birth;
- A copy of your Form I–94, Arrival/Departure Record; or
- Form I–797, the notice of approval, for your Form I–821, Application for Temporary Protected Status, if you received one from USCIS.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits. SAVE can verify when an individual has TPS based on the documents above. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *uscis.gov/save/save-casecheck,* then by clicking the ''Check Your Case'' button. CaseCheck is a free service that lets you follow the progress of your SAVE verification using your date of birth and SAVE verification case number or an immigration identifier number that you provided to the benefit-granting agency. If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the final SAVE response is correct, please see the SAVE Records: Fast Facts For Benefit Applicants sheet under SAVE Resources at *https://www.uscis.gov/save/save-resources* for information about how to correct or update your immigration record.

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**BILLING CODE 9111–97–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–6317–N–01]**

## Mortgagee Review Board: Administrative Actions

**AGENCY:** Office of the Assistant Secretary for Housing–Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** In compliance with section 202(c)(5) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against FHA-approved mortgagees.

**FOR FURTHER INFORMATION CONTACT:** Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW, Room B–133/3150, Washington, DC 20410–8000; telephone (202) 402–2701 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Information Service at (800) 877–8339 (this is a toll-free number).

**SUPPLEMENTARY INFORMATION:** Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD ''publish in the **Federal Register** a description of and the cause for administrative action against a[n FHA-approved] mortgagee'' by HUD's Mortgagee Review Board (''Board''). In compliance with the requirements of

section 202(c)(5), this notice advises of actions that have been taken by the Board in its meetings from the beginning of fiscal year 2021, October 1, 2020, through September 30, 2021, where settlement agreements have been reached as of February 28, 2022. The notice also includes one notice of administrative action (a withdrawal) which was issued in fiscal year 2019.

**I. Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, and Reprimands**

*1. Absolute Home Mortgage Corporation, Fairfield, NJ [Docket No. 20–2122–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Absolute Home Mortgage Corporation (''Absolute Home Mortgage'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Absolute Home Mortgage (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*2. All Western Mortgage Inc d/b/a Ping Home Loans, Las Vegas, NV [Docket No. 21–2163–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with All Western Mortgage Inc. (''All Western'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: All Western failed to timely notify FHA of a state sanction in fiscal year 2019.

*3. American Advisors Group, Orange, CA [Docket No. 20–2140–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with American Advisors Group (''American Advisor'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: American Advisors failed to timely notify FHA of a state sanction in fiscal year 2019.

*4. American Federal Mortgage Corp., Chester, NJ [Docket No. 21–2171–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with American Federal Mortgage Corp. (''American Federal'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: American Federal (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*5. American Ken, Inc., Diamond Bar, CA [Docket No. 21–2174–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with American Ken Inc. (''American Ken'') that included a civil money penalty of $10,245. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: American Ken failed to timely notify FHA of a state sanction in fiscal year 2020.

*6. American Neighborhood Mortgage Acceptance Co., Mount Laurel, NJ [Docket No. 20–2022–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with American Neighborhood Mortgage Acceptance Co. (''Annie Mac'') that included a civil money penalty of $218,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Annie Mac serviced FHA-insured mortgages without the required state mortgage servicing license.

*7. AmeriSave Mortgage Corporation, Atlanta, GA [Docket No. 20–2148–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with AmeriSave Mortgage Corporation (''AmeriSave'') that included a civil money penalty of $10,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: AmeriSave failed to timely notify FHA of a state sanction in fiscal year 2019.

*8. Angel Oak Home Loans LLC, Atlanta, GA [Docket No. 21–2186–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with Angel Oak Home Loans LLC (''Angel Oak'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Angel Oak (a) failed to timely notify FHA of an unresolved finding in fiscal year 2020; and (b) failed to timely notify FHA of a state sanction in fiscal year 2020.

*9. Assent Mortgage, LLC, Irvine, CA [Docket No. 20–2026–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Assent Mortgage, LLC (''Assent'') that included a civil money penalty of $20,067, Assent seeking a voluntary withdrawal from the FHA program, and—after its withdrawal—Assent would refrain from applying to the FHA program for one year. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Assent (a) failed to disclose to FHA a sanction in fiscal year 2018 during the pendency of its FHA application; (b) submitted a false certification to FHA concerning fiscal year 2018; and (c) failed for fiscal year 2019 to remit its annual certification statements and to timely submit its audited financial statements and supplementary information.

*10. Assurance Financial Group LLC, Baton Rouge, LA [Docket No. 20–2137–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Assurance Financial Group, LLC (''Assurance Financial Group'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Assurance Financial Group (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*11. Atlantic Home Loans, Inc., Parsippany, NJ [Docket No. 21–2193–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement

agreement with Atlantic Home Loans, Inc (''Atlantic'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Atlantic failed to timely notify FHA of a state sanction in fiscal year 2020.

*12. Blue Ridge Bank, N.A., Greensboro, NC [Docket No. 21–2208–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with Blue Ridge Bank, N.A. (''Blue Ridge Bank'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Blue Ridge failed to notify FHA of change in business structure in fiscal year 2021.

*13. Bond Street Mortgage, LLC, Paramus, NJ [Docket No. 20–2147–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with Bond Street Mortgage, LLC (''Bond Street'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Bond Street failed to timely notify FHA of a state sanction in fiscal year 2019.

*14. Castle & Cooke Mortgage LLC, Draper, UT [Docket No. 20–2100–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Castle & Cooke Mortgage LLC (''Castle & Cooke'') that included a civil money penalty of $15,245. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Castle & Cooke (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*15. CIS Financial Services, Inc., Hamilton, AL [Docket No. 20–2123–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with CIS Financial Services, Inc. (''CIS'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: CIS (a) failed to timely notify FHA of an operating loss in excess of 20 percent of its quarter-end net worth in fiscal year 2019; and (b) failed to submit to FHA the required quarterly financial statements following a quarterly loss exceeding 20 percent of net worth.

*16. CityWorth Mortgage LLC, Fairfax, VA [Docket No. 21–2205–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with CityWorth Mortgage LLC (''CityWorth'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: CityWorth (a) failed to maintain the required minimum adjusted net worth in fiscal year 2020; (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2020; and (c) failed to timely notify FHA of an operating loss in excess of 20 percent of its quarter-end net worth in fiscal year 2020.

*17. CU Mortgage Direct LLC, Sioux Falls, SD [Docket No. 20–2144–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with CU Mortgage Direct LLC (''CU'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: CU (a) failed to maintain the minimum required liquid assets for fiscal year 2019; and (b) failed to timely notify FHA that it did not meet the minimum liquid asset requirement in fiscal year 2019.

*18. CWM Partners LP, Moore, OK [Docket No. 20–2018–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with CWM Partners LP (''CWM'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: CWM failed to timely notify FHA of a state sanction in fiscal year 2019.

*19. DEVAL, LLC, Irving, TX [Docket No. 20–2124–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with DEVAL, LLC (''Deval'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: DEVAL failed to timely notify FHA of a state sanction in fiscal year 2019.

*20. Diamond Residential Mortgage Corporation, Lake Forest, IL [Docket No. 19–2044–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with Diamond Residential Mortgage Corporation (''Diamond Residential'') that included a civil money penalty of $813,703. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Diamond Residential (a) failed to timely notify FHA of two state sanctions in fiscal year 2018; (b) failed to timely notify FHA of a state sanction imposed against an employee in fiscal year 2018; (c) failed to timely notify FHA of a business change affecting a state lending license; (d) engaged in business practices that did not conform to generally accepted practices of prudent mortgagees by failing to supervise properly a branch location and a branch manager; and (e) provided false information to FHA.

*21. Embrace Home Loans, Inc., Middletown, RI [Docket No. 21–2167–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with Embrace Home Loans, Inc. (''Embrace'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Embrace (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*22. FFC Mortgage Corporation, Irvine, CA [Docket No. 20–2099–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with FFC Mortgage Corporation (''FFC'') that included a civil money penalty of $5,000. The

settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: FFC failed to timely notify FHA of a state sanction in fiscal year 2019.

*23. First Choice Loan Services, East Brunswick, NJ [Docket No. 20–2098–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with First Choice Loan Services (''First Choice'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: FFC failed to timely notify FHA of a state sanction in fiscal year 2019.

*24. First Heritage Mortgage, LLC, Fairfax, VA [Docket No. 20–2128–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with First Heritage Mortgage, LLC (''First Heritage'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: First Heritage failed to timely notify FHA of a state sanction in fiscal year 2019.

*25. Flagstar Bank, Troy, MI [Docket No. 20–2153–MR]*

*Action:* On February 25, 2021, the Board voted to authorize a settlement with Flagstar Bank (''Flagstar'') that required Flagstar to pay the Government $70,000,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following allegation: Flagstar failed to act in good faith to meet certain preconditions that triggered Flagstar's repayment obligations under a 2012 False Claims Act settlement agreement.

*26. FM Home Loans LLC, Brooklyn, NY [Docket No. 20–2138–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with FM Home Loans LLC (''FM Home Loans'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: FM Home Loans (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*27. Grande Home Loans, LLC, Dallas, TX [Docket No. 20–2119–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with Grande Home Loans (''Grande Home'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Grande Home failed to maintain the required minimum adjusted net worth in fiscal year 2019.

*28. Green Brick Mortgage, LLC, Dallas, TX [Docket No. 20–2131–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Green Brick Mortgage, LLC (''Green Brick'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Green Brick failed to maintain the minimum required adjusted net worth in fiscal year 2019.

*29. Greenway Mortgage Funding Corporation, Middletown, NJ [Docket No. 21–2175–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Greenway Mortgage Funding Corporation (''Greenway'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Greenway failed to timely notify FHA of a state sanction in fiscal year 2019.

*30. Group One Mortgage, Inc., Jupiter, FL [Docket No. 20–2073–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with Group One Mortgage, Inc. (''Group One'') that included a civil money penalty of $24,442. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Group One (a) failed to maintain the minimum required adjusted net worth in fiscal years 2017 and 2018; and (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2017.

*31. GSF Mortgage Corporation, Brookfield, WI [Docket No. 21–2199–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with GSF Mortgage Corporation (''GSF'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: GSF failed to timely notify FHA of a state sanction in fiscal year 2020.

*32. Guild Mortgage Company, San Diego, CA [Docket No. 16–cv–02909 (S.D. Cal.)]*

*Action:* On October 8, 2020, the Board voted to accept a False Claims Act settlement agreement involving Guild Mortgage Company (''Guild'') that included a payment to the United States of $24,900,000, of which $16,600,000 was restitution. For FHA-insured loans covered by the False Claim Act settlement agreement, the Board provided Guild a release for administrative liability under 24 CFR parts 25 and 30. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Guild knowingly caused ineligible mortgage loans to be endorsed with FHA insurance between July 1, 2007, and December 31, 2011.

*33. Guild Mortgage Company, San Diego, CA [Docket No. 19–2019–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with Guild Mortgage Company (''Guild'') that included a civil money penalty of $5,000 and execution of a life-of-loan indemnification for one loan. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Guild (a) failed to obtain documentation evidencing a repayment agreement for the borrower's outstanding federal debt; (b) failed to verify the status of this debt; and (c) failed to document that funds used to pay off the borrower's debts prior to closing came from an acceptable source and to ensure that the borrower did not incur new debt not included in the debt-to-income ratio used during underwriting.

*34. Hancock Mortgage Partners, LLC, Sugar Land, TX [Docket No. 20–2149–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Hancock Mortgage Partners, LLC (''Hancock'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Hancock failed to timely notify FHA of a sanction in fiscal year 2020.

*35. Home Mortgage Bankers, Carolina, PR [Docket No. 20–2024–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with Home Mortgage Bankers that included a civil money penalty of $20,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Home Mortgage Bankers (a) failed to maintain a warehouse line of credit in fiscal year 2018; (b) failed to timely notify FHA of a warehouse line of credit deficiency in fiscal year 2018; (c) failed to maintain a warehouse line of credit in fiscal year 2019; and (d) failed to maintain a warehouse line of credit in fiscal year 2020.

*36. HomeServices Lending, LLC, Golden Valley, MN [Docket No. 20–2127–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with HomeServices Lending, LLC (''HSL'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: HSL failed to timely notify FHA of two state sanctions in fiscal year 2019.

*37. Homespire Mortgage Corporation, Gaithersburg, MD [Docket No. 21–2189–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with Homespire Mortgage Corporation (''Homespire'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Homespire failed to timely notify FHA of a state sanction in fiscal year 2020.

*38. Hometown Lenders, Inc., Huntsville, AL [Docket No. 21–2196–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with Hometown Lenders, Inc (''Hometown'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Hometown (a) failed to timely notify FHA of a state sanction in fiscal year 2020; and (b) submitted a false certification to FHA concerning fiscal year 2020.

*39. Intercontinental Capital Group Inc d/b/a Fellowship HL, Melville, NY [Docket No. 20–2157–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Intercontinental Capital Group Inc. (''Intercontinental'') that included a civil money penalty of $20,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Intercontinental (a) failed to timely notify FHA of a state sanction in fiscal year 2019; (b) failed to timely notify FHA of a state sanction against a corporate officer in fiscal year 2019; and (c) submitted a false certification to FHA concerning fiscal year 2019.

*40. Johnson Capital Multifamily, Inc., F/K/A Funding Incorporated, Houston, TX [Docket Nos. 20–2013–MR and 18–1897 MRT]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with Johnson Capital Multifamily, Inc. (''Johnson Capital'') that included a civil money penalty of $60,980. Separately, the Board voted to enter into a settlement agreement with Johnson Capital that included a settlement of $4,500. The settlements did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Johnson Capital (a) failed to comply with FHA's annual recertification requirements in a timely manner following fiscal year 2017; (b) failed to maintain the required liquid assets in fiscal years 2019 and 2020; (c) failed to maintain the minimum required adjusted net worth in fiscal years 2019 and 2020; and (d) failed to timely notify FHA that it did not meet the adjusted net worth requirement or the liquid asset requirement in fiscal years 2019 and 2020.

*41. Jordan West Companies LTD d/b/a U.S. Mortgages, Centennial, CO [Docket No. 19–1964–MR]*

*Action:* On May 12, 2020, the Board voted to withdraw Jordan West Companies LTD (''Jordan West'') for a period of one year. Jordan West appealed the Board's action, and, on November 18, 2020, the Board voted to enter into a settlement agreement with Jordan West that included a civil money penalty in the amount of $60,000 and required the submission to FHA of quarter-end financial statements for a two-year period and the implementation of a detailed corrective action plan. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board withdrew Jordan West's FHA-approval based on the following alleged violation of FHA requirements: Jordan West failed to maintain the minimum required adjusted net worth in fiscal year 2018. As to the settlement, the Board took this action based on the following alleged violations of FHA requirements: Jordan West (a) failed to maintain the minimum required adjusted net worth in fiscal years 2018, 2019, and 2020; (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal years 2018, 2019, and 2020; (c) failed to timely notify FHA of an operating loss in excess of 20 percent of its quarter-end net worth in fiscal year 2018; and (d) failed to submit to FHA the required quarterly financial statements following a quarterly loss exceeding 20 percent of net worth.

*42. Keller Mortgage, LLC, Dublin, OH [Docket No. 20–2142–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Keller Mortgage, LLC (''Keller Mortgage'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Keller Mortgage (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*43. Liberty Mortgage Corporation, Vestavia, AL [Docket No. 20–2156–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Liberty Mortgage

Corporation (''Liberty Mortgage'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Liberty Mortgage (a) failed to maintain minimum liquid asset requirements in fiscal year 2020; and (b) failed to timely notify FHA that it did not meet the minimum liquid asset requirement in fiscal year 2020.

*44. LoanSnap, Inc., Costa Mesa, CA [Docket No. 20–2114–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with LoanSnap, Inc (''LoanSnap'') that included a civil money penalty of $25,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: LoanSnap (a) failed to timely notify FHA of an operating loss in excess of 20 percent of its quarter-end net worth in fiscal year 2019; and (b) failed to submit to FHA the required quarterly financial statements following a quarterly loss exceeding 20 percent of net worth.

*45. Long Lake MSR, Inc., Troy, MI [Docket No. 20–2120–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Long Lake MSR (''Long Lake'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Long Lake failed to timely notify FHA of a state sanction in fiscal year 2019.

*46. M Squared Financial, LLC d/b/a Fountain Mortgage, Prairie Village, KS [Docket No. 20–2132–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with M Squared Financial, LLC (''M Squared'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: M Squared failed to timely notify FHA of a state sanction in fiscal year 2019.

*47. Manhattan Financial Group, Inc., Escondido, CA [Docket No. 20–2039–MR]*

*Action:* On November 17, 2020, the Board voted to enter into a settlement agreement with Manhattan Financial Group, Inc (''Manhattan Financial'') that included a civil money penalty of $14,819. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Manhattan Financial (a) failed to timely notify FHA of a state sanction in fiscal year 2018; and (b) submitted a false certification to FHA concerning fiscal year 2018.

*48. MMS Mortgage Services, Ltd, Farmington Hills, MI [Docket No. 20–2125–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with MMS Mortgage Services (''MMS'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: MMS failed to timely notify FHA of a state sanction in fiscal year 2019.

*49. Monarch Funding Corp, Anaheim, CA [Docket No. 20–2097–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with Monarch Funding Corp (''Monarch Funding'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Monarch Funding (a) failed to maintain a warehouse line of credit in fiscal year 2019; (b) failed to timely notify FHA of a warehouse line of credit deficiency in fiscal year 2019; and (c) failed to maintain a warehouse line of credit in fiscal year 2020.

*50. Multiples Mortgage Corporation, San Juan, PR [Docket No. 20–2126–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Multiples Mortgage Corporation (''Multiples'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Multiples (a) failed to timely notify FHA of operating losses exceeding 20 percent in fiscal year ended 2019; and (b) failed to timely notify FHA of a change in corporate officers in the fiscal years 2018 and 2020.

*51. Network Funding LP, Houston, TX [Docket No. 20–2107–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Network Funding LP (''Network Funding'') that included a civil money penalty of $14,468. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Network Funding (a) failed to timely notify FHA of a state sanction in fiscal year 2016; and (b) submitted a false certification to FHA concerning fiscal year 2016.

*52. New West Lending, Inc., Phoenix, AZ [Docket No. 21–2188–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with New West Lending Inc. (''New West'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: New West (a) failed to timely notify FHA of a state sanction in fiscal year 2020; and (b) overcharged an FHA borrower in violation of the Truth in Lending Act.

*53. NJ Lenders Corporation, Little Falls, NJ [Docket No. 20–2155–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with NJ Lenders Corporation (''NJ Lenders'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: NJ Lenders (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*54. Pacific Residential Mortgage, LLC, Lake Oswego, OR [Docket No. 21–2162–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with Pacific Residential Mortgage, LLC (''Pacific Residential'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Pacific Residential (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*55. Paragon Mortgage Corporation, Phoenix, AZ [Docket No. 20–2159–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Paragon Mortgage Corporation (''Paragon'') that included a civil money penalty of $20,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Paragon (a) failed to timely notify FHA of an operating loss in excess of 20 percent of its quarter-end net worth in fiscal year 2019; and (b) failed to submit to FHA the required quarterly financial statements following a quarterly loss exceeding 20 percent of net worth.

*56. Polaris Home Funding Corporation, Grandville, MI [Docket No. 20–2021–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Polaris Home Funding Corporation (''Polaris Home Funding'') that included a civil money penalty of $29,886. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Polaris Home Funding (a) failed to timely notify FHA of state sanctions in fiscal years 2018 and 2019; and (b) submitted false certifications to FHA concerning fiscal year 2018 and 2019.

*57. Premier Lending, Inc., Charlotte, NC [Docket No. 20–2146–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Premier Lending, Inc. (''Premier Lending'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Premier Lending (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*58. R M K Financial Corp d/b/a Majestic Home Loans, Ontario, CA [Docket No. 20–2086–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with R M K Financial Corp. (''R M K'') that included a civil money penalty of $40,268 and execution of a five-year indemnification for two loans. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: R M K (a) failed to adequately document and implement its Quality Control Program; (b) failed to identify a conflict of interest in connection with an FHA-insured mortgage; and (c) failed to document that a borrower had sufficient funds available from an acceptable source to close a loan.

*59. Ready Mortgage Lenders, LLC, Miami, FL [Docket No. 21–2190–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with Ready Mortgage Lenders, LLC (''Ready'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Ready (a) failed to timely notify FHA of a change in ownership in fiscal year 2017; and (b) failed to timely notify FHA of a state sanction in fiscal year 2020.

*60. Renaissance Lenders Inc., Pasadena, MD [Docket No. 20–2152–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with Renaissance Lenders Inc. (''Renaissance'') that included a civil money penalty of $90,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Renaissance (a) failed to maintain the minimum required adjusted net worth in fiscal years 2019 and 2020; (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2019; (c) failed to maintain the required liquid assets in fiscal years 2019 and 2020; (d) failed to timely notify FHA that it did not meet the minimum liquid asset requirement in fiscal years 2019 and 2020; (e) failed to maintain an acceptable funding program in fiscal years 2019 and 2020; (f) failed to timely notify FHA of a funding program deficiency in fiscal year 2019; (g) failed to maintain the required fidelity bond coverage in fiscal year 2019; (h) failed to timely notify FHA of a change in fidelity bond coverage in fiscal year 2019; (i) failed to maintain the required fidelity bond coverage in fiscal year 2020; (j) failed to maintain the required error and omissions insurance in fiscal years 2019 and 2020; (k) failed to timely notify FHA of a change in error and omissions insurance in fiscal year 2019; and (l) failed to submit to FHA the required quarterly financial statements following a quarterly loss exceeding 20 percent of net worth.

*61. Reverse Mortgage Funding, Bloomfield, NJ [Docket No. 20–2151–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with Reverse Mortgage Funding (''Reverse Mortgage'') that included a repurchase of a Home Equity Conversion Mortgage (HECM) loan, execution of a life-of-loan indemnification for one HECM loan, and a civil money penalty of $10,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Reverse Mortgage (a) submitted false information in connection an assignment to FHA of a HECM in fiscal year 2019; and (b) assigned an ineligible HECM loan to FHA in fiscal year 2019.

*62. River City Mortgage, LLC, Blue Ash, OH [Docket No. 21–2172–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with River City Mortgage, LLC (''River City'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: River City (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) failed to timely notify FHA of a state sanction in fiscal year 2020.

*63. Semper Home Loans Inc., Providence, RI [Docket No. 21–2170–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Semper Home Loans, Inc. (''Semper'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Semper

(a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*64. Senior Mortgage Banker, Inc., San Juan, PR [Docket No. 20–2040–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Senior Mortgage Banker, Inc (''Senior'') that included a civil money penalty of $15,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Semper (a) failed to maintain the minimum required adjusted net worth in fiscal year 2017; (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2017; and (c) failed to maintain the minimum required adjusted net worth in fiscal year 2018.

*65. Servis One Inc. d/b/a BSI Financial Services, Irving, TX [Docket No. 20–2154–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Servis One, Inc. (''Servis'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Servis (a) failed to timely notify FHA of an operating loss in excess of 20 percent of its quarter-end net worth in fiscal year 2020; and (b) failed to timely notify FHA of a sanction in fiscal year 2020.

*66. SIRVA Mortgage, Inc., Independence, OH [Docket No. 21–2197–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with SIRVA Mortgage, Inc. (''SIRVA'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: SIRVA failed to timely notify FHA of a state sanction in fiscal year 2020.

*67. SouthPoint Financial Services, Inc., Alpharetta, GA [Docket No. 20–2084–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with Southpoint Financial Services, Inc. (''SouthPoint'') that included a civil money penalty of $39,065. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: SouthPoint (a) failed to timely notify FHA of an operating loss in excess of 20 percent of its net worth in fiscal year 2018; (b) failed to submit to FHA the required quarterly financial statements following a quarterly loss exceeding 20 percent of net worth; (c) failed to maintain the minimum required adjusted net worth in fiscal year 2018; and (d) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2018.

*68. Southwest Funding LP, Dallas, TX [Docket No. 20–2000–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with Southwest Funding LP (''Southwest Funding'') that included a civil money penalty of $220,703. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Southwest Funding (a) failed to cooperate with FHA lender monitoring reviews in 2017 and 2018; (b) implemented a Quality Control Plan (QC) that omitted required elements; (c) failed to ensure its QC vendors made accurate loan sample risk assessments; (d) failed to self-report material findings for four loans; (e) failed to complete timely reviews of its early payment defaults in accordance with FHA requirements; and (f) failed to ensure that its training policies complied with FHA requirements.

*69. Summit Funding Inc., Sacramento, CA [Docket No. 20–2161–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with Summit Funding Inc. (''Summit Funding'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Summit Funding (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*70. TAM Lending Center, Inc., Cherry Hill, NJ [Docket No. 20–2014–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with TAM Lending Center, Inc. (''TAM Lending Center'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: TAM Lending Center (a) failed to maintain the minimum required adjusted net worth in fiscal year 2018; and (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2018.

*71. Thompson Kane & Company, LLC, Madison, WI [Docket No. 19–1987–MRT]*

*Action:* On November 18, 2021, the Board voted to enter into a settlement agreement with Thompson Kane & Company (''Thompson Kane'') that included a civil money penalty of $39,819. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Thompson Kane (a) to comply with FHA's annual recertification requirements in a timely manner following fiscal year 2018; (b) failed to maintain the minimum required adjusted net worth in fiscal year 2018; (c) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2018; (d) failed to maintain the required liquid assets in fiscal year 2018; (e) failed to timely notify FHA that it did not meet the minimum liquid asset requirement in fiscal year 2018; (f) failed to timely notify FHA of an operating loss in excess of 20 percent of its quarter-end net worth in fiscal year 2018; and (g) failed to submit to FHA the required quarterly financial statements following a quarterly loss exceeding 20 percent of net worth in fiscal year 2018.

*72. Total Media Management LLC d/b/a New South Mortgage, Huntsville, AL [Docket No. 19–1941–MR]*

*Action:* On June 30, 2021, the Board voted to enter into a settlement agreement with Total Media Management, Inc. (''Total Media'') that included a civil money penalty of $142,619 and execution of a life-of-loan indemnification for six HECM loans. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Total Media (a) failed to maintain the minimum required adjusted net worth in fiscal years 2017, 2018, and 2019; (b) failed to timely notify FHA that it did

not meet the adjusted net worth requirement in fiscal years 2017, 2018, and 2019; (c) failed to maintain the required liquid assets in 2017; (d) failed to timely notify FHA that it did not meet the minimum liquid asset requirement in fiscal year 2017; (e) violated FHA's underwriting requirements for three HECM loans by failing to analyze the borrower's credit history to determine the borrower's willingness and ability to timely meet the financial obligations; and (f) violated FHA's underwriting requirements for five HECM loans by failing to document the borrower's income, verify the accuracy of the income reported, or determine whether the offered income was effective income.

*73. Unify Home Lending, Inc., Rapid City, SD [Docket No. 20–2094–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with Unify Home Lending, Inc. (''Unify'') that included a civil money penalty of $15,067. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Unify (a) failed to maintain the minimum required adjusted net worth in fiscal year 2019; and (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2019.

*74. United Community Banks, Inc., Greenville, SC [Docket No. 21–2210–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with United Community Banks, Inc. (''United Community'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: United Community failed to notify FHA of a change in business structure in fiscal year 2020.

*75. United Shore Financial Services, LLC, Pontiac, MI [Docket No. 20–2075–MR]*

*Action:* On November 18, 2020, the Board voted to enter into a settlement agreement with United Shore Financial Services, LLC (''United Shore'') that included reimbursement of claims for FHA mortgage insurance for five loans in the amount of $675,861.89. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: United Shore violated FHA's underwriting requirements for five loans for (a) failure to document transfer of gift funds; (b) failure to document source of funds used to pay off a debt and pre-closing deposits; (c) failure to manually underwrite loans that had disputed credit report entries; (d) failure to properly calculate and document borrower income; (e) failure to properly verify borrower assets; (f) failure to order a required second appraisal; and (g) failure to include all borrower debts.

*76. Vibrant Credit Union, Moline, IL [Docket No. 20–2102–MR]*

*Action:* On November 18, 2021, the Board voted to enter into a settlement agreement with Vibrant Credit Union (''Vibrant'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Vibrant failed to timely notify FHA of a change in business structure in fiscal year 2019.

*77. Victorian Finance LLC, Pittsburgh, PA [Docket No. 20–2139–MR]*

*Action:* On May 11, 2021, the Board voted to enter into a settlement agreement with Victorian Finance LLC (''Victorian Finance'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: Victorian Finance (a) failed to timely notify FHA of a state sanction in fiscal year 2019; and (b) submitted a false certification to FHA concerning fiscal year 2019.

*78. WestCoast Mortgage Group and Realty Company, Sacramento, CA [Docket No. 20–2133–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with WestCoast Mortgage Group and Realty Company (''West Coast'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: West Coast failed to timely notify FHA of a state sanction in fiscal year 2019.

*79. Westerra Credit Union, Denver, CO [Docket No. 20–2158–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with. Westerra Credit Union (''Westerra'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Westerra failed to notify FHA of a change in business structure in fiscal year 2019.

*80. Willow Bend Mortgage Company LLC, Plano, TX [Docket No. 21–2169–MR]*

*Action:* On May 18, 2021, the Board voted to enter into a settlement agreement with. Willow Bend Mortgage Company LLC (''Willow Bend'') that included a civil money penalty of $5,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violation of FHA requirements: Willow Bend failed to timely notify FHA of a state sanction in fiscal year 2019.

*81. WVMF Funding LLC, Wilmington, DE [Docket No. 21–2217–MR]*

*Action:* On September 21, 2021, the Board voted to enter into a settlement agreement with WVMF Funding LLC (''WVMF'') that included a civil money penalty of $10,000. The settlement did not constitute an admission of liability or fault.

*Cause:* The Board took this action based on the following alleged violations of FHA requirements: WVMF (a) failed to maintain the minimum required adjusted net worth in fiscal year 2020; and (b) failed to timely notify FHA that it did not meet the adjusted net worth requirement in fiscal year 2020.

**II. Lenders That Failed to Timely Meet Requirements for Annual Recertification of FHA Approval but Came Into Compliance**

*Action:* The Board entered into settlement agreements with the following lenders, which required the lender to pay a civil money penalty without admitting fault or liability.

*Cause:* The Board took these actions based upon allegations that the listed lenders failed to comply with FHA's annual recertification requirements in a timely manner.

The following lenders paid civil money penalties of $10,245.

1. Cross River Bank, Teaneck, NJ [Docket No. 21–2231–MRT]

2. Financial Partners Credit Union, Downey, CA [Docket No. 21–2218–MRT]
3. West One Capital Group, Inc., Newport Beach, CA [Docket No. 21–2222–MRT]

The following lender paid civil money penalties of $10,067.

4. Rusty Rose Inc., Miami, FL [Docket No. 20–2105–MRT]

The following lender paid civil money penalties of $10,000.

5. Logan Finance Corporation, Blytheville, AR [Docket No. 21–2178]

The following lender paid civil money penalties of $9,623.

6. Idaho First Bank, Boise, ID [Docket No. 20–2106–MRT]

The following lenders paid civil money penalties of $5,000.

7. Cooperativa De Ahorro y Crédito Caguas, Caguas, PR [Docket No. 21–2164–MRT]
8. Eclipse Bank, Inc., Louisville, KY [Docket No. 21–2212–MRT]
9. FedEx Employees Credit Association, Memphis, TN [Docket No. 21–2239–MRT]
10. First Independence Bank, Detroit, MI [Docket No. 21–2228–MRT]
11. First National Bank of Tom Bean, Tom Bean, TX [Docket No. 21–2226–MRT]
12. Genhome Mortgage Corporation f/k/a Beckham Funding Corp., Irvine, CA [Docket No. 21–2237–MRT]
13. Greenbox Loan, Inc., Los Angeles, CA [Docket No. 21–2244–MRT]
14. Home Financing Center, Inc., Coral Gables, FL [Docket No. 21–2141–MRT]
15. Sterling Bank and Trust, F.S.B., Southfield, MI [Docket No. 20–2101–MRT]
16. Washington County Bank, Blair, NE [Docket No. 21–2219–MRT]
17. Wyoming Community Bank, Riverton, WY [Docket No. 20–2108–MRT]

## III. Lenders That Failed To Meet Requirements for Annual Recertification of FHA Approval

The Board voted to withdraw Essential Federal Credit Union of Baton Rouge, LA for a period of one year on September 19, 2019 for its alleged failure to meet the annual recertification requirements in fiscal year 2018.

**Lopa P. Kolluri,**

*Principal Deputy Assistant Secretary for Housing—Federal Housing Administration, Mortgagee Review Board.*

[FR Doc. 2022–08340 Filed 4–18–22; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–7056–N–13]**

## 60-Day Notice of Proposed Information Collection: Manufactured Housing Installation Program Reporting Requirements; OMB Control No.: 2502–0578

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* June 21, 2022.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

### A. Overview of Information Collection

*Title of Information Collection:* Manufactured Housing Installation Program Reporting Requirements.

*OMB Approval Number:* 2502–0578.

*OMB Expiration Date:* July 31, 2022.

*Type of Request:* Revision of a currently approved collection.

*Form Numbers:* HUD–305; HUD–306; HUD–307; HUD–308; HUD–309; HUD–312.

*Description of the need for the information and proposed use:* The Manufactured Housing Installation Program, mandated by the Manufactured Home Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000, establishes regulations for the implementation and administration of an installation program and establishes a regulatory program for States that choose not to implement their own programs. HUD uses the information collected for the enforcement of the Model Manufactured Home Installation Standards in each State that does not have an installation program established by State law to ensure that the minimum criteria of an installation program are met.

*Respondents* (*i.e.,* affected public): Business or other for-profit; State, Local, or Tribal Government; Individuals or households.

*Estimated Number of Respondents:* 4,072.

*Estimated Number of Responses:* 388,357.

*Frequency of Response:* Annually.

*Average Hours per Response:* 4.

*Total Estimated Burdens:* 290,523 hours.

### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(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;

(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 through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

**C. Authority**

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

**Janet M. Golrick,**

*Acting Chief of Staff for Housing.*

[FR Doc. 2022–08336 Filed 4–18–22; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Geological Survey

**[GX21xxxx; OMB Control Number 1028–NEW]**

### Agency Information Collection Activities; Wildlife Morbidity/Mortality or Disease Surveillance Event Reporting

**AGENCY:** U.S. Geological Survey, Interior.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing an existing collection without an OMB number.

**DATES:** Interested persons are invited to submit comments on or before June 21, 2022.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–NEW in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Katherine Richgels by email at *krichgels@usgs.gov* or by telephone at 608–381–2492. 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. You may also view the ICR at: *http://www.reginfo.gov/public/do/PRAMain.*

**SUPPLEMENTARY INFORMATION:** In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifiable information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

*Abstract:* The USGS National Wildlife Health Center (NWHC) collects information on the presence of highly consequential wildlife diseases and the occurrence of wildlife morbidity/mortality events nationwide to aid in outbreak investigations conducted by land-management agencies and as part of their mission-critical activities associated with response to animal health emergencies (Emergency Support Function 11). The collected information is used to provide situational awareness of potential zoonotic disease threats to human- and agricultural-health agencies and to assist land-management agencies with management decisions. NWHC requests that state, federal, and tribal natural-resource managers report wildlife morbidity and mortality events and collaborate on national-scale surveillance. Reported information includes the location, land ownership, and date(s) where the event occurred or sample was taken; capture methods and sample type, species sampled, and individual characteristics such as sex, age, and size; any clinical signs or other event history observed; habitat characteristics known to affect the suspected disease process, such as habitat type, habitat cover, temperature, precipitation, or others; laboratory-confirmed or suspected diagnoses; and contact information for the person reporting the event or submitting the sample. NWHC reports back the results of diagnostic testing and cause of death (if applicable) to the submitter and provides generalized information to registered users through our WHISPers platform, where users can search and download current and historical trends in wildlife diseases (in accordance with the open data policy and FAIR standards).

*Title of Collection:* Wildlife morbidity/mortality or disease surveillance event reporting.

*OMB Control Number:* 1028–NEW.

*Form Number:* None.

*Type of Review:* An existing collection without an OMB number.

*Respondents/Affected Public:* Employees of state, federal, or tribal agencies with wildlife-management authority.

*Total Estimated Number of Annual Respondents:* 400.

*Total Estimated Number of Annual Responses:* 400.

*Estimated Completion Time per Response:* 15 min.

*Total Estimated Number of Annual Burden Hours:* 100.

*Respondent's Obligation:* Voluntary.

*Frequency of Collection:* Per wildlife health event, frequency depends on the number of events experienced by an agency/management unit.

*Total Estimated Annual Nonhour Burden Cost:* None.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

**Jonathan Sleeman,**

*Director, National Wildlife Health Center.*

[FR Doc. 2022–08274 Filed 4–18–22; 8:45 am]

**BILLING CODE 4338–11–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–372]**

### Exempt Chemical Preparations Under the Controlled Substances Act

**AGENCY:** Drug Enforcement Administration, Department of Justice.

**ACTION:** Order with opportunity for comment.

**SUMMARY:** The applications for exempt chemical preparations received by the Drug Enforcement Administration (DEA) between July 1, 2021, and December 31, 2021, as listed below, were accepted for filing and have been approved or denied as indicated.

**DATES:** Interested persons may file written comments on this order in accordance with 21 CFR 1308.23(e). Electronic comments must be submitted, and written comments must be postmarked, on or before June 21, 2022. Commenters should be aware that the electronic Federal Docket Management System will not accept comments after 11:59 p.m. Eastern Time on the last day of the comment period.

**ADDRESSES:** To ensure proper handling of comments, please reference ''Docket No. DEA–372'' on all correspondence, including any attachments.

*Electronic comments:* DEA encourages that all comments be submitted through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Please go to *http://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon completion of your submission you will receive a Comment Tracking Number for your comment. Please be aware that submitted comments are not instantaneously available for public view on *Regulations.gov.* If you have received a comment tracking number, your comment has been successfully submitted and there is no need to resubmit the same comment.

*Paper comments:* Paper comments that duplicate the electronic submission are not necessary and are discouraged. Should you wish to mail a comment *in lieu of* an electronic comment, it should be sent via regular or express mail to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DRW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**FOR FURTHER INFORMATION CONTACT:** Terrence L. Boos, Ph.D., Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–8201.

**SUPPLEMENTARY INFORMATION:**

### Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the DEA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter. The Freedom of Information Act applies to all comments received.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment.

Comments containing personal identifying information and confidential business information identified as directed above will generally be made publicly available in redacted form. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be made publicly available. Comments posted to *http://www.regulations.gov* may include any personal identifying information (such as name, address, and phone number) included in the text of your electronic submission that is not identified as directed above as confidential.

An electronic copy of this document is available at *http://www.regulations.gov* for easy reference.

### Legal Authority

Section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) authorizes the Attorney General, by regulation, to exempt from certain provisions of the CSA certain compounds, mixtures, or preparations containing a controlled substance, if he finds that such compounds, mixtures, or preparations meet the requirements detailed in 21 U.S.C. 811(g)(3)(B).[1] The Drug Enforcement Administration (DEA) regulations at 21 CFR 1308.23 and 1308.24 further detail the criteria by which the DEA Deputy Assistant Administrator may exempt a chemical preparation or mixture from certain provisions of the CSA. The Deputy Assistant Administrator may, pursuant to 21 CFR 1308.23(f), modify or revoke the criteria by which exemptions are granted and modify the scope of exemptions at any time.

### Exempt Chemical Preparation Applications Submitted Between July 1, 2021, and December 31, 2021

The Deputy Assistant Administrator received applications between July 1, 2021, and December 31, 2021, requesting exempt chemical preparation status detailed in 21 CFR 1308.23. Pursuant to the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23, the Deputy Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart I below is intended for laboratory, industrial, educational, or special research purposes and not for general administration to a human being or animal and either: (1) Contains no narcotic controlled substance and is packaged in such a form or concentration that the packaged quantity does not present any significant potential for abuse; or (2) contains either a narcotic or non-narcotic controlled substance and one or more adulterating or denaturing agents in such a manner, combination, quantity, proportion, or concentration that the preparation or mixture does not present any potential for abuse and, if the preparation or mixture contains a narcotic controlled substance, is formulated in such a manner that it incorporates methods of denaturing or other means so that the preparation or mixture is not liable to be abused or have ill effects, if abused, and so that the narcotic substance cannot in practice be removed.

Accordingly, pursuant to 21 U.S.C. 811(g)(3)(B), 21 CFR 1308.23, and 21 CFR 1308.24, the Deputy Assistant Administrator has determined that each of the chemical preparations or mixtures generally described in Chart I below and specifically described in the application materials received by DEA is exempt, to the extent described in 21 CFR 1308.24, from application of sections 302, 303, 305, 306, 307, 308, 309, 1002, 1003, and 1004 (21 U.S.C. 822–823, 825–829, and 952–954) of the CSA, and 21 CFR 1301.74, as of the date that was

[1] This authority has been delegated from the Attorney General to the DEA Administrator by 28 CFR 0.100, and subsequently redelegated to the Deputy Assistant Administrator pursuant to 28 CFR 0.104 and Section 7 of the appendix to subpart R of part 0.

provided in the approval letters to the individual requesters.

**Scope of Approval**

The exemptions are applicable only to the precise preparation or mixture described in the application submitted to DEA in the form(s) listed in this order and only for those above mentioned sections of the CSA and the CFR. In accordance with 21 CFR 1308.24(h), any change in the quantitative or qualitative composition of the preparation or mixture, or change in the trade name or other designation of the preparation or mixture after the date of application requires a new application. The requirements set forth in 21 CFR 1308.24(b)–(e) apply to the exempted materials. In accordance with 21 CFR 1308.24(g), DEA may prescribe requirements other than those set forth in 21 CFR 1308.24(b)–(e) on a case-by-case basis for materials exempted in bulk quantities. Accordingly, in order to limit opportunity for diversion from the larger bulk quantities, DEA has determined that each of the exempted bulk products listed in this order may only be used in-house by the manufacturer, and may not be distributed for any purpose, or transported to other facilities.

Additional exempt chemical preparation requests received between July 1, 2021, and December 31, 2021, and not otherwise referenced in this order, may remain under consideration until DEA receives additional information required, pursuant to 21 CFR 1308.23(d), as detailed in separate correspondence to individual requesters. DEA's order on such requests will be communicated to the public in a future **Federal Register** publication.

DEA also notes that these exemptions are limited to exemption from only those sections of the CSA and the CFR that are specifically identified in 21 CFR 1308.24(a). All other requirements of the CSA and the CFR apply, including registration as an importer as required by 21 U.S.C. 957.

CHART I

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| Absolute Standards, Inc | (+/−)-MDA–D5, 100 ug/ml, in Methanol | Glass ampoule: 1 ml | 10/21/2021 |
| Absolute Standards, Inc | (+/−)-Methamphetamine-D9, 100 ug/ml, in Methanol | Glass ampoule: 1 ml | 10/21/2021 |
| Absolute Standards, Inc | 4-Androstene-3,17-dione, 1000 ug/ml, in Methanol | Glass ampoule: 1 ml | 10/21/2021 |
| Absolute Standards, Inc | 6-Acetylmorphine, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | 6-Acetylmorphine-D3, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Amfepramone, 100 ug/ml, in Acetonitrile:Water [1:1] | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Amfepramone-D10, 100 ug/ml, in 1% IM HCl Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Anhydroecgonine methyl ester, 100 ug/ml, in Acetonitrile | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Barbital, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Benzoylecgonine-D3, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Chlordiazepoxide, 100 ug/ml, in Acetonitrile | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Cocaethylene, 100 ug/ml, in Acetonitrile | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Cocaethylene-D3, 100 ug/ml, in Acetonitrile | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Codeine-D3, 100 ug/ml, in Ethanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Dihydrotestosterone, 1000 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Ecgonine methyl ester, 1000 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Fenproporex, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Fenproporex-D5, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Fentanyl, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO 17025 Calibrator—Level 0, ≥500 ng/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO 17025 Calibrator—Level 3, ≥5000 ng/ml, In Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO 17025 Calibrator—Level 4, ≥10 ng/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO 17025 Calibrator—Level 5, ≥20 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO 17025 Calibrator • Level 1, ≥1000 ng/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO 17025 Calibrator • Level 2, ≥2500 ng/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO 17043 Internal Standard, ≥3000 ng/ml, in Methanol | Glass ampoule: 5 ml | 10/21/2021 |
| Absolute Standards, Inc | ISO G34 calibrator Spike Solution Rev 1, ≥50 ng/ml, in Methanol. | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO G34 Control Spike High Rev-1, ≥7000 ng/ml, in Methanol. | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | ISO G34 Control Spike Low Rev-1, ≥4000 ng/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | JWH–018, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | JWH–018-d9, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Ketamine-d4, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Mazindol, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Mazindol-D4, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Morphine, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Morphine-D3, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Norcocaine, 100 ug/ml, in Acetonitrile | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Norcocaine-D3, 100 ug/ml, in Acetonitrile | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Paraldehyde, 1000 ug/ml, in Water | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Phencyclidine, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Pregabalin-d6, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Psilocybin, 100 ug/ml, in Acetonitrile.:Water [1:1] | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | Psilocybin, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | THC-O-Acetate, 100 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | THC-O-Acetate, 1000 ug/ml, in Methanol | Glass ampoule: 1 mL | 10/21/2021 |
| Absolute Standards, Inc | WS Chloral hydrate, 4–30 ug/ml, in Acetone | Glass ampoule: 2 ml | 10/21/2021 |
| Absolute Standards, Inc | WS Chloral hydrate, 4–30 ug/ml, in MTBE | Glass ampoule: 2 ml | 10/21/2021 |
| Audit MicroControls, Inc | Linearity FD Immunoassay | Kit: 10 vials; 5 mL each | 8/23/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| Audit MicroControls, Inc | Linearity FD Immunoassay for Abbott Systems | Kit: 10 vials; 5 mL each | 7/19/2021 |
| Audit MicroControls, Inc | Linearity FD Immunoassay for Abbott Systems Level A | Glass vial: 5 mL | 7/19/2021 |
| Audit MicroControls, Inc | Linearity FD Immunoassay for Abbott Systems Level B | Glass vial: 5 mL | 7/19/2021 |
| Audit MicroControls, Inc | Linearity FD Immunoassay for Abbott Systems Level C | Glass vial: 5 mL | 7/19/2021 |
| Audit MicroControls, Inc | Linearity FD Immunoassay for Abbott Systems Level D | Glass vial: 5 mL | 7/19/2021 |
| Audit MicroControls, Inc | Linearity FD Immunoassay for Abbott Systems Level E | Glass vial: 5 mL | 7/19/2021 |
| Audit MicroControls, Inc | Linearity FLQ Fertility Siemens Atellica/Centaur | Kit: 10 vials; 2 mL each | 8/18/2021 |
| Audit MicroControls, Inc | Linearity FLQ Fertility Siemens Atellica/Centaur, Set 2 Level A. | Glass vial: 2 mL | 8/18/2021 |
| Audit MicroControls, Inc | Linearity FLQ Fertility Siemens Atellica/Centaur, Set 2 Level B. | Glass vial: 2 mL | 8/18/2021 |
| Audit MicroControls, Inc | Linearity FLQ Fertility Siemens Atellica/Centaur, Set 2 Level C. | Glass vial: 2 mL | 8/18/2021 |
| Audit MicroControls, Inc | Linearity FLQ Fertility Siemens Atellica/Centaur, Set 2 Level D. | Glass vial: 2 mL | 8/18/2021 |
| Audit MicroControls, Inc | Linearity FLQ Fertility Siemens Atellica/Centaur, Set 2 Level E. | Glass vial: 2 mL | 8/18/2021 |
| Cayman Chemical Compan | (±)-cis-Δ9-THC (CRM) 1 mg/mL in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | (±)-cis-Δ9-THC (CRM) 1 mg/mL in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | (±)-cis-Δ9-THC (CRM) 100 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | (±)-cis-Δ9-THC (CRM) 100 µg/ml in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | 3-trifluoromethyl-N-Ethylamphetamine (hydrochloride) (exempt preparation). | Glass ampule: 1.0 mL | 10/7/2021 |
| Cayman Chemical Company | 3-trifluoromethyl-N-Ethylamphetamine (hydrochloride) (exempt preparation). | Glass ampule: 0.5 mL | 10/7/2021 |
| Cayman Chemical Company | 4′-methyl Fentanyl (hydrochloride) (exempt preparation) | Glass ampule: 0.5 mL | 10/7/2021 |
| Cayman Chemical Company | 4-methyl Fentanyl (hydrochloride) (exempt preparation) | Glass ampule: 0.5 mL | 10/7/2021 |
| Cayman Chemical Company | Custom Phytocannabinoid Mixture (CRM)—Adams Independent Testing. | Glass ampule: 0.5 mL | 10/7/2021 |
| Cayman Chemical Company | Custom Phytocannabinoid Mixture (CRM)—Adams Independent Testing. | Glass ampule: 1.0 mL | 10/7/2021 |
| Cayman Chemical Company | Custom Phytocannabinoid Mixture (CRM)—Adams Independent Testing. | Glass ampule: 1.0 mL | 10/7/2021 |
| Cayman Chemical Company | LSD (CRM) 25 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | LSD (CRM) 50 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | meta-Methylfentanyl (hydrochloride) (exempt preparation) | Glass ampule: 0.5 mL | 10/7/2021 |
| Cayman Chemical Company | N-methyl Tryptamine (CRM) 1 mg/mL in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | N-methyl Tryptamine (CRM) 1 mg/mL in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | N-methyl Tryptamine (CRM) 100 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | N-methyl Tryptamine (CRM) 100 µg/ml in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | ortho-Methylfentanyl (hydrochloride) (exempt preparation) | Glass ampule: 1.0 mL | 10/7/2021 |
| Cayman Chemical Company | para-Chlorofentanyl (hydrochloride) (exempt preparation) | Glass ampule: 1.0 mL | 10/7/2021 |
| Cayman Chemical Company | Δ8-THC Acetate (CRM) 1 mg/mL in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THC Acetate (CRM) 1 mg/mL in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THC Acetate (CRM) 100 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THC Acetate (CRM) 100 µg/ml in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THC Acetate-d9 (CRM) 1 mg/mL in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THC Acetate-d9 (CRM) 100 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THC Acetate-d9 (CRM) 100 µg/ml in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THCV (CRM) 1 mg/mL in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THCV (CRM) 1 mg/mL in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THCV (CRM) 100 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ8-THCV (CRM) 100 µg/ml in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ9-THCO (CRM) 1 mg/mL in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ9-THCO (CRM) 1 mg/mL in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ9-THCO (CRM) 100 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ9-THCO (CRM) 100 µg/ml in Methanol | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ9-THCOA-A (CRM) 1 mg/mL in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cayman Chemical Company | Δ9-THCOA-A (CRM) 100 µg/ml in Acetonitrile | Glass Ampule: 1 mL | 9/7/2021 |
| Cerilliant Corporation | PMMA HCl | Glass ampule: 1 mL | 7/23/2021 |
| Cerilliant Corporation | Tetrahydrocannabiphorol (THCP) | Glass Ampule: 1 mL | 8/30/2021 |
| College of American Pathologists. | 2022 NOB–01 | Amber Vial: 15 mL | 8/4/2021 |
| College of American Pathologists. | 2022 NOB–02 | Amber Vial: 15 mL | 8/4/2021 |
| College of American Pathologists. | 2022 NOB–03 | Amber Vial: 15 mL | 8/4/2021 |
| College of American Pathologists. | 2022 NOB–04 | Amber Vial: 15 mL | 8/4/2021 |
| College of American Pathologists. | 2022 NOB–05 | Amber Vial: 15 mL | 8/4/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| College of American Pathologists. | 2022 NOB–06 | Amber Vial: 15 mL | 8/4/2021 |
| College of American Pathologists. | 2022 SCDD–01 | HDPE Bottle: 10 mL | 8/4/2021 |
| College of American Pathologists. | 2022 SCDD–02 | HDPE Bottle: 10 mL | 8/4/2021 |
| College of American Pathologists. | 2022 SCDD–03 | HDPE Bottle: 10 mL | 8/4/2021 |
| College of American Pathologists. | 2022 SCDD–04 | HDPE Bottle: 10 mL | 8/4/2021 |
| College of American Pathologists. | 2022 SCDD–05 | HDPE Bottle: 10 mL | 8/4/2021 |
| College of American Pathologists. | 2022 SCDD–06 | HDPE Bottle: 10 mL | 8/4/2021 |
| CPI International | Custom Cannabinoid Mixture, 11–0202, 250 ug/mL, 0.4 ml | Amber ampule: 0.4 mL | 10/5/2021 |
| CPI Internatonal | Custom Cannabinoid Mixture, 11–0268, 500 ug/mL, 0.4 ml | Amber ampule: 0.4 mL | 10/5/2021 |
| LGC—Dr. Ehrenstorfer | 19-Norandrost-4-ene-3,17-dione 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 10/5/2021 |
| LGC—Dr. Ehrenstorfer | Cannabinoids Mixture 269 100 µg/mL in Acetonitrile | Certain Capillary Vial: 1 mL | 12/27/2021 |
| LGC—Dr. Ehrenstorfer | Carisoprodol 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 10/5/2021 |
| LGC—Dr. Ehrenstorfer | Delta8-Tetrahydrocannabinol 250 µg/mL in Acetonitrile | Amber ampule: 1 mL | 10/14/2021 |
| LGC—Dr. Ehrenstorfer | Delta9-Tetrahydrocannabinol 250 µg/mL in Acetonitrile | Amber ampule: 1 mL | 10/14/2021 |
| LGC—Dr. Ehrenstorfer | Delta9-Tetrahydrocannabinolic acid 250 µg/mL in Acetonitrile | Amber ampule: 1 mL | 10/14/2021 |
| LGC—Dr. Ehrenstorfer | Delta9-Tetrahydrocannabivarin (THCV) 10 µg/mL in Methanol. | Amber ampule: 1 mL | 10/14/2021 |
| LGC—Dr. Ehrenstorfer | Delta9-Tetrahydrocannabivarin (THCV) 250 µg/mL in Acetonitrile. | Amber ampule: 1 mL | 9/10/2021 |
| LGC—Dr. Ehrenstorfer | Diazepam 1000 µg/mL in Methanol | Amber ampule: 1 mL | 10/28/2021 |
| LGC—Dr. Ehrenstorfer | Drostanolone propionate 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 9/10/2021 |
| LGC—Dr. Ehrenstorfer | Mestanolone 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 9/10/2021 |
| LGC—Dr. Ehrenstorfer | Methandrostenolone 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 10/5/2021 |
| LGC—Dr. Ehrenstorfer | Methenolone 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 9/10/2021 |
| LGC—Dr. Ehrenstorfer | Methenolone acetate 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 9/10/2021 |
| LGC—Dr. Ehrenstorfer | Methenolone enanate 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 9/10/2021 |
| LGC—Dr. Ehrenstorfer | Methylandrostenediol 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 10/5/2021 |
| LGC—Dr. Ehrenstorfer | Testosterone cyprionate 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 9/10/2021 |
| LGC—Dr. Ehrenstorfer | Trenbolone –acetate 100 µg/mL in Acetonitrile | Amber ampule: 1 mL | 9/10/2021 |
| LGC GmbH | Butalbital 1.0 mg/ml in Methanol | Glass vial: 1 mL | 12/10/2021 |
| LGC GmbH | Codeine 6-beta-D-Glucuronide 1.0 mg/ml in water | Glass vial: 1 mL | 12/10/2021 |
| LGC GmbH | Fentanyl 0.1 mg/ml in Methanol | Glass vial: 1 mL | 12/10/2021 |
| LGC GmbH | Norfentanyl (N-Phenyl-N-(piperidin-4-yl)propanamide) 1.0 mg/ml in Methanol. | Glass vial: 1 mL | 12/10/2021 |
| Lipomed, Inc | Psilocin 1 mg/mL in Acetonitrile | Amber ampule: 1 mL | 8/6/2021 |
| Lipomed, Inc | Psilocybin 1 mg/mL in Acetonitrile./water (1:1) | Amber ampule: 1 mL | 8/6/2021 |
| National Laboratory Certification Program. | 3000301B, 3053607B, 3084208B, 3103122B, 3156687B, 3158826B, 3183876B, 3201353B, 3229034B, 3233324B, 3277815B, 3298240B, 3383493B, 3399449B, 3413172B, 3470836B, 3508218B, 3554818B, 3625338B, 3658358B, 3706577B, 3737871B, 3815352B, 3823243B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3000670B, 3032994B, 3079288B, 3087729B, 3129996B, 3143285B, 3175656B, 3205258B, 3211974B, 3219480B, 3220498B, 3234331B, 3304440B, 3319768B, 3331949B, 3360550B, 3454144B, 3556565B, 3602149B, 3612809B, 3759595B, 3766891B, 3834257B, 3840355B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3001256B, 3049804B, 3065461B, 3076777B, 3094226B, 3107432B, 3133183B, 3166163B, 3205456B, 3251624B, 3267771B, 3312521B, 3408750B, 3412141B, 3475940B, 3489631B, 3493042B, 3496785B, 3534087B, 3547891B, 3562016B, 3583238B, 3642398B, 3670153B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3001930B, 3053799B, 3067331B, 3217483B, 3249962B, 3252399B, 3257007B, 3283704B, 3290913B, 3300942B, 3313345B, 3356739B, 3363749B, 3398017B, 3464034B, 3492609B, 3533880B, 3534125B, 3577760B, 3610623B, 3634218B, 3715106B, 3797301B, 3800867B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3002725B, 3038406B, 3062660B, 3072460B, 3087244B, 3154378B, 3321460B, 3361495B, 3387749B, 3411158B, 3442938B, 3481924B, 3506635B, 3512954B, 3530321B, 3557516B, 3573234B, 3644954B, 3693710B, 3722436B, 3730620B, 3755114B, 3818143B, 3829739B. | HDPE vial: 3 mL | 9/13/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| National Laboratory Certification Program. | 3002882A, 3028570A, 3036478A, 3118833A, 3182692A, 3190145A, 3193313A, 3197420A, 3198433A, 3222023A, 3299073A, 3315482A, 3346597A, 3433659A, 3483907A, 3528495A, 3530692A, 3604775A, 3665629A, 3731585A, 3736476A, 3756355A, 3773428A, 3803698A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3003428A, 3076536A, 3098332A, 3184891A, 3192786A, 3220587A, 3243741A, 3268860A, 3303950A, 3497611A, 3525874A, 3547255A, 3609651A, 3648156A, 3655950A, 3682011A, 3690946A, 3693884A, 3709375A, 3787270A, 3809742A, 3867580A, 3871107A, 3899709A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3004102B, 3061919B, 3067584B, 3182767B, 3259518B, 3277121B, 3280849B, 3344267B, 3354418B, 3379735B, 3472004B, 3498418B, 3563359B, 3567549B, 3571788B, 3603663B, 3623930B, 3639850B, 3645137B, 3655511B, 3667869B, 3693135B, 3800153B, 3816405B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3004456B, 3010241B, 3049402B, 3066217B, 3090094B, 3106608B, 3119130B, 3255475B, 3304866B, 3306126B, 3387057B, 3461609B, 3466933B, 3499210B, 3513516B, 3616880B, 3624838B, 3652628B, 3662466B, 3715271B, 3731168B, 3755832B, 3768746B, 3808607B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3004459B, 3012938B, 3100503B, 3151938B, 3221006B, 3233063B, 3247680B, 3330056B, 3373427B, 3415515B, 3463883B, 3498650B, 3589710B, 3595282B, 3610043B, 3706099B, 3720530B, 3727533B, 3757975B, 3783997B, 3797718B, 3812546B, 3827723B, 3844354B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3004499B, 3023722B, 3099165B, 3112979B, 3127505B, 3136949B, 3215719B, 3241024B, 3278495B, 3321843B, 3332081B, 3401270B, 3429193B, 3436991B, 3464872B, 3470894B, 3498192B, 3505984B, 3588409B, 3681412B, 3705510B, 3708606B, 3715336B, 3745790B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3006245B, 3048677B, 3092932B, 3113535B, 3115421B, 3126039B, 3216871B, 3239795B, 3279560B, 3282287B, 3298461B, 3321857B, 3327593B, 3388101B, 3414018B, 3444816B, 3484045B, 3500148B, 3535498B, 3566624B, 3575438B, 3589851B, 3593765B, 3594140B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3006287B, 3024365B, 3072772B, 3102304B, 3181119B, 3205421B, 3210145B, 3212012B, 3219963B, 3237536B, 3248910B, 3251463B, 3306543B, 3370725B, 3373480B, 3422342B, 3466404B, 3473372B, 3506771B, 3508548B, 3524133B, 3618957B, 3665329B, 3700588B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3008708A, 3016714A, 3025842A, 3070529A, 3085647A, 3098353A, 3119731A, 3142448A, 3154416A, 3167233A, 3218866A, 3222308A, 3269379A, 3274616A, 3279106A, 3317902A, 3382874A, 3425335A, 3444483A, 3531957A, 3600417A, 3642658A, 3657273A, 3750257A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3008828A, 3026409A, 3038392A, 3218744A, 3254477A, 3289650A, 3298361A, 3310677A, 3330787A, 3331007A, 3384869A, 3390776A, 3412570A, 3438244A, 3549310A, 3560267A, 3587250A, 3587970A, 3588634A, 3636834A, 3738478A, 3769136A, 3799837A, 3821037A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3008838B, 3050141B, 3055009B, 3081934B, 3094795B, 3121770B, 3151007B, 3181864B, 3189941B, 3206510B, 3245243B, 3262514B, 3361299B, 3373545B, 3434154B, 3469908B, 3582025B, 3586968B, 3613215B, 3636688B, 3641116B, 3655972B, 3668172B, 3739262B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3009115B, 3071178B, 3072116B, 3079551B, 3096797B, 3115852B, 3134527B, 3201454B, 3260406B, 3281092B, 3402884B, 3417856B, 3417858B, 3426353B, 3451201B, 3487627B, 3493853B, 3496292B, 3524238B, 3578854B, 3616716B, 3618779B, 3628443B, 3664926B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3009834A, 3032237A, 3043005A, 3053618A, 3075175A, 3076894A, 3131101A, 3145021A, 3152402A, 3194042A, 3202757A, 3213899A, 3246984A, 3300283A, 3313680A, 3356302A, 3385262A, 3405906A, 3525353A, 3536464A, 3541980A, 3629391A, 3672896A, 3718978A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3009955A, 3025983A, 3077802A, 3087627A, 3129724A, 3162171A, 3167262A, 3204717A, 3344764A, 3359536A, 3369440A, 3518531A, 3529980A, 3562554A, 3564219A, 3574601A, 3610880A, 3614032A, 3673432A, 3689724A, 3712498A, 3761052A, 3768842A, 3784571A. | HDPE vial: 3 mL | 9/13/2021 |

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| Supplier | Product name | Form | Application date |
|---|---|---|---|
| National Laboratory Certification Program. | 3010479A, 3019300A, 3046656A, 3047815A, 3051819A, 3058136A, 3141572A, 3142991A, 3168503A, 3168568A, 3276583A, 3304720A, 3334687A, 3372805A, 3460441A, 3505207A, 3570174A, 3596620A, 3637562A, 3681777A, 3746596A, 3767630A, 3785272A, 3795682A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3010632B, 3027415B, 3040029B, 3147629B, 3168655B, 3191473B, 3196619B, 3204959B, 3248736B, 3266360B, 3302473B, 3325620B, 3389278B, 3409693B, 3533496B, 3559118B, 3625183B, 3643588B, 3687362B, 3701656B, 3716357B, 3729135B, 3739883B, 3756621B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3011334A, 3054962A, 3123658A, 3126696A, 3283098A, 3308345A, 3337250A, 3344485A, 3358993A, 3393457A, 3399326A, 3399379A, 3425672A, 3431652A, 3576731A, 3596648A, 3598670A, 3602748A, 3664763A, 3686748A, 3713176A, 3727573A, 3736626A, 3755186A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3011386B, 3076154B, 3085817B, 3157502B, 3184735B, 3262215B, 3381196B, 3471350B, 3473362B, 3473659B, 3474599B, 3492320B, 3496214B, 3540285B, 3557251B, 3583127B, 3584328B, 3617916B, 3626903B, 3666056B, 3692840B, 3730008B, 3766776B, 3842750B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3012172A, 3049473A, 3061547A, 3068909A, 3216904A, 3251252A, 3251723A, 3258273A, 3291572A, 3322138A, 3327105A, 3361723A, 3391155A, 3439019A, 3470434A, 3474424A, 3476315A, 3672534A, 3689234A, 3689253A, 3725647A, 3736534A, 3777644A, 3793837A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3012337B, 3045030B, 3054379B, 3192242B, 3198182B, 3213208B, 3226568B, 3307120B, 3332769B, 3377297B, 3379395B, 3386564B, 3481464B, 3482917B, 3539583B, 3578026B, 3596183B, 3731615B, 3737486B, 3766260B, 3781197B, 3864040B, 3875090B, 3899412B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3013028B, 3014731B, 3099745B, 3125642B, 3133329B, 3150889B, 3196292B, 3201158B, 3240793B, 3254970B, 3327084B, 3393776B, 3409535B, 3424764B, 3426650B, 3485112B, 3507951B, 3542168B, 3588332B, 3590641B, 3597973B, 3612044B, 3621558B, 3628060B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3013899B, 3047268B, 3077303B, 3077380B, 3102664B, 3113045B, 3201829B, 3204047B, 3212368B, 3221830B, 3255898B, 3345392B, 3375569B, 3436063B, 3444985B, 3454187B, 3456569B, 3487783B, 3488426B, 3493248B, 3581727B, 3619561B, 3638314B, 3671622B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3014277A, 3054350A, 3071415A, 3146516A, 3162470A, 3246104A, 3252641A, 3264270A, 3274573A, 3320271A, 3383723A, 3392424A, 3455759A, 3478640A, 3484417A, 3489752A, 3526242A, 3628091A, 3642285A, 3649691A, 3695014A, 3771792A, 3779678A, 3786913A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3014626A, 3035226A, 3077914A, 3080686A, 3082234A, 3123444A, 3155810A, 3161553A, 3332493A, 3337740A, 3353616A, 3486257A, 3507423A, 3510294A, 3535684A, 3545489A, 3667138A, 3669339A, 3699026A, 3716893A, 3733737A, 3770383A, 3840899A, 3877286A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3017131B, 3026375B, 3101868B, 3115686B, 3123639B, 3139555B, 3146834B, 3210067B, 3223628B, 3227210B, 3321910B, 3440754B, 3526276B, 3532250B, 3567811B, 3588199B, 3588516B, 3602849B, 3606787B, 3650186B, 3650483B, 3685112B, 3745963B, 3827992B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3017296A, 3089817A, 3102219A, 3108957A, 3216724A, 3257045A, 3264554A, 3301964A, 3311892A, 3435185A, 3435502A, 3437870A, 3449317A, 3511056A, 3578930A, 3597863A, 3632574A, 3647302A, 3686097A, 3702439A, 3786314A, 3826747A, 3841424A, 3860574A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3017391B, 3051445B, 3057067B, 3087211B, 3117856B, 3235445B, 3269565B, 3276378B, 3310093B, 3336452B, 3357458B, 3383344B, 3447183B, 3472336B, 3517354B, 3521060B, 3537088B, 3628030B, 3656027B, 3656477B, 3666287B, 3725810B, 3812346B, 3827884B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3017464A, 3061947A, 3105743A, 3118845A, 3157908A, 3183565A, 3214791A, 3317031A, 3335054A, 3360757A, 3397761A, 3425786A, 3433792A, 3496660A, 3531444A, 3531581A, 3545804A, 3557878A, 3559163A, 3602685A, 3621111A, 3643237A, 3647107A, 3677051A. | HDPE vial: 3 mL | 9/13/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| National Laboratory Certification Program. | 3018233A, 3149094A, 3202345A, 3246162A, 3254294A, 3271001A, 3286494A, 3351055A, 3357803A, 3372684A, 3419821A, 3432039A, 3452545A, 3456851A, 3467579A, 3537667A, 3574010A, 3621300A, 3646140A, 3715917A, 3729244A, 3783152A, 3795769A, 3876434A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3018302A, 3024118A, 3024998A, 3035864A, 3083660A, 3093978A, 3094815A, 3124506A, 3127471A, 3133616A, 3150608A, 3224828A, 3236416A, 3379952A, 3449221A, 3515236A, 3525862A, 3542969A, 3568626A, 3678732A, 3700244A, 3705093A, 3735792A, 3793734A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3018797A, 3058717A, 3076016A, 3094926A, 3124692A, 3132733A, 3144795A, 3170055A, 3177938A, 3179180A, 3199727A, 3213684A, 3218115A, 3253648A, 3295330A, 3329630A, 3339587A, 3374941A, 3415296A, 3465116A, 3500290A, 3521058A, 3528832A, 3632002A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3019454A, 3020820A, 3076066A, 3115784A, 3201070A, 3225082A, 3239312A, 3276716A, 3303075A, 3335812A, 3375837A, 3379796A, 3401174A, 3423034A, 3454814A, 3487926A, 3492517A, 3581724A, 3636060A, 3666774A, 3670732A, 3716880A, 3723632A, 3763826A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3020527A, 3026789A, 3075508A, 3245437A, 3271303A, 3281468A, 3298196A, 3319418A, 3321790A, 3330450A, 3338616A, 3377012A, 3445838A, 3478926A, 3490923A, 3499296A, 3523968A, 3528755A, 3542722A, 3609532A, 3612845A, 3679856A, 3748530A, 3782719A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3022756B, 3029938B, 3074194B, 3074993B, 3086341B, 3130776B, 3171227B, 3205064B, 3206769B, 3236004B, 3246091B, 3325696B, 3333909B, 3334502B, 3368350B, 3413517B, 3422044B, 3444947B, 3447518B, 3487094B, 3516962B, 3536967B, 3684705B, 3702588B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3022987A, 3057323A, 3059381A, 3130343A, 3164563A, 3181674A, 3229310A, 3232545A, 3274096A, 3307805A, 3310367A, 3323088A, 3328795A, 3354207A, 3380697A, 3383031A, 3386017A, 3430363A, 3483469A, 3531094A, 3644733A, 3652546A, 3661318A, 3715119A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3023260A, 3037680A, 3038359A, 3043771A, 3056518A, 3118831A, 3121329A, 3150339A, 3193649A, 3228398A, 3258512A, 3369163A, 3407370A, 3466141A, 3502244A, 3532993A, 3548893A, 3578937A, 3603623A, 3633306A, 3641133A, 3641154A, 3692635A, 3721001A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3023315B, 3044667B, 3050898B, 3086301B, 3092086B, 3097396B, 3098257B, 3114458B, 3199922B, 3281688B, 3288526B, 3352481B, 3460208B, 3499059B, 3558644B, 3624433B, 3662489B, 3692883B, 3716983B, 3749133B, 3795606B, 3812398B, 3822238B, 3840948B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3024515A, 3029804A, 3039443A, 3142081A, 3143623A, 3145741A, 3147406A, 3160969A, 3167594A, 3228586A, 3316488A, 3337545A, 3394468A, 3407446A, 3424299A, 3449418A, 3530268A, 3551235A, 3553662A, 3560177A, 3597811A, 3646205A, 3690888A, 3710381A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3033758B, 3080920B, 3126324B, 3134664B, 3163069B, 3181490B, 3262581B, 3309456B, 3319825B, 3343420B, 3404145B, 3416848B, 3480271B, 3539450B, 3540093B, 3548918B, 3562162B, 3564355B, 3564573B, 3613411B, 3645402B, 3683067B, 3695243B, 3779462B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3034224B, 3048235B, 3098161B, 3110771B, 3122785B, 3124321B, 3237639B, 3257267B, 3264767B, 3347100B, 3364461B, 3375021B, 3402246B, 3412358B, 3420135B, 3425642B, 3433276B, 3441077B, 3565841B, 3602318B, 3613400B, 3692969B, 3753308B, 3780764B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3034410A, 3080462A, 3102402A, 3119201A, 3122247A, 3137966A, 3281622A, 3306748A, 3343730A, 3354106A, 3402370A, 3405845A, 3422971A, 3429934A, 3433038A, 3455815A, 3465600A, 3519002A, 3626061A, 3670393A, 3679210A, 3684869A, 3700307A, 3769803A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3034833A, 3035331A, 3038291A, 3061655A, 3063131A, 3073883A, 3102878A, 3109096A, 3333983A, 3356402A, 3381675A, 3382958A, 3383239A, 3406429A, 3428075A, 3444621A, 3476554A, 3529229A, 3554578A, 3795005A, 3813091A, 3823366A, 3833284A, 3834748A. | HDPE vial: 3 mL | 9/13/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| National Laboratory Certification Program. | 3035278B, 3051588B, 3076916B, 3085491B, 3089629B, 3094528B, 3096204B, 3121984B, 3124256B, 3182463B, 3206419B, 3222476B, 3257609B, 3331291B, 3390944B, 3464824B, 3587728B, 3601382B, 3617853B, 3682193B, 3724720B, 3728205B, 3795663B, 3847156B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3039843B, 3046612B, 3099526B, 3212364B, 3234169B, 3251305B, 3329922B, 3376223B, 3450514B, 3467340B, 3504631B, 3507167B, 3568849B, 3573672B, 3574241B, 3588203B, 3639520B, 3640293B, 3648581B, 3678696B, 3707027B, 3707314B, 3724017B, 3724678B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3039931B, 3042761B, 3206845B, 3331446B, 3355902B, 3358839B, 3366059B, 3374236B, 3392803B, 3415608B, 3468731B, 3469798B, 3544510B, 3565235B, 3657001B, 3688894B, 3750816B, 3771030B, 3800096B, 3802978B, 3841894B, 3862815B, 3888536B, 3895739B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3041199A, 3057074A, 3083214A, 3130474A, 3167562A, 3238864A, 3249525A, 3257796A, 3268073A, 3315177A, 3332898A, 3357972A, 3440422A, 3470450A, 3489313A, 3506616A, 3517335A, 3533274A, 3585749A, 3659811A, 3674767A, 3715138A, 3740750A, 3778300A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3042218A, 3055193A, 3063196A, 3111183A, 3146090A, 3203127A, 3203334A, 3268239A, 3322442A, 3394806A, 3500946A, 3525519A, 3554909A, 3561271A, 3569383A, 3618289A, 3624760A, 3626383A, 3628571A, 3644995A, 3648868A, 3649216A, 3700425A, 3758646A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3042588A, 3090144A, 3147879A, 3235657A, 3247087A, 3268881A, 3281569A, 3295897A, 3343013A, 3398256A, 3430529A, 3447868A, 3537144A, 3578567A, 3584944A, 3622276A, 3623249A, 3647658A, 3683259A, 3748849A, 3753634A, 3757359A, 3767825A, 3823553A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3043354B, 3061886B, 3112207B, 3127108B, 3188040B, 3210527B, 3216454B, 3225242B, 3257364B, 3285595B, 3321996B, 3352981B, 3377957B, 3380925B, 3426997B, 3430721B, 3460702B, 3479202B, 3499605B, 3512884B, 3570598B, 3599234B, 3644866B, 3670169B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3045304B, 3101957B, 3137690B, 3168427B, 3194745B, 3211227B, 3216225B, 3239794B, 3251896B, 3280300B, 3298514B, 3320849B, 3449018B, 3487665B, 3526915B, 3548525B, 3559721B, 3566095B, 3650447B, 3676102B, 3685145B, 3698120B, 3704457B, 3724580B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3046377A, 3098212A, 3129398A, 3131566A, 3135943A, 3187710A, 3194313A, 3236402A, 3253743A, 3308549A, 3318611A, 3326064A, 3340131A, 3358581A, 3367249A, 3369543A, 3374471A, 3536434A, 3600542A, 3633263A, 3697673A, 3746718A, 3770175A, 3786610A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3048283B, 3114680B, 3144701B, 3155286B, 3182332B, 3225691B, 3243394B, 3246239B, 3268189B, 3281369B, 3289733B, 3301515B, 3327125B, 3389988B, 3429907B, 3474919B, 3615677B, 3662270B, 3667200B, 3679094B, 3684599B, 3706790B, 3711074B, 3730484B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3049375A, 3059562A, 3117638A, 3144764A, 3158707A, 3159874A, 3169106A, 3200605A, 3332518A, 3347176A, 3362032A, 3403205A, 3464910A, 3517568A, 3544410A, 3569813A, 3583530A, 3679139A, 3685846A, 3734629A, 3762895A, 3810417A, 3823466A, 3863311A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3050941A, 3101924A, 3133330A, 3135194A, 3151106A, 3183193A, 3194436A, 3227748A, 3268146A, 3414464A, 3453160A, 3517256A, 3549368A, 3595129A, 3763791A, 3765464A, 3765891A, 3766903A, 3788462A, 3791715A, 3799366A, 3856208A, 3857179A, 3860615A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3051638A, 3087119A, 3107322A, 3144908A, 3153523A, 3192419A, 3284388A, 3304132A, 3378652A, 3412001A, 3423565A, 3429871A, 3436471A, 3447727A, 3506621A, 3573323A, 3614040A, 3614483A, 3624692A, 3654539A, 3687183A, 3694046A, 3725576A, 3785881A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3051882A, 3066507A, 3112326A, 3163238A, 3182649A, 3191094A, 3234392A, 3271638A, 3329656A, 3343406A, 3362381A, 3383388A, 3407448A, 3471219A, 3507119A, 3510547A, 3541616A, 3545894A, 3600650A, 3619541A, 3636930A, 3654422A, 3716003A, 3799917A. | HDPE vial: 3 mL | 9/13/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| National Laboratory Certification Program. | 3053133A, 3054649A, 3068683A, 3069171A, 3101331A, 3115191A, 3189390A, 3233124A, 3233594A, 3243042A, 3301081A, 3331568A, 3363494A, 3368184A, 3478675A, 3529350A, 3560376A, 3562159A, 3571393A, 3577723A, 3584059A, 3726117A, 3754843A, 3779142A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3058935A, 3092962A, 3129401A, 3265392A, 3271446A, 3274442A, 3297577A, 3310054A, 3313197A, 3365969A, 3387508A, 3397502A, 3474282A, 3479713A, 3482596A, 3525485A, 3530168A, 3545512A, 3551861A, 3552004A, 3611321A, 3645018A, 3805872A, 3810125A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3060892A, 3109767A, 3113037A, 3145139A, 3158413A, 3168075A, 3189652A, 3238570A, 3253458A, 3275678A, 3368401A, 3374018A, 3432891A, 3452436A, 3465389A, 3468246A, 3515588A, 3526702A, 3533390A, 3653318A, 3756260A, 3827077A, 3853255A, 3886471A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3068499A, 3173397A, 3190004A, 3198545A, 3205379A, 3213984A, 3266174A, 3283428A, 3306373A, 3332348A, 3411211A, 3429670A, 3437347A, 3506194A, 3517398A, 3521283A, 3569583A, 3591698A, 3596442A, 3618933A, 3683745A, 3700002A, 3711553A, 3797117A, 3806263A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3070609B, 3114265B, 3122329B, 3148487B, 3162138B, 3201104B, 3325741B, 3330553B, 3353270B, 3354566B, 3356241B, 3435801B, 3468939B, 3477377B, 3528908B, 3589501B, 3624541B, 3676364B, 3677554B, 3693335B, 3706594B, 3751671B, 3764185B, 3787870B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3070698A, 3078192A, 3103700A, 3163670A, 3176403A, 3193961A, 3226709A, 3231858A, 3265601A, 3289811A, 3421904A, 3454756A, 3481864A, 3482407A, 3509388A, 3521249A, 3535368A, 3592769A, 3607507A, 3617172A, 3640030A, 3674810A, 3692752A, 3727986A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3074214A, 3084538A, 3087300A, 3116946A, 3122365A, 3227721A, 3230548A, 3284466A, 3390491A, 3402415A, 3486697A, 3518682A, 3534512A, 3538212A, 3556397A, 3649052A, 3668831A, 3676000A, 3708014A, 3768703A, 3819545A, 3820277A, 3831189A, 3864906A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3081024A, 3091460A, 3116119A, 3133530A, 3180854A, 3183796A, 3194248A, 3227047A, 3228058A, 3254215A, 3254352A, 3263321A, 3272674A, 3343212A, 3520982A, 3555237A, 3561611A, 3571328A, 3651892A, 3684583A, 3713606A, 3719497A, 3757517A, 3785698A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3084696B, 3102460B, 3148397B, 3254915B, 3329992B, 3403226B, 3472260B, 3475562B, 3480413B, 3486261B, 3550221B, 3564715B, 3600735B, 3613567B, 3620049B, 3620584B, 3723583B, 3734199B, 3749278B, 3757974B, 3850603B, 3867029B, 3880567B, 3880989B. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3108482A, 3110411A, 3216617A, 3221209A, 3233596A, 3287967A, 3333031A, 3354214A, 3357977A, 3395942A, 3407011A, 3433699A, 3434044A, 3442774A, 3466342A, 3486208A, 3486314A, 3493194A, 3548093A, 3550525A, 3581852A, 3592113A, 3661157A, 3698038A. | HDPE vial: 3 mL | 9/13/2021 |
| National Laboratory Certification Program. | 3144998B, 3145083B, 3153578B, 3156212B, 3200709B, 3230462B, 3337259B, 3385798B, 3566093B, 3593197B, 3624368B, 3655255B, 3700779B, 3718551B, 3772690B, 3792532B, 3840928B, 3852293B, 3859792B, 3895239B, 3920670B, 3922642B, 3931513B, 3941243B. | HDPE vial: 3 mL | 9/13/2021 |
| o2si smart solutions | Custom Cannabinoid Mixture 11–0361 500–10000 ug/ml 0.5 ml. | Boston Round: 0.5 mL | 8/18/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Calibration Kit 16–0260, (2 × G34—140260–98). | 1 kit; 26 amber ampules × 300 µL. | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Calibration Pack 16–0260, 13 × 1 ml. | 1 pack; 13 amber ampules × 300 µL. | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture CCV 16–0260, 10.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture ICV (second source), 16–0260, 10.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture LCS, 16–0260, 10.0 ug/mL, 1 mL with a 2 ml Silanized Vial (ISO17034). | Amber ampule:1 mL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture LCS, 16–0260, 250.0 ug/mL, 1 mL with a 2 ml Silanized Vial (ISO17034). | Amber ampule: 1 mL | 11/22/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| o2si smart solutions | Custom Pharmaceutical Mixture Level #1, 16–0260, 0.3 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Level #2, 16–0260, 1.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Level #3, 16–0260, 5.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Level #4, 16–0260, 10.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Level #5, 16–0260, 25.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Level #6, 16–0260, 50.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Level #7, 16–0260, 100.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture Level #8, 16–0260, 250.0 µg/mL, 300 µL with a 2 mL silanized vial (ISO17034). | Amber ampule: 300 µL | 9/13/2021 |
| o2si smart solutions | Custom Pharmaceutical Mixture, 13–0364, 100 µg/mL, 5 × 1 mL (ISO 17034). | 5 Pack Amber ampules: 1 mL each. | 9/22/2021 |
| o2si smart solutions | ISO 17034 Custom Toxin/Poison Stock Standard Mix, 30–318, 100 mg/L, 1 mL. | Amber ampule: 1 mL | 7/21/2021 |
| Purisys, LLC | Delta 9-Tetrahydrocannabinolic Acid (THCA) in Acetonitrile | Sealed ampule: 1 mL | 8/17/2021 |
| Purisys, LLC | Tetrahydrocannabinolic acid in dimethylsulfoxide (1 mg/mL) | Sealed ampule: 1 mL | 8/30/2021 |
| Purisys, LLC | Δ9-Tetrahydrocannabinol in dimethylsulfoxide (1 mg/mL) | Sealed ampule: 1 mL | 8/30/2021 |
| Restek Corporation | Custom Acetate & Aldehyde Standard | Glass ampule: 1.3 mL | 12/15/2021 |
| Restek Corporation | Custom NSF 401 Group #1.2 Standard | Glass ampule: 1.3 mL | 12/14/2021 |
| Restek Corporation | Custom Pharmaceuticals Standard #1 | Glass ampule: 1.3 mL | 9/29/2021 |
| Restek Corporation | Custom Pharmaceuticals Standard #3 | Glass ampule: 1.3 mL | 8/30/2021 |
| Restek Corporation | Custom Pharmaceuticals Standard #6 | Glass ampule: 1.3 mL | 8/30/2021 |
| Roche Diagnostics | 6-Acetylmorphine Control Set Ref# 08240213190 | Kit: 4 dropper bottles; 15 mL each. | 7/27/2021 |
| Roche Diagnostics | 6-Acetylmorphine Qualitative Calibrator Set Ref# 08240205190. | Dropper bottle: 5 mL | 7/27/2021 |
| Roche Diagnostics | 6-Acetylmorphine Semi-Quantitative Calibrators Set Ref# 08240183190. | Kit: 5 dropper bottles: 5 mL each. | 7/27/2021 |
| Roche Diagnostics | Buprenorphine 10 Control Set Ref# 08239908190 | Kit: 4 dropper bottles; 15 mL each. | 7/27/2021 |
| Roche Diagnostics | Buprenorphine 10 Qualitative Calibrator Set Ref# 08239894190. | Dropper bottle: 5 mL | 7/27/2021 |
| Roche Diagnostics | Buprenorphine 5 Control Set Ref# 08356670190 | Kit: 4 dropper bottles; 15 mL each. | 7/27/2021 |
| Roche Diagnostics | Buprenorphine 5 Qualitative Calibrator Set Ref# 08356661190. | Dropper bottle: 5 mL | 7/27/2021 |
| Roche Diagnostics | Buprenorphine Semi-Quantitative Calibrators Set Ref# 08239886190. | Kit: 6 dropper bottles: 5 mL each. | 7/27/2021 |
| Roche Diagnostics | DAT Opiates Multi Control I Set Ref# 09330119190 | Kit: 4 dropper bottles: 15 mL each. | 7/26/2021 |
| Roche Diagnostics | Fentanyl Qualitative Calibrator Set Ref# 09330097190 | Dropper bottle: 5 mL | 7/26/2021 |
| Roche Diagnostics | Hydrocodone 100 Control Set Ref# 08304742190 | Kit: 4 dropper bottles; 15 mL each. | 7/27/2021 |
| Roche Diagnostics | Hydrocodone 100 Qualitative Calibrator Set Ref# 08304734190. | Dropper bottle: 5 mL | 7/27/2021 |
| Roche Diagnostics | Hydrocodone 100 Semi-Quantitative Calibrators Set Ref# 08304718190. | Kit: 5 dropper bottles: 5 mL each. | 7/27/2021 |
| Roche Diagnostics | Hydrocodone 300 Control Set Ref# 08239851190 | Kit: 4 dropper bottles; 15 mL each. | 7/27/2021 |
| Roche Diagnostics | Hydrocodone 300 Qualitative Calibrator Set Ref# 08239843190. | Dropper bottle: 5 mL | 7/27/2021 |
| Roche Diagnostics | Hydrocodone 300 Semi-Quantitative Calibrators Set Ref# 08239827190. | Kit: 5 dropper bottles: 5 mL each. | 7/27/2021 |
| RTI International | 000382B, 030449B, 033498B, 038922B, 039862B, 090400B, 146079B, 192053B, 212337B, 241168B, 287670B, 304327B, 332636B, 396817B, 410327B, 427256B, 527123B, 543000B, 544988B, 571072B, 601995B, 645346B, 664574B, 729585B, 739504B, 757277B, 781245B, 814526B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 001355A, 056755A, 093169A, 096514A, 104752A, 132047A, 135710A, 141093A, 207832A, 250956A, 262210A, 322090A, 349735A, 370117A, 373438A, 373948A, 375489A, 401306A, 479905A, 502837A, 525072A, 525354A, 541420A, 622732A, 622814A, 655269A, 673741A, 724033A. | HDPE bottles: 35 mL | 9/14/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| RTI International | 001958A, 046335A, 069934A, 092611A, 112555A, 116892A, 179368A, 224648A, 255451A, 303476A, 343649A, 346062A, 354928A, 359963A, 412328A, 432376A, 469355A, 475498A, 550297A, 561828A, 614670A, 624432A, 692509A, 694975A, 746438A, 758056A, 770349A, 802258A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 002486B, 008180B, 022758B, 027643B, 145609B, 158337B, 168213B, 227304B, 261497B, 262097B, 263064B, 314163B, 332587B, 346651B, 387628B, 390939B, 398197B, 440632B, 493412B, 513759B, 520774B, 557176B, 609772B, 655570B, 699746B, 744019B, 758457B, 779150B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 003264B, 010287B, 035050B, 035622B, 040399B, 069082B, 102598B, 105202B, 106703B, 120072B, 142646B, 213000B, 276154B, 421458B, 433910B, 436945B, 439209B, 448564B, 457453B, 463715B, 468656B, 483876B, 498189B, 572052B, 604943B, 632692B, 659105B, 734338B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 003522B, 007454B, 018485B, 042182B, 048162B, 075318B, 096155B, 152285B, 152570B, 171928B, 256062B, 304943B, 308786B, 332949B, 352716B, 358489B, 375524B, 422817B, 439811B, 452078B, 485177B, 568025B, 588777B, 600043B, 621012B, 635185B, 666624B, 688732B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 004284B, 009205B, 022363B, 023926B, 027669B, 077712B, 097976B, 117096B, 137137B, 155082B, 201475B, 222722B, 240934B, 310859B, 319055B, 325185B, 325313B, 344538B, 357780B, 360156B, 393298B, 400502B, 423723B, 442087B, 464507B, 514765B, 529072B, 542637B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 006033B, 017000B, 082761B, 101519B, 131337B, 170167B, 171246B, 184779B, 205725B, 256627B, 257633B, 281194B, 303533B, 309737B, 318283B, 347633B, 378444B, 427078B, 463032B, 466703B, 511146B, 523997B, 539975B, 540992B, 556413B, 613166B, 638296B, 642311B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 006072A, 027577A, 067890A, 125064A, 137302A, 142698A, 246456A, 251595A, 275283A, 282815A, 319753A, 337678A, 338177A, 355955A, 391553A, 437636A, 462629A, 469539A, 498444A, 539865A, 543326A, 570273A, 588331A, 591648A, 670321A, 714662A, 774840A, 824851A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 006746B, 021551B, 023268B, 058678B, 062270B, 065266B, 093869B, 152084B, 162960B, 181899B, 263318B, 291279B, 316416B, 332734B, 338411B, 357942B, 387507B, 408151B, 504393B, 505918B, 505953B, 555730B, 641988B, 735892B, 799695B, 807383B, 821232B, 829503B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 007066A, 018010A, 077641A, 080843A, 103467A, 131933A, 150657A, 176069A, 199131A, 211523A, 273880A, 305340A, 309199A, 318340A, 417682A, 423962A, 461182A, 543968A, 551300A, 562930A, 563032A, 563085A, 574724A, 576446A, 653108A, 657079A, 662399A, 741331A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 007345A, 023974A, 063528A, 118425A, 138846A, 153511A, 168437A, 169265A, 225700A, 237092A, 376724A, 393402A, 397902A, 409713A, 495584A, 541626A, 571065A, 603541A, 615438A, 624687A, 654283A, 657412A, 673819A, 693302A, 739853A, 760294A, 777216A, 810352A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 007736B, 011172B, 114812B, 117495B, 120995B, 143574B, 162860B, 180412B, 262498B, 268018B, 279722B, 316516B, 336594B, 362841B, 383168B, 421968B, 443271B, 567403B, 626548B, 682862B, 683790B, 684524B, 724353B, 766530B, 802102B, 837643B, 856625B, 870279B. | HDPE bottles: 35 mL | 9/14/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| RTI International | 007805B, 011746B, 040665B, 063782B, 114545B, 201389B, 224334B, 230165B, 245660B, 257727B, 287269B, 306855B, 367522B, 387596B, 394756B, 420864B, 425386B, 426467B, 442507B, 461004B, 536423B, 579190B, 582644B, 583948B, 587223B, 609372B, 666559B, 692905B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 007990B, 060463B, 072768B, 167809B, 257829B, 278338B, 305472B, 309358B, 317182B, 323102B, 357375B, 397415B, 422241B, 448463B, 458704B, 483464B, 497949B, 532944B, 557160B, 642544B, 649674B, 667600B, 711326B, 711400B, 758154B, 777493B, 803735B, 856376B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 008249B, 017005B, 023025B, 045053B, 047289B, 210248B, 213179B, 242611B, 324279B, 343336B, 352904B, 357536B, 436704B, 444440B, 482065B, 497633B, 524663B, 645614B, 649427B, 704335B, 722142B, 727368B, 742926B, 753947B, 754736B, 756471B, 761898B, 818387B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 008378A, 020285A, 070609A, 126965A, 161603A, 221890A, 222561A, 224448A, 229304A, 236314A, 296755A, 309735A, 312792A, 314688A, 340252A, 379329A, 391445A, 401701A, 556508A, 610582A, 628117A, 680391A, 702425A, 732151A, 745048A, 796290A, 802487A, 805069A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 008485B, 039768B, 055877B, 094384B, 143908B, 146833B, 152530B, 154757B, 157678B, 163169B, 259398B, 279357B, 340363B, 360253B, 380907B, 392903B, 395158B, 414641B, 436901B, 465886B, 553767B, 609916B, 616836B, 624654B, 701737B, 709371B, 759588B, 786244B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 008725A, 021166A, 043867A, 059687A, 103195A, 121198A, 139425A, 175863A, 214459A, 216324A, 231260A, 244567A, 250219A, 277343A, 279936A, 362415A, 363655A, 391984A, 449776A, 451230A, 516253A, 613700A, 618257A, 681553A, 710915A, 776155A, 778654A, 784580A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 009318B, 011683B, 025480B, 025671B, 087852B, 099813B, 124045B, 129342B, 137642B, 163514B, 167958B, 252112B, 255896B, 270051B, 310931B, 332711B, 353730B, 367155B, 431266B, 535150B, 547017B, 556833B, 574302B, 688932B, 735439B, 746642B, 791922B, 853560B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 010174B, 010219B, 041899B, 042321B, 047906B, 092518B, 106457B, 127038B, 133134B, 192443B, 210331B, 215233B, 227917B, 272210B, 282011B, 312582B, 333795B, 335310B, 346511B, 375873B, 393763B, 393959B, 409613B, 431610B, 435804B, 451635B, 457274B, 470563B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 010965A, 030741A, 046791A, 058365A, 062541A, 114995A, 122977A, 134512A, 161666A, 172845A, 205566A, 208520A, 221838A, 342285A, 342560A, 346057A, 400632A, 425916A, 431972A, 459933A, 511894A, 512258A, 545877A, 553662A, 560292A, 705320A, 719419A, 746067A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 011426B, 021161B, 058570B, 069449B, 072872B, 103885B, 139082B, 158982B, 178375B, 181825B, 191073B, 209439B, 243326B, 245104B, 258066B, 292927B, 297156B, 298788B, 325388B, 395817B, 443939B, 467104B, 518611B, 541536B, 561414B, 592512B, 654235B, 666333B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 011526A, 015399A, 026322A, 050763A, 083985A, 104236A, 104573A, 143233A, 149811A, 181164A, 213711A, 277402A, 281796A, 322947A, 357155A, 406218A, 439526A, 475066A, 510445A, 546596A, 568298A, 641216A, 660474A, 772730A, 809283A, 861325A, 861483A, 894226A. | HDPE bottles: 35 mL | 9/14/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| RTI International | 011700B, 012578B, 087444B, 098261B, 128878B, 139764B, 174711B, 196224B, 208585B, 214675B, 276119B, 287699B, 391044B, 409892B, 417778B, 449857B, 462580B, 473774B, 529943B, 538354B, 558326B, 594198B, 604966B, 635361B, 660369B, 678549B, 681594B, 766084B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 011813A, 048951A, 110558A, 224844A, 282790A, 308411A, 351924A, 451956A, 455520A, 471589A, 484961A, 495755A, 540110A, 557046A, 565964A, 576151A, 580361A, 601157A, 615300A, 623892A, 634508A, 681430A, 699057A, 758877A, 822810A, 844038A, 844084A, 897647A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 012300A, 046442A, 140584A, 177420A, 204489A, 204557A, 223210A, 223908A, 278944A, 280062A, 282930A, 295960A, 315809A, 316011A, 368543A, 376448A, 438807A, 458240A, 463709A, 520300A, 529416A, 531808A, 641824A, 644216A, 656352A, 693588A, 724613A, 771083A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 013093A, 088130A, 092515A, 144177A, 145776A, 146186A, 167589A, 230580A, 233580A, 239463A, 249482A, 265270A, 277950A, 343285A, 404454A, 411265A, 437591A, 473045A, 476664A, 505605A, 507609A, 524534A, 636725A, 681003A, 726944A, 750420A, 786454A, 786777A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 013468A, 044442A, 051511A, 080096A, 085361A, 155745A, 156379A, 183152A, 197624A, 208401A, 227088A, 266951A, 307566A, 312104A, 406314A, 467036A, 475292A, 494123A, 498736A, 509727A, 510981A, 568926A, 582709A, 629522A, 658131A, 664396A, 667372A, 681993A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 013840A, 041967A, 120223A, 164066A, 166335A, 214931A, 252276A, 263438A, 273280A, 274254A, 278555A, 303048A, 342953A, 368214A, 376310A, 380951A, 386162A, 440370A, 468453A, 491212A, 496804A, 559244A, 577944A, 592849A, 653738A, 693786A, 714969A, 742553A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 013910A, 017092A, 051952A, 062357A, 100264A, 118711A, 158003A, 236749A, 257929A, 322690A, 354583A, 376398A, 378950A, 420641A, 444061A, 444746A, 460486A, 515360A, 574203A, 585770A, 588984A, 735988A, 762323A, 834473A, 842293A, 879212A, 882312A, 895374A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 015940A, 039927A, 042116A, 071608A, 108890A, 120345A, 137448A, 148090A, 161528A, 199727A, 220165A, 291463A, 339223A, 345775A, 365899A, 403920A, 404150A, 417972A, 436618A, 493617A, 498658A, 504051A, 513743A, 589229A, 606349A, 614641A, 624754A, 640951A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 016624A, 078074A, 086167A, 101947A, 107160A, 116066A, 130437A, 164162A, 189318A, 229706A, 245387A, 279941A, 315220A, 316445A, 328107A, 359447A, 383964A, 399394A, 407726A, 490289A, 531249A, 537743A, 542550A, 545626A, 583231A, 599934A, 605189A, 624255A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 017730A, 119864A, 171018A, 188883A, 188929A, 199991A, 200435A, 206128A, 223581A, 365346A, 368049A, 385038A, 390328A, 402991A, 407549A, 412778A, 426647A, 444727A, 464296A, 488709A, 506307A, 512500A, 521523A, 542832A, 559006A, 596895A, 653516A, 671321A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 017870A, 062046A, 068630A, 089015A, 094929A, 100395A, 108613A, 157007A, 157186A, 169910A, 196388A, 227251A, 268142A, 341492A, 377483A, 545113A, 619003A, 626831A, 664128A, 664239A, 684240A, 708925A, 742825A, 763995A, 766282A, 800855A, 803573A, 824338A. | HDPE bottles: 35 mL | 9/14/2021 |

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| Supplier | Product name | Form | Application date |
|---|---|---|---|
| RTI International | 018074B, 051240B, 073998B, 114202B, 127629B, 162868B, 166985B, 171374B, 218778B, 350128B, 390030B, 417830B, 463893B, 467586B, 491500B, 576836B, 631251B, 642331B, 650703B, 652497B, 707179B, 716603B, 788466B, 789387B, 807934B, 817252B, 818176B, 839039B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 020517A, 037741A, 113659A, 252081A, 276931A, 298651A, 323790A, 397338A, 402369A, 402780A, 435215A, 457169A, 478964A, 495824A, 502568A, 515559A, 549342A, 656805A, 666954A, 671886A, 745668A, 747906A, 796167A, 829252A, 831939A, 834971A, 835698A, 855989A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 020980B, 041480B, 068463B, 081440B, 102656B, 107474B, 123252B, 126634B, 156669B, 158154B, 172667B, 177534B, 180088B, 190263B, 222400B, 308319B, 365985B, 389228B, 486622B, 505807B, 517986B, 528278B, 554724B, 578021B, 732651B, 747795B, 772431B, 796780B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 022679A, 023750A, 037873A, 068246A, 089803A, 120569A, 124405A, 210636A, 319033A, 366721A, 387037A, 404960A, 405393A, 408999A, 413612A, 420919A, 422609A, 494405A, 520177A, 658584A, 675251A, 675643A, 692660A, 693815A, 694514A, 698266A, 751139A, 758845A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 023097A, 058667A, 061122A, 071991A, 080178A, 082571A, 089258A, 091377A, 127069A, 167719A, 213775A, 263552A, 285450A, 308685A, 374795A, 411196A, 423929A, 474257A, 501797A, 512278A, 527083A, 588635A, 663142A, 672142A, 709179A, 733778A, 797930A, 898357A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 023396B, 025827B, 040707B, 086841B, 087811B, 180485B, 183531B, 203079B, 206510B, 215783B, 223466B, 313246B, 317698B, 348791B, 380884B, 407787B, 433446B, 441053B, 480510B, 492350B, 584055B, 620528B, 625932B, 636368B, 639136B, 640634B, 767440B, 805640B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 025118B, 038688B, 070965B, 088460B, 107650B, 152109B, 181324B, 188695B, 214132B, 226945B, 233130B, 233622B, 274003B, 279646B, 373798B, 401860B, 430945B, 440003B, 485409B, 485750B, 492345B, 518290B, 534980B, 553475B, 570751B, 589675B, 627677B, 716276B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 026483B, 037412B, 149032B, 152913B, 160504B, 186619B, 202810B, 208710B, 246788B, 249267B, 281097B, 349643B, 387130B, 450174B, 452950B, 507650B, 552783B, 573337B, 594255B, 611745B, 612430B, 624473B, 625115B, 625454B, 628509B, 725528B, 729910B, 799055B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 026694B, 048848B, 086986B, 146664B, 158129B, 162657B, 178854B, 190605B, 197436B, 225959B, 247210B, 277562B, 319647B, 324532B, 438064B, 460376B, 501902B, 511745B, 513157B, 538194B, 546125B, 610027B, 642563B, 661317B, 663078B, 685479B, 698409B, 706765B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 027015B, 049679B, 051603B, 053950B, 089127B, 135386B, 138280B, 164130B, 186455B, 192521B, 224641B, 228271B, 257168B, 287249B, 291626B, 357962B, 505516B, 535676B, 536543B, 543665B, 544641B, 665930B, 703520B, 744721B, 785845B, 791676B, 798397B, 802479B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 029083B, 040983B, 118320B, 149752B, 150611B, 166917B, 211066B, 270151B, 282538B, 285886B, 293121B, 299276B, 322798B, 355106B, 371381B, 412996B, 413225B, 451485B, 454841B, 547699B, 581070B, 611090B, 616632B, 622406B, 636503B, 643970B, 721610B, 764571B. | HDPE bottles: 35 mL | 9/14/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| RTI International | 031030A, 033441A, 035719A, 082275A, 106016A, 139825A, 163960A, 168309A, 178326A, 196972A, 254229A, 334665A, 370371A, 421421A, 432085A, 491052A, 511826A, 511871A, 520636A, 559074A, 597622A, 656661A, 669546A, 716388A, 718948A, 744410A, 802562A, 841556A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 033761B, 053598B, 084451B, 085494B, 199713B, 203902B, 252784B, 283309B, 329315B, 344038B, 367228B, 405169B, 413059B, 455485B, 459343B, 485793B, 564918B, 592560B, 616168B, 625196B, 659340B, 688873B, 699287B, 713834B, 731184B, 749101B, 753792B, 779934B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 033790A, 067755A, 069599A, 079210A, 099827A, 101769A, 115501A, 132600A, 192520A, 195620A, 247338A, 328557A, 346384A, 361907A, 369310A, 391092A, 396101A, 515313A, 542894A, 563017A, 566144A, 603641A, 637930A, 679878A, 688648A, 707052A, 721825A, 730865A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 034094A, 040523A, 049848A, 055661A, 072357A, 091114A, 125036A, 135869A, 147474A, 155846A, 166954A, 186292A, 193606A, 199099A, 262568A, 277608A, 282907A, 313026A, 410505A, 418482A, 424765A, 424990A, 432845A, 474405A, 498897A, 521359A, 555546A, 601144A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 034266B, 044317B, 068168B, 074042B, 118136B, 145010B, 146472B, 226639B, 279638B, 291730B, 297755B, 313476B, 382992B, 390596B, 401280B, 409562B, 458367B, 537833B, 578203B, 592033B, 657611B, 660633B, 682368B, 699401B, 711443B, 732829B, 737003B, 790217B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 034512A, 075860A, 101228A, 110642A, 111830A, 149431A, 166111A, 175421A, 207130A, 278988A, 292385A, 293413A, 300113A, 315127A, 372451A, 417218A, 435889A, 436710A, 476371A, 616083A, 635545A, 669466A, 720372A, 745666A, 746719A, 757971A, 815553A, 820735A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 036476A, 051499A, 053986A, 071277A, 082252A, 134277A, 167600A, 178723A, 268399A, 348366A, 350602A, 386798A, 423173A, 526788A, 539056A, 541260A, 559542A, 603211A, 623687A, 637698A, 640017A, 673022A, 764963A, 767836A, 786722A, 795592A, 799191A, 800519A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 036708A, 083917A, 086818A, 090508A, 117782A, 130406A, 181561A, 186031A, 210865A, 279177A, 331075A, 337842A, 349274A, 364105A, 388395A, 399693A, 413944A, 423517A, 444331A, 471261A, 511329A, 534798A, 593399A, 602528A, 689274A, 739266A, 744836A, 769335A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 042088B, 046141B, 067980B, 133103B, 138387B, 149484B, 276844B, 325135B, 339339B, 375126B, 382666B, 472034B, 484718B, 490099B, 496164B, 511180B, 541279B, 579545B, 710946B, 722071B, 741717B, 757104B, 783154B, 793047B, 807929B, 815180B, 848861B, 866113B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 042524B, 067153B, 085207B, 088481B, 118799B, 148645B, 158902B, 193209B, 194198B, 195783B, 200930B, 242588B, 262816B, 283122B, 298710B, 314258B, 328764B, 392087B, 411819B, 412332B, 421330B, 423825B, 595536B, 608878B, 636067B, 660454B, 668853B, 687245B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 043753B, 048283B, 071802B, 106158B, 134797B, 178448B, 229508B, 242088B, 361933B, 364662B, 367499B, 394688B, 411437B, 432337B, 432823B, 503986B, 511558B, 538096B, 542940B, 559479B, 600773B, 617563B, 630555B, 695256B, 731127B, 749462B, 778163B, 779093B. | HDPE bottles: 35 mL | 9/14/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| RTI International | 044568B, 078173B, 088626B, 106025B, 165161B, 191599B, 201838B, 217733B, 222892B, 272217B, 283064B, 285329B, 334762B, 346523B, 399639B, 497926B, 512804B, 581610B, 599676B, 631931B, 646633B, 657337B, 707009B, 707692B, 750240B, 810383B, 824209B, 844453B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 045036A, 088691A, 095294A, 127609A, 134573A, 138033A, 161813A, 187420A, 195072A, 239592A, 247165A, 261412A, 274130A, 300096A, 305456A, 323348A, 383136A, 383885A, 403934A, 429258A, 512120A, 588720A, 621290A, 633441A, 638055A, 728684A, 788050A, 793492A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 047122A, 063183A, 078325A, 114577A, 151124A, 170284A, 181357A, 192257A, 208662A, 221125A, 226855A, 324733A, 328016A, 376347A, 395163A, 458271A, 465651A, 537296A, 565727A, 607658A, 628639A, 629538A, 725657A, 728884A, 791726A, 793302A, 808679A, 813463A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 049152A, 406437A, 409610A, 470241A, 685527A, 772816A | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 051575B, 055881B, 069961B, 091730B, 118125B, 163000B, 199267B, 266402B, 273083B, 299528B, 455919B, 478332B, 485972B, 501916B, 512620B, 516085B, 524178B, 541091B, 613750B, 703484B, 746025B, 777755B, 779895B, 793904B, 845477B, 847357B, 848131B, 861091B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 054660A, 096758A, 306853A, 701781A, 825995A, 860534A | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 055511B, 107279B, 126577B, 134031B, 153482B, 181565B, 200785B, 222352B, 285529B, 336801B, 355886B, 405525B, 462089B, 472956B, 477421B, 494872B, 499895B, 511995B, 519990B, 524963B, 530923B, 557653B, 583610B, 610524B, 694578B, 716394B, 729930B, 748221B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 061338A, 093079A, 093984A, 103102A, 112885A, 137651A, 167643A, 170617A, 178820A, 207911A, 284122A, 314088A, 316008A, 331130A, 336962A, 384338A, 395142A, 405441A, 416604A, 419130A, 439941A, 496655A, 514774A, 531054A, 578870A, 584698A, 631879A, 637438A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 067148B, 084154B, 123136B, 171952B, 189776B, 198985B, 240779B, 296047B, 331408B, 346926B, 349043B, 377267B, 392493B, 415562B, 446444B, 455140B, 566660B, 572790B, 598654B, 599399B, 602105B, 607520B, 616169B, 629812B, 708589B, 740894B, 749926B, 752010B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 067219A, 075336A, 115543A, 124843A, 148815A, 176294A, 248673A, 257985A, 274411A, 342381A, 356595A, 370689A, 396961A, 407712A, 442211A, 446296A, 446876A, 504924A, 548982A, 554793A, 602352A, 667819A, 682091A, 698888A, 714376A, 717453A, 718201A, 724474A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 067530B, 112579B, 117617B, 119138B, 158200B, 158348B, 177597B, 211999B, 216463B, 220805B, 267092B, 320209B, 341040B, 342282B, 366176B, 406725B, 411349B, 480111B, 488710B, 513640B, 526772B, 530577B, 589238B, 611386B, 648800B, 662283B, 670365B, 700479B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 083375B, 093920B, 101122B, 127621B, 146680B, 173394B, 181774B, 256751B, 277951B, 342274B, 382283B, 407571B, 414872B, 445466B, 503903B, 509664B, 549767B, 559437B, 567878B, 578803B, 602058B, 631496B, 674419B, 715980B, 775937B, 790278B, 796515B, 814400B. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 086234A, 134886A, 234646A, 562489A, 661831A, 674781A | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 098169A, 161057A, 173427A, 241526A, 264674A, 374229A, 410011A, 411043A, 414388A, 419030A, 455995A, 456354A, 467926A, 481812A, 484158A, 589107A, 605603A, 610712A, 627981A, 639089A, 644638A, 650014A, 651506A, 651777A, 671809A, 687028A, 721256A, 773684A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 119100A, 279532A, 439085A, 466615A, 563819A, 981418A | HDPE bottles: 35 mL | 9/14/2021 |

CHART I—Continued

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| RTI International | 145074A, 163970A, 176045A, 215129A, 225392A, 235273A, 248657A, 271067A, 308576A, 311993A, 321160A, 363272A, 378254A, 382246A, 451805A, 470383A, 500607A, 534405A, 551494A, 578227A, 591070A, 742302A, 743822A, 750765A, 765628A, 833310A, 837447A, 916631A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 197765A, 428493A, 455083A, 790360A, 792562A, 961635A | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 256338A, 262674A, 270370A, 296287A, 299248A, 327468A, 347682A, 395285A, 403259A, 441123A, 471182A, 546403A, 590341A, 596455A, 645571A, 653977A, 656203A, 706251A, 706784A, 749478A. | HDPE bottles: 35 mL | 9/14/2021 |
| RTI International | 361580A, 438138A, 634629A, 690620A, 760765A, 863003A | HDPE bottles: 35 mL | 9/14/2021 |

The Deputy Assistant Administrator has found that each of the compounds, mixtures, and preparations described in Chart II below is not consistent with the criteria stated in 21 U.S.C. 811(g)(3)(B) and in 21 CFR 1308.23. Accordingly, the Deputy Assistant Administrator has determined that the chemical preparations or mixtures generally described in Chart II below and specifically described in the application materials received by DEA, are not exempt from application of any part of the CSA or from application of any part of the CFR, with regard to the requested exemption pursuant to 21 CFR 1308.23, as of the date that was provided in the determination letters to the individual requesters.

CHART II

| Supplier | Product name | Form | Application date |
|---|---|---|---|
| Absolute Standards, Inc | Chloral hydrate, 5000 ug/ml, in MTBE | Glass ampoule: 1 ml | 10/21/2021 |
| Cayman Chemical Company | Custom Phytocannabinoid Mixture (CRM)—Adams Independent Testing. | Glass ampule: 1 mL | 10/7/2021 |
| LGC GmbH | ((-)-delta9-THC (Dronabinol)) for 1.0 mg/mL in Methanol | Glass Vial: 1 mL | 12/7/2021 |
| LGC GmbH | Fentanyl 1.0 mg/ml in methanol | Glass vial: 1 mL | 12/10/2021 |
| LGC GmbH | LSD (Lysergic Acid Diethylamide) 1.0 mg/ml in acetonitrile | Glass vial: 1 mL | 12/10/2021 |
| Lipomed Inc | Iso LSD 0.1 mg/1 mL acetonitrile | Amber ampule: 1 mL | 7/23/2021 |
| Lipomed Inc | Iso LSD 1 mg/1 mL acetonitrile | Amber ampule: 1 mL | 7/23/2021 |
| Lipomed, Inc | Iso LSD 0.1 mg/1 mL acetonitrile | Amber ampule: 1 mL | 7/23/2021 |
| Lipomed, Inc | Iso LSD 1 mg/1 mL acetonitrile | Amber ampule: 1 mL | 7/23/2021 |
| Purisys, LLC | Tetrahydrocannabinolic acid in dimethylsulfoxide (10 mg/mL) | Sealed ampule: 1 mL | 8/30/2021 |
| Purisys, LLC | Tetrahydrocannabinolic acid in dimethylsulfoxide (5 mg/mL) | Sealed ampule: 1 mL | 8/30/2021 |
| Purisys, LLC | Δ9-Tetrahydrocannabinol in dimethylsulfoxide (10 mg/mL) | Sealed ampule: 1 mL | 8/30/2021 |
| Purisys, LLC | Δ9-Tetrahydrocannabinol in dimethylsulfoxide (5 mg/mL) | Sealed ampule: 1 mL | 8/30/2021 |
| Siemens Healthcare Diagnostics Inc. | IMMULITE Estradiol Diluent | Plastic container: 0.5L–3L | 10/11/2021 |

## Opportunity for Comment

Pursuant to 21 CFR 1308.23(e), any interested person may submit written comments on or objections to any chemical preparation in this order that has been approved or denied as exempt. If any comments or objections raise significant issues regarding any finding of fact or conclusion of law upon which this order is based, the Deputy Assistant Administrator will immediately suspend the effectiveness of any applicable part of this order until he may reconsider the application in light of the comments and objections filed. Thereafter, the Deputy Assistant Administrator shall reinstate, revoke, or amend his original order as he determines appropriate.

## Approved Exempt Chemical Preparations Are Posted on the DEA's Website

A list of all current exemptions, including those listed in this order, is available on the DEA's website at *http://www.DEAdiversion.usdoj.gov/schedules/exempt/exempt_chemlist.pdf.* The dates of applications of all current exemptions are posted for easy reference.

* * * * *

**Thomas W. Prevoznik,**

*Deputy Assistant Administrator.*

[FR Doc. 2022–08300 Filed 4–18–22; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2022–02; Exemption Application No. L–12008]**

### Exemption From Certain Prohibited Transaction Restrictions Involving Phillips 66 Company (Phillips 66 or the Applicant) Located in Houston, TX

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** This document contains a notice of exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974

(ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code). Under the exemption, the Phillips 66 Group Life Insurance Plan (the Plan) will enter into an insurance contract with an unrelated A-rated insurance company (the Fronting Insurer) that will, in turn, enter into a reinsurance contract with Spirit Insurance Company (Spirit), an affiliate of Phillips 66 (the Reinsurance Arrangement). Under the Reinsurance Arrangement, Spirit will reinsure the Plan's risks.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Brennan of the Department at (202) 693–8456. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On September 20, 2021, the Department published a notice of proposed exemption in the **Federal Register** at 86 FR 52210, permitting: (1) The reinsurance of risks; and (2) the receipt of premiums by Spirit in connection with insurance contracts sold by Zurich American Life Insurance Company (or any successor Fronting Insurer) to provide Group Term Life and Accidental Death and Dismemberment benefits to Plan participants.

This exemption provides only the relief specified in the text of the exemption. It provides no relief from violations of any law other the prohibited transaction provisions of ERISA expressly stated herein.

The Department makes the requisite findings under ERISA Section 408(a) based on adherence to all of the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA Section 408(a) in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).

**Written Comments**

In the proposed exemption, the Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption. All comments and requests for a hearing were due to the Department by November 5, 2021. The Department received one written comment from the Applicant and three calls from Plan participants seeking to better understand the proposed exemption. The Department did not receive any requests for a public hearing from any of the commenters.

*Comments From the Applicant*

*I. Text of Exemptive Relief in Section II*

Section II of the proposed exemption at 86 FR 52215 states: ''The exemption would provide relief from the prohibited transactions provisions of ERISA sections 406(a)(1)(A), (D), and 406(b)(1) and (b)(3), and the excise tax imposed by Code section 4975(a) and (b) (due to the operation of parallel prohibited transaction provisions contained in Code section 4975(c)(1)(A), (D), (E), and (F)) with respect to . . .''

The Applicant notes that it requested exemptive relief from ERISA Sections 406(a)(1)(A), (C) and (D), and 406(b)(1), (2), and (3), along with the parallel provisions of the Code.

The Applicant requests that the Department either directly state that it does not need relief from ERISA Sections 406(a)(1)(C) and 406(b)(2) because the Reinsurance Arrangement would not violate those sections, or broaden the exemption in Section II to include relief from ERISA Sections 406(a)(1)(C) and 406(b)(2).

*Department's Response:* The Department intended to include exemptive relief from ERISA Section 406(b)(2) in Section II of the proposed exemption and has revised that section of the exemption accordingly. However, the Department is not revising the proposed exemption to include relief from ERISA Section 406(a)(1)(C). Such relief is available to the Applicant to the extent it meets the requirements of ERISA Section 408(b)(2), a statutory exemption that provides exemptive relief from the prohibitions of ERISA Section 406(a) for, among other things, contracting or making reasonable arrangements with a party in interest for services necessary to operate the plan. Relief in the statutory exemption is conditioned on certain requirements being met that are not included in the conditions of this exemption. The Department could not make a finding that the exemption would be in the interest of the Plan if the Department provided the Applicant with exemptive relief from ERISA Section 406(a)(1)(C) without requiring it to meet the additional protections afforded by ERISA Section 408(b)(2) and the requirements set forth in Department's regulations issued thereunder (29 CFR 2550.408b–2).

*Department's Note:* Since the Plan is not subject to the provisions of Title II of ERISA, the Department has revised the scope of relief in the exemption by removing references to Code Sections 4975(c)(1)(A), (D), (E) and (F).

**II. Limitations on the Use of Participant-Related Data or Information**

Section III(o) of the proposed exemption states that: ''Neither Phillips 66 nor any related entity may use participant-related data or information generated by or derived from the Reinsurance Arrangement in a manner that benefits Phillips 66 or a related entity . . . .'' Preamble Section 5 of the proposed exemption states: ''The Department developed this proposed exemption based on the Applicant's representation that Phillips 66 is not expected to receive any benefit from the Reinsurance Arrangement other than the net income increase described herein, which must be verified annually by the Independent Fiduciary.''

The Applicant states that, while it does not object to the Department's concept of an express prohibition on misuse of participant data, it is concerned that the specific language of the prohibition in Section III(o) is too broad, and may prohibit activity the Department did not intend to prohibit. The Applicant further states that the Preamble description explaining Section III(o) is even broader than the actual text of Section III(o), stating that ''. . . any participant-related data . . .'' from the Reinsurance Arrangement cannot be used ''. . . in any manner . . .'' that ''benefits'' Phillips 66 or an affiliate.

The Applicant reiterates that Phillips 66 intends to derive no additional benefit from the Reinsurance Arrangement other than what it has already disclosed, and states that the proposed exemption's broad language could be read to prevent Phillips 66 from using participant data and information in perfectly appropriate ways related to better plan administration. For example, the Applicant asserts that claims data may be used to improve claims processing and risk mitigation or to determine whether and how to enhance benefits. The Applicant states that these purposes would benefit participants but might also be seen to benefit Phillips 66.

Accordingly, the Applicant requests the following modification to Section III(o): ''Neither Phillips 66 nor any related entity may benefit from the use of participant-related data or information generated by or derived from the Reinsurance Arrangement for purposes unrelated to Phillips 66's role as a plan sponsor and/or employer. . . .'' The Applicant states that this language achieves the Department's objectives without

unintentionally limiting the appropriate use of plan and participant data.

*Department's Response:* The Department declines to make the Applicant's requested revisions. The prohibition against the use of participant-related data by Phillips 66 is intentionally expansive in order to protect the interest of each affected Plan participant as required by ERISA section 408(a). The Applicant has not demonstrated that the Plan's participants and beneficiaries would, in all instances, be adequately protected if Phillips 66 were to use plan-related data in its role as a plan sponsor and/or employer. However, the Department has revised Section III(o) to clarify that the condition does not preclude Phillips 66 from using participant-related data solely to improve the administration of the Plan, or to enhance the Plan's benefits. Phillips 66 may contact the Office of Exemption Determinations to the extent it is unsure whether its potential future use of participant-related data would violate this condition.

*III. Technical Edits*

The Department has revised the exemption consistent with two non-substantive edits identified by the Applicant involving the numbering and lettering of certain paragraphs and sub-paragraphs. For clarity, the Department added a new definition, which defines the term ''Plan'' as the Phillips 66 Group Life Insurance Plan.

Accordingly, after considering the entire record developed in connection with the Applicant's exemption application and comment letter, the Department has determined to grant the exemption described below.

The complete application file (L–12008) is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1515, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210. For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 28, 2021, at 86 FR 34048.

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) does not relieve a fiduciary or other party in interest from certain requirements of other ERISA provisions, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with ERISA Section 404(a)(1)(B).

(2) As required by ERISA Section 408(a), the Department hereby finds that the exemption is: (a) Administratively feasible; (b) in the interests of affected plans and of their participants and beneficiaries; and (c) protective of the rights of participants and beneficiaries of such plans.

(3) This exemption is supplemental to, and not in derogation of, any other ERISA provisions, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of determining whether the transaction is in fact a prohibited transaction.

(4) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describe all material terms of the transactions that are the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA Section 408(a), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

**Exemption**

*Section I. Definitions*

(a) An ''affiliate'' of Phillips 66 or Spirit includes: (1) Any person or entity who controls Phillips 66 or Spirit or is controlled by or under common control with Phillips 66 or Spirit; (2) any officer, director, employee, relative, or partner with respect to Phillips 66 or Spirit; and (3) any corporation or partnership of which the person in (2) of this paragraph is an officer, director, partner, or employee;

(b) The term ''Benefit Enhancements'' means the following benefits, unless adjusted in a manner that is consistent with the terms of this exemption:

(i) *The New Care Advocacy Service Benefit.* Under this new benefit, master's degree-level licensed social workers will proactively find participants needing specialized assistance, including those diagnosed with a terminal or chronic illness or who are managing a chronic condition that has confined them to their home or a rehabilitation center. Care Advocacy support service includes participant education and assistance with respect to available community resources, and assistance with scheduling and navigating doctor's appointments, completing forms, and coordinating care with doctors and specialists.

(ii) *The Enhanced Funeral Concierge Service Benefit.* Under this enhancement, the Plan would extend its existing Funeral Concierge Service Benefit to provide coverage for Plan participants' family members.

(iii) *The Enhanced Accelerated Death Benefit.* The Plan currently provides an Accelerated Death Benefit for terminally-ill participants with life expectancy of 24 months or less to receive an accelerated life insurance benefit payment in advance of death of up to 50 percent of the participant's total life insurance benefit amount. Under this enhancement, the amount of the Accelerated Death Benefit will increase to 80 percent of a participant's life insurance benefit.

(iv) *The Enhanced Accidental Death & Dismemberment Benefit.* The Plan currently provides that if a participant suffers an injury resulting in Hemiplegia, the Plan would pay such participant a benefit equal to 66 percent of the participant's incurred losses from such injury. Under this enhancement, the payment will increase to 75 percent of the participant's incurred losses from such injury.

(v) *The New Accidental Death & Dismemberment Benefit.* Under the current terms of the Plan, if a participant dies in an automobile accident while seated in an air bag-protected position and such air bag system deployed during the accident, the Plan would not pay any additional benefit to the participant. Under this enhancement, the Plan will provide a new benefit that pays ten percent of the principal sum, up to $25,000, upon the occurrence of this event.

Further, under the current terms of the Plan, if a participant dies 100 miles away from his or her primary place of residence, the Plan would not cover costs incurred to transport the participant's body from the place of death to a mortuary near the participant's primary residence. Under this enhancement, the Plan will provide a new benefit of up to five percent of the AD&D policy amount, up to a maximum of $5,000, for the cost associated with transporting the deceased participant's body to a mortuary near his or her primary residence.

Finally, the Plan currently does not cover medical costs incurred by a participant who suffers third degree burns. Under this enhancement, the

Plan will enhance the AD&D benefit by paying a percentage of the principal sum based on the body area(s) and the percentage of the body surface affected.

(c) The term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(d) The term ''Independent Fiduciary'' means a person who:

(1) Is not Phillips 66 or an affiliate of Phillips 66 or Spirit and does not hold an ownership interest in Phillips 66, Spirit or affiliates of Phillips 66 or Spirit;

(2) Was not a fiduciary with respect to the Plan before its appointment to serve as the Independent Fiduciary;

(3) Has acknowledged in writing that:

(i) It is a fiduciary and has agreed not to participate in any decision with respect to any transaction in which it has an interest that might affect its best judgment as a fiduciary; and

(ii) Has appropriate technical training or experience to perform the services contemplated by the exemption;

(4) For purposes of this definition, no organization or individual may serve as Independent Fiduciary for any fiscal year if the gross income received by such organization or individual from Phillips 66, Spirit, or their affiliates for that fiscal year exceeds two percent of such organization's or individual's gross income from all sources for the prior fiscal year. This provision also applies to a partnership or corporation of which such organization or individual is an officer, director, or 10 percent or more partner or shareholder and includes as gross income amounts received as compensation for services provided as an independent fiduciary under any prohibited transaction exemption granted by the Department;

(5) No organization or individual that is an Independent Fiduciary and no partnership or corporation of which such organization or individual is an officer, director or ten percent or more partner or shareholder may acquire any property from, sell any property to, or borrow any funds from Phillips 66, Spirit, or affiliates of Phillips 66 or Spirit while the individual serves as an Independent Fiduciary. This prohibition would continue for a period of six months after either: (i) The party ceases to be an Independent Fiduciary or (ii) the Independent Fiduciary negotiates on behalf of the Plan during the period that such organization or the individual serves as an Independent Fiduciary; and

(6) In the event a successor Independent Fiduciary is appointed to represent the interests of the Plan with respect to the subject transaction, no time should elapse between the resignation or termination of the former Independent Fiduciary and the appointment of the successor Independent Fiduciary;

(e) The term ''Plan'' means the Phillips 66 Group Life Insurance Plan.

*Section II. Covered Transactions*

The restrictions of ERISA Sections 406(a)(1)(A) and (D), and 406(b)(1), (b)(2) and (b)(3), shall not apply to: (1) The reinsurance of risks; and (2) the receipt of premiums by Spirit in connection with insurance contracts sold by Zurich (or any successor Fronting Insurer) to provide Group Term Life and Accidental Death and Dismemberment benefits to Plan participants. In order to receive such relief, the conditions in Section II must be met in conformance with the definitions set forth in Section I.

(a) Phillips 66 must improve the Plan with the Benefit Enhancements that are funded solely by Phillips 66 in compliance with (b) through (e) below;

(b) For every dollar that Phillips 66 and its related parties directly and indirectly benefit from the Captive Reinsurance arrangement, Phillips 66 must pay at least $0.51 towards the Benefit Enhancements, as may be adjusted under condition (e) below (the Primary Benefit Test);

(c) The Independent Fiduciary must determine whether the Primary Benefit Test has been met with respect to each successive five-year period covered by the exemption. The Independent Fiduciary must report its determinations as part of the Independent Fiduciary's next annual report. For purposes of the initial five-year period, the Independent Fiduciary may test only the costs and benefits that inure to Phillips 66 during years two through five of the initial five-year period.

(d)(1) If the Primary Benefit Test has not been met with respect to a five-year period, Phillips 66 must reduce the participants' portion of the Plan's premium in the next consecutive year by an amount that is at least equal to the amount by which the prior five-year Primary Benefit Test was not met, plus an additional payment of interest on the shortfall, at the Code's federal underpayment rate set forth in Code Section 6621(b). The premium reduction must benefit all plan participants equally, be fully implemented during the course of the year following the last year of the five-year period to which it relates, and be verified by the Independent Fiduciary; (2) If the captive reinsurance arrangement is terminated before the end of a five-year period (a Shorter Term), and if the Primary Benefit Test has not been met during the Shorter Term, Phillips 66 must reduce the participants' portion of the Plan's premium in the following year by an amount at least equal to the amount by which the Shorter Term Primary Benefit Test was not met. The premium reduction must benefit all plan participants equally, be fully implemented during the course of the year following the last year of the Shorter Term, and be verified by the Independent Fiduciary. Relief in this proposed exemption does not extend to prohibited transactions described in this proposed exemption that occur during the Shorter Term unless the requirements in this Subsection (d)(2) have been met. The Independent Fiduciary must ensure the premium reduction was properly implemented, notwithstanding that the Reinsurance Arrangement has already been terminated;

(e) Phillips 66 may adjust the Benefit Enhancements to the Plan at any time, if such adjustment is approved in advance by the Independent Fiduciary after the Independent Fiduciary first determines that each adjusted Benefit Enhancement is in the interest of the Plan's participants and beneficiaries and available to them on an equal basis. The cost incurred by Phillips 66 to fund the Benefit Enhancement may be used to determine whether the Primary Benefit Test has been met. A complete description of any new Benefit Enhancements and the Independent Fiduciary's rationale and determinations regarding such enhancements must be included in the next Independent Fiduciary report submitted to the Department.

(f) Spirit must:

(1) Be a party in interest with respect to the Plan based on its affiliation with Phillips 66 that is described in ERISA Section 3(14)(G); [1]

(2) Be licensed to sell insurance or conduct reinsurance operations in the Vermont;

(3) Have obtained a Certificate of Authority from the insurance commissioner of Vermont to transact business as a captive insurance company. Such certificate must not have been revoked or suspended;

(4) Have undergone a financial examination (within the meaning of the

[1] Under ERISA Section 3(14)(G), a corporation is a ''party in interest'' with respect to an employee benefit plan if 50 percent or more of the combined voting power of all classes of the corporation's stock entitled to vote, or the total value of shares of all classes of stock of the corporation, is owned by an employer any of whose employees are covered by the employee benefit plan.

law of its domiciliary State of Vermont) by the Insurance Commissioner of Vermont within five years before the end of the year preceding the year in which the reinsurance transaction occurred;

(5) Have undergone, and continue to undergo, an examination by an independent certified public accountant for its last completed taxable year immediately before the taxable year of the Reinsurance Arrangement covered by this exemption; and

(6) Be licensed to conduct reinsurance transactions by a state whose law requires that an actuarial review of reserves be conducted annually by an independent firm of actuaries and reported to the appropriate regulatory authority;

(g) In each year of coverage provided by a Fronting Insurer, the formulae used by the Fronting Insurer to calculate premiums will be similar to formulae used by other insurers providing comparable life insurance coverage under similar programs. Furthermore, the premium charges calculated in accordance with the formulae will be reasonable and comparable to the premiums charged by the Fronting Insurer and its competitors with the same or a better financial strength rating providing the same coverage under comparable programs;

(h) The Plan must pay no commissions with respect to the sale of such contracts or the Reinsurance Arrangement;

(i) The Fronting Insurer must have a financial strength rating of ''A'' or better from A.M. Best Company (A.M. Best) or an equivalent rating from another rating agency;

(j) The Reinsurance Arrangement between Spirit and Zurich or any successor Fronting Insurer must be indemnity insurance only. The arrangement must not relieve a Fronting Insurer from any responsibility or liability to the Plan, including liability that would result if Spirit fails to meet any of its contractual obligations to Zurich or any successor Fronting Insurer under the Reinsurance Arrangement;

(k) Phillips 66 will not offset or reduce any benefits provided to Plan participants and beneficiaries in relation to its implementation of the Benefit Enhancements;

(l) The Independent Fiduciary must:

(1) In compliance with the fiduciary obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B) (i) review the Reinsurance Arrangement and the terms of the exemption; (ii) obtain and review all current objective, reliable, third-party documentation necessary to make the determinations required of the Independent Fiduciary by the exemption; and (iii) confirm in writing that all of the exemption's terms and conditions have been met (or, due to timing requirements, can reasonably be expected to be met consistent with the terms of this proposed exemption) and send this confirmation to the Department's Office of Exemption Determinations at least 30 days before Phillips 66 engages in the Reinsurance Arrangement. The confirmation must include copies of each document relied on by the Independent Fiduciary and the steps the Independent Fiduciary took to make its confirmation;

(2) Monitor, enforce and ensure compliance with all conditions of this exemption, in accordance with its obligations of prudence and loyalty under ERISA Sections 404(a)(1)(A) and (B), including all conditions and obligations imposed on any party dealing with the Plan, throughout the period during which Spirit's assets are directly or indirectly used in connection with a transaction covered by this exemption.

(3) Report any instance of non-compliance immediately to the Department's Office of Exemption Determinations;

(4) Take all appropriate actions to safeguard the interests of the Plan;

(5) Review all contracts pertaining to the Reinsurance Arrangement, and any renewals of such contracts, to determine whether the requirements of this exemption and the terms of Benefit Enhancements continue to be satisfied;

(6) Submit an annual Independent Fiduciary Report to the Department certifying under penalty of perjury whether each term and condition of the exemption is met over the applicable period. Each report must be: (i) Completed within six months after the end of the twelve-month period to which it relates (the first twelve-month period begins on the effective date of the exemption grant); and (ii) submitted to the Department within 60 days thereafter. The relevant report must include all of the objective data necessary to demonstrate that the Primary Benefit Test has been met;

(m) Neither Phillips 66 nor any related entity may use participant-related data or information generated by or derived from the Reinsurance Arrangement in a manner that benefits Phillips 66 or a related entity. Notwithstanding the above, this condition does not preclude Phillips 66 from using participant-related data solely to improve the administration of the Plan or to enhance the Plan's benefits;

(n) No amount of Spirit's reserves that are attributable to the Plan participants' contributions may be transferred to Phillips 66 or a related party;

(o) All the facts and representations set forth in the Summary of Facts and Representation must be true and accurate; and

(p) No party related to this exemption request has or will, indemnify the Independent Fiduciary, in whole or in part, for negligence and/or for any violation of state or federal law that may be attributable to the Independent Fiduciary in performing its duties under the captive reinsurance arrangement. In addition, no contract or instrument may purport to waive any liability under state or federal law for any such violations.

*Effective Date:* This exemption will be in effect on the date that this grant notice is published in the **Federal Register**.

Signed at Washington, DC.

**Timothy P. Hauser,**

*Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2022–08305 Filed 4–18–22; 8:45 am]

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

**[Prohibited Transaction Exemption 2022–01; Exemption Application No. D–12065]**

### Exemption for Certain Prohibited Transaction Restrictions Involving Credit Suisse Group AG (CSG or the Applicant), Located in Zurich, Switzerland

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of exemption.

**SUMMARY:** This document is a notice of exemption issued by the Department of Labor (the ''Department'') from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (''ERISA'') and the Internal Revenue Code of 1986 (the ''Code''). The exemption allows entities with specified relationships to Credit Suisse AG (''CSAG'') and Credit Suisse Securities (Europe) Limited (''CSSEL'') to continue to rely on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14, notwithstanding the judgments of conviction against CSAG and CSSEL, described below.

**DATES:** The exemption will be in effect for one year beginning on the date of conviction of Credit Suisse Securities (Europe) Limited in Case Number 1:21–cr–00520–WFK.

**FOR FURTHER INFORMATION CONTACT:** Erin Scott Hesse of the Department at (202) 693–8546. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On January 10, 2022, the Department published a notice of proposed exemption in the **Federal Register** [1] for certain qualified professional asset managers within the corporate family of Credit Suisse Group AG (''CSG''), to continue relying on the class exemptive relief granted in Prohibited Transaction Exemption (PTE) 84–14 (''PTE 84–14''), for up to one year, notwithstanding the judgment of conviction against Credit Suisse AG (''CSAG'') and upcoming judgment of conviction against Credit Suisse Securities (Europe) Limited (''CSSEL''). The Department is granting this exemption to ensure that Covered Plans and their participants and beneficiaries are protected while the Department determines whether additional relief is warranted.[2]

The Department stresses that this exemption provides Covered Plans and CS Affiliated QPAMs with the ability to rely on PTE 84–14 for one year and that this exemption will terminate at the end of that period. The grant of this one-year exemption does not imply that the Department will grant additional relief for the CS Affiliated QPAMs to continue to rely on the relief in PTE 84–14 beyond the end of this exemption's one-year term. The Convictions and other alleged Credit Suisse-related criminal misconduct constitute serious years-long systemic criminal misconduct that counsels against providing broad relief from ERISA's prohibited transaction provisions and raises fundamental questions regarding whether the CS Affiliated QPAMs have sufficient integrity to warrant their continued reliance on PTE 84–14.

This exemption provides only the relief specified in the text of the exemption, and only with respect to the criminal convictions or criminal conduct described herein. It provides no relief from violations of any law other than the prohibited transaction provisions of Title I of ERISA and the Code.

The Department intends for the terms of this exemption to promote adherence by the CS Affiliated QPAMs to basic fiduciary standards under Title I of ERISA and the Code. The Department's primary objective in granting this exemption is to ensure that Covered Plans can terminate their relationships with a CS Affiliated QPAM in an orderly and cost-effective fashion in the event the fiduciary of a Covered Plan determines it is prudent to do so. The Department makes the requisite findings under ERISA section 408(a) and Code Section 4975(c)(2) based on the Applicant's adherence to all the conditions of the exemption. Accordingly, affected parties should be aware that the conditions incorporated in this exemption are, taken as a whole, necessary for the Department to grant the relief requested by the Applicant. Absent these or similar conditions, the Department would not have granted this exemption.

The Applicant requested an individual exemption pursuant to ERISA section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of the Secretary of the Treasury to issue administrative exemptions under Code section 4975(c)(2) to the Secretary of Labor. Accordingly, the Department grants this exemption under its sole authority.

**Written Comments**

The Department invited all interested persons to submit written comments and/or requests for a public hearing with respect to the notice of proposed exemption (the ''Proposal''). In this regard, the Applicant was given ten (10) days to provide notice to interested persons, and all comments and requests for a hearing were due on February 22, 2022. The Department received two written comments and no hearing requests. One comment was from the Applicant, as discussed in more detail below. The other comment was from Senators Elizabeth Warren and Tina Smith urging the Department to reconsider and rescind the Proposal. After considering the entire record developed in connection with the Applicant's exemption request, the Department has determined to grant the one-year exemption to ensure that affected plans and their participants are protected, as described below.

**Department's Comment**

The Department cautions that the relief in this exemption will terminate immediately if an entity within the CSG corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the judgment of conviction against CSAG and upcoming judgment of conviction against CSSEL, as further defined below) during the Exemption Period. Although the CS Affiliated and Related QPAMs could apply for a new exemption in that circumstance, the Department would not be obligated to grant the exemption. The Department designed the terms of this exemption to permit plans to terminate their relationships in an orderly and cost-effective fashion. Nothing in this exemption should be construed to suggest that the Department will grant further relief after the expiration of this one-year exemption. In this regard, the CS Affiliated QPAMs must manage the assets of Covered Plan clients consistent with this understanding and in accordance with their fiduciary obligations under ERISA and the conditions of this one-year exemption. The Department stresses that complying with their fiduciary obligations means that the CS Affiliated QPAMs' should advise their plan and IRA clients to prepare for the possibility that the Department will not grant further relief at the end of the one-year period and the ensuing consequences. This also means that the QPAMs should take the necessary and appropriate steps to ensure their Covered Plan clients will not be exposed to prohibited transactions and that the QPAMs have prudent processes in place to comply with the penalty-free withdrawal and indemnification requirements set forth in Section I(j) of PTE 2019–07 and Section III(j) of this exemption.

Below, the Department provides the overview of the relevant convictions, which was published in the

[1] 87 FR 1186 (Jan. 10, 2022).

[2] For purposes of this exemption, a ''Covered Plan'' is a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84–14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a CS Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: The modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the CS Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

Department's notice of proposed exemption.[3]

*Prior 2014 Conviction of CSAG (the CSAG Conviction) and Related Exemptions*

The CSAG Conviction

On May 19, 2014, the Tax Division of the United States Department of Justice (DOJ) and the U.S. Attorney's Office for the Eastern District of Virginia filed a one-count criminal information (the CSAG Information) in the District Court for the Eastern District of Virginia (the Virginia District Court) charging CSAG with a conspiracy to violate Code section 7206(2) in violation of Title 18, United States Code, Section 371. The CSAG Information charged the Applicant and its subsidiaries, Credit Suisse Fides and Clariden Leu Ltd., with willfully aiding, assisting in, procuring, counseling, and advising the preparation and presentation of false income tax returns and other documents to the Internal Revenue Service of the Treasury Department (IRS), for decades, prior to and through approximately 2009.

According to the Statement of Facts filed in the criminal case (the CSAG Statement of Facts), for decades before and through approximately 2009, CSAG operated an illegal cross-border banking business that knowingly and willfully aided and assisted thousands of U.S. clients in opening and maintaining undeclared accounts concealing their offshore assets and income from the IRS. Private bankers employed by CSAG (referred to as Relationship Managers or RMs) served as the primary contact for U.S. clients with undeclared accounts at CSAG. CSAG used a variety of means to assist U.S. clients in concealing their undeclared accounts, including by: Assisting clients in using sham entities as nominee beneficial owners of the undeclared accounts; soliciting IRS forms that falsely stated under penalty of perjury that the sham entities beneficially owned the assets in the accounts; failing to maintain records in the United States related to the accounts; destroying account records sent to the United States for client review; using Credit Suisse[4] managers and employees as unregistered investment advisors on undeclared accounts; facilitating withdrawals of funds from undeclared accounts by either providing hand-delivered cash in the United States or using Credit Suisse's correspondent bank accounts in the United States; structuring transfers of funds to evade currency transaction reporting requirements; and providing offshore credit and debit cards to repatriate funds in the undeclared accounts.

CSAG made a number of ineffectual attempts to consolidate these U.S. clients' accounts in CSAG business entities that complied with U.S. law. For instance, starting in or about 2009, CSAG engaged in a flawed process of verifying tax compliance of U.S. accounts in order to allow these accounts to remain at CSAG. In December 2010, the Tax Division of the U.S. Department of Justice (DOJ) informed Credit Suisse AG that it had begun a criminal investigation of CSAG that had uncovered evidence of tax law violations. Although CSAG had either transferred or terminated the majority of its relationships with these U.S. clients by approximately 2010, CSAG continued to identify U.S. customer accounts for closure until on or about 2013.

On May 19, 2014, pursuant to a plea agreement (the CSAG Plea Agreement), CSAG entered a plea of guilty for assisting U.S. citizens in federal income tax evasion. The conviction (the CSAG Conviction) occurred on November 21, 2014.

Related Individual Exemptions

In connection with the CSAG Conviction, the Department first granted PTE 2014–11,[5] a one-year exemption that allowed CS Affiliated and Related QPAMs to continue to rely on PTE 84–14, notwithstanding the CSAG Conviction, as long as a number of conditions were met. Subsequent to granting PTE 2014–11, the Department granted PTE 2015–14, an additional four-year exemption that continued to provide extended relief for CS Affiliated QPAMs.[6] Before the expiration of PTE 2015–14, the Department granted PTE 2019–07, which would have provided the final five-years of relief CS Affiliated needed in connection with the CSAG Conviction.[7]

*Impending Conviction of CSSEL (the CSSEL Conviction) and CSG Deferred Prosecution Agreement (DPA)*

The CSSEL Conviction

On October 19, 2021, the DOJ, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York (collectively, the Offices), filed a criminal information (the CSSEL Information) in the District Court for the Eastern District of New York (the New York District Court) charging CSSEL with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. 1349. As of the date of this publication, the CSSEL sentencing date is scheduled for May 13, 2022.

CSSEL agreed to resolve the action through a plea agreement presented to the New York District Court on October 19, 2021 (the CSSEL Plea Agreement). Under the CSSEL Plea Agreement, CSSEL agreed to enter a plea of guilty to the charge set out in the CSSEL Information (the CSSEL Plea). In addition, CSSEL will make an admission of guilt to the District Court. The Applicant expects that the District Court will enter a judgment against CSSEL that will require remedies that are materially the same as those set forth in the CSSEL Plea Agreement. On October 19, 2021, in connection with the CSSEL Plea, the ultimate parent of CSSEL, CSG, entered into a Deferred Prosecution Agreement (the DPA) with the Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section of the DOJ and the United States Attorney's Office for the Eastern District of New York.

For purposes of Section I(g) of PTE 84–14, the date CSSEL is sentenced will be the conviction date (the CSSEL Conviction Date). As of that date, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by PTE 84–14 as of the CSSEL Conviction Date. The CSSEL Conviction will also violate PTE 2019–07 and therefore, absent this exemption, the CS Affiliated and Related QPAMs will no longer be able to rely on the relief provided by either PTE 84–14 or PTE 2019–07 as of the CSSEL Conviction Date.

According to the Statement of Facts (the CSSEL Statement of Facts)[8] that

[3] 87 FR 1186 (Jan. 10, 2022).

[4] The CSAG Statement of Facts defined ''Credit Suisse'' to mean CSAG, its parent, and Switzerland-based subsidiaries and affiliates, including Clariden Leu.

[5] 79 FR 68716 (Nov. 18, 2014).

[6] 80 FR 59817 (Oct. 2, 2015). PTE 2015–14 provided relief to the CS Related QPAMs for the entire remainder of the ineligibility period.

[7] *See* 84 FR 61928 (Nov. 14, 2019).

[8] Unless otherwise specified, all information in this section is taken from the Applicant's exemption application and supporting documents, the CSSEL Plea Agreement, and the CSSEL Statement of Facts. According to the CSSEL Plea Agreement ''[t]he Defendant is pleading guilty because it is guilty of the charge contained in the Information. The Defendant admits, agrees, and stipulates that the factual allegations set forth in the Information and the Statement of Facts are true and correct, that it is responsible for the acts of its officers, directors, employees, and agents described in the Information and the Statement of Facts, and that the Information and the Statement of Facts accurately reflect the Defendant's criminal conduct.'' P. 11. Additionally, as part of the CSSEL Plea Agreement, the Defendant ''expressly agrees

Continued

accompanied the CSSEL Plea Agreement,[9] CSSEL acted as a Joint Lead Manager underwriting the issuance of $500 million in loan participation notes (LPNs) to partially finance an $850 million loan for a tuna fishing project in Mozambique in 2013, and acted as Joint Dealer Manager in the exchange of those LPNs for a sovereign bond (EMATUM[10] Exchange) (collectively, the EMATUM Securities) in 2016.

CSSEL, through its employees, conspired to use U.S. wires and the U.S. financial system to defraud U.S. and international investors. Credit Suisse[11] and its co-conspirators conspired to use international and interstate wires to, from, and through the United States to transmit false and misleading statements to investors in the EMATUM Securities, transfer proceeds obtained from those investors through the fraudulent scheme to the co-conspirators, and pay kickbacks to three former Credit Suisse bankers.

CSSEL, through Surjan Singh (Singh), who left Credit Suisse in 2017, and Andrew Pearse (Pearse) and Detelina Subeva (Subeva), who both left Credit Suisse in 2013, among other things, conspired to defraud investors and potential investors in the EMATUM Securities by concealing and misrepresenting the fact that approximately $50 million in kickbacks were paid to Pearse, Singh, and Subeva from the loan proceeds of the EMATUM LPN transaction. Jean Boustani, an agent of Privinvest,[12] an entity not affiliated with Credit Suisse, paid bribes totaling approximately $150 million to various Mozambican government officials and others, including Manuel Chang, Mozambique's Minister of Finance, and Antonio do Rosario, an official in Mozambique's governmental state intelligence and security service, known as Servico de Informacoes e Seguranca do Estado, which, together with other Mozambican government agencies, was an owner of ProIndicus[13] and EMATUM.

Credit Suisse also arranged the EMATUM Exchange, whereby, in 2015, when EMATUM began encountering problems servicing the EMATUM loans, Credit Suisse arranged for the LPNs to be exchanged for Mozambique-issued Eurobonds. According to the Statement of Facts, in seeking investors' consent to the EMATUM Exchange, CSSEL prepared documents about the EMATUM Exchange that were sent to investors and included false and misleading statements regarding the use of proceeds of the original EMATUM loan and omitted certain other facts concerning the EMATUM Exchange. Credit Suisse ignored or only nominally addressed a number of red flags in connection with these transactions.

On or about August 30, 2013, Credit Suisse agreed to move forward with the EMATUM transaction. In addition to Credit Risk Management, the European Investment Banking Committee, Reputational Risk, and the Compliance and Anti-Money Laundering functions considered the transaction and agreed to allow the EMATUM transaction to go forward. The CSSEL Statement of Facts indicates that after Credit Suisse transferred the funds raised to finance EMATUM to Privinvest, Privinvest secretly paid millions of dollars to three of the signatories on the EMATUM deal—Singh, Do Rosario, and Chang.

Credit Suisse approved the EMATUM loan notwithstanding the fact that its earlier due diligence process for ProIndicus had identified significant risks of bribery and the size of the project had expanded greatly without apparent justification, and Credit Suisse, through Pearse, Singh, and Subeva, knew that Privinvest had paid kickbacks to Pearse in connection with the ProIndicus transaction, and would pay further kickbacks to Pearse and Singh in connection with the EMATUM loan.

Credit Suisse sent potential investors materials that included the EMATUM loan agreement and marketing materials such as the offering circular (the LPN Investor Documents), notwithstanding the fact that the LPN Investor Documents represented that the loan proceeds would be used exclusively to fund the EMATUM project, and that none of the proceeds would be used to pay bribes or kickbacks. For example, (a) Pearse and Singh knew that they would receive millions of dollars in illegal kickback payments from Privinvest in connection with the EMATUM loan while employed by Credit Suisse; (b) Firm 1 had expressly warned Credit Suisse about Privinvest and Privinvest Co-Conspirator 1's history of corruption and bribery; and (c) a senior Credit Suisse executive had previously said ''no'' to Pearse to the combination of Privinvest Co-Conspirator 1 and Mozambique in November 2012.[14]

Despite the use of proceeds concerns raised by the significant valuation shortfall and other previously identified red flags, which underscored the risk that the EMATUM proceeds had been used for corruption and bribery, Credit Suisse approved the EMATUM Exchange. Although Credit Suisse did disclose in investor documents that it had been ''widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment,'' and that ''subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes,'' Credit Suisse did not disclose any of the information it had about the significant shortfall between the price Privinvest charged EMATUM for the purchase of assets and the value of those assets. In the EMATUM Exchange documentation, Credit Suisse also: (a) Included false and misleading statements regarding the use of proceeds of the original EMATUM loans; (b) failed to disclose kickbacks to Singh, Pearse, and Subeva, of which Singh was aware; (c) did not disclose any of the information Credit Suisse had about the significant shortfall between the price Privinvest charged EMATUM for the 27 boats and the fair market value of those boats; and (d) failed to disclose the existence of the ProIndicus and MAM loans,[15] and their maturity dates, and instead disclosed that Credit Suisse and VTB Bank ''have engaged, and may in the future engage, in investment banking and/or commercial banking transactions with, and have performed and continue to perform services for the Issuer and its affiliates in the ordinary course of business for which they have received and for which

that it shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for the Defendant make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by the Defendant set forth above or the facts described in the Information and the Statement of Facts.'' P. 23.

[9] Plea Agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York and Credit Suisse Securities (Europe) Limited, Cr. No. 21–520 (MKB), filed Oct. 19, 2021.

[10] EMATUM was a company owned, controlled, and overseen by the Government of Mozambique. EMATUM was created to undertake a project to create a state-owned tuna fishing company for Mozambique.

[11] The CSSEL Statement of facts defined ''Credit Suisse'' to mean CSG together with its wholly-owned subsidiaries and affiliated entities.

[12] Privinvest was a holding company based in Abu Dhabi, United Arab Emirates. Privinvest was engaged in shipbuilding of various types of vessels.

[13] ProIndicus was a company owned, controlled, and overseen by the Government of Mozambique. ProIndicus was created to undertake a project to create a state-owned coastal surveillance and protection plan for Mozambique.

[14] The CSSEL Statement of Facts did not identify Privinvest Co-conspirator 1 or Firm 1 other than that Firm 1 was a ''diligence firm'' used by Credit Suisse.

[15] MAM was a company owned, controlled, and overseen by the Government of Mozambique. MAM was created to build and maintain shipyards.

they will in the future receive, fees. . . . In particular, an affiliate of [CSSEL] has a lending relationship with a wholly-owned state entity whose obligations have the benefit of a guarantee from Mozambique.'' Credit Suisse did disclose, however, that it had been ''widely reported in the press that the proceeds of the [LPNs] had been used in part to purchase defense equipment,'' and that ''subsequent press reports [had] also called into question whether all of the proceeds of the [LPNs] were used for authorized or appropriate purposes.''

By agreeing to the EMATUM Exchange, which delayed the EMATUM loan repayment date, Credit Suisse knew that EMATUM loan participation note investors were agreeing to be paid after any other investors in other Mozambique government loans that matured earlier, such as ProIndicus. Credit Suisse arranged and was an investor in the ProIndicus loan. As a result, by extending the EMATUM loan repayment date through the EMATUM Exchange, Credit Suisse would be repaid on its investment in the private ProIndicus loan before EMATUM Securities investors were repaid.

During the investor road show for the EMATUM Exchange, Credit Suisse and Do Rosario and the then-Minister of Finance for Mozambique did not inform investors of (a) the significant valuation shortfall and risk that loan proceeds were improperly diverted, including to pay bribes; (b) the existence or maturity dates of the ProIndicus and MAM loans; (c) that Mozambique had not disclosed its true level of debt to the ProIndicus and MAM loans to the International Monetary Fund (IMF); and (d) kickbacks paid to Credit Suisse bankers in connection with the EMATUM loan.

Under the CSSEL Plea Agreement, CSSEL agreed, among other things, as follows: First, that CSSEL shall cooperate fully with the Offices in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and other conduct under investigation by the Offices or any other component of the Department of Justice at any time during the term of the DPA (the Term) until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded or the end of the Term. Second, at the request of the Offices, CSSEL shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks in any investigation of CSSEL, CSG, its affiliates, or any of its present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in the CSSEL Plea Agreement and the CSSEL Statement of Facts and any other conduct under investigation by the Offices or any other component of the DOJ. Third, should CSSEL learn during the Term of any evidence or allegations of conduct that may constitute a violation of the federal wire fraud statute had the conduct occurred within the jurisdiction of the United States, CSSEL shall promptly report such evidence or allegation to the Offices. CSSEL also agreed to commit no further crimes and to work with Credit Suisse in fulfilling the obligations of CSG's DPA.

Impacted Investors

The Applicant represented to the Department that the LPNs were distributed from Credit Suisse's UK operations via CSSEL into international capital markets in 2013, to non-U.S. entities, pursuant to U.S. Securities and Exchange Commission (SEC) Regulation S. Credit Suisse is aware that the purchasers of those LPNs were made up of hedge funds, banks, and other institutions, but due to Regulation S, the purchasers' only obligation was to certify their status as Qualified Institutional Buyers (QIBs) in the applicable subscription agreements. The Applicant represents that it is unlikely that Covered Plans were initial purchasers of those LPNs. According to the Applicant, Credit Suisse has no way of knowing, and does not know in any systematic manner, whether (a) the fund owners or investors in the initial purchasers' funds themselves were Covered Plans, or (b) parties buying and selling the LPNs in the secondary market were Covered Plans.

Furthermore, the Applicant represented that in 2016, LPN investors had the option to exchange their LPNs for sovereign-issued Mozambique Exchange Bonds (the Exchange Bonds) issued under either Regulation S or SEC Rule 144A, in London, England. Credit Suisse represents that it is unlikely that those investors who chose to exchange their LPNs for Regulation S bonds, and who must have been QIBs and non-U.S. entities, were Covered Plans. The 2016 Exchange also included a Rule 144A tranche into which investors could exchange their LPNs; however, those buyers also were required to represent that they were QIBs, and as a result, it is unlikely that their clients were Covered Plans. According to the information on purchasers which Credit Suisse does have, at the time of the Exchange, Credit Suisse was aware that the LPNs, and subsequently, the Eurobonds, were held via either Euroclear or Clearstream accounts in Europe. While Credit Suisse has identified a list of the entities that maintained custodial accounts at Euroclear and Clearstream in connection with those transactions, Credit Suisse represents that it has no way of knowing the identities of the ultimate beneficial owners of the LPNs at the time of the Exchange.

The CSG DPA

On October 19, 2021, in addition to the CSSEL Plea, the ultimate parent entity of CSSEL, CSG, entered into a three-year DPA with the Offices in connection with the same conduct as set forth in the CSSEL Statement of Facts that forms the basis for the CSSEL Plea Agreement.

The DPA indicates that CSG admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the CSSEL Information, and as set forth in the CSSEL Statement of Facts, and that the allegations described in the CSSEL Information and the facts described in the CSSEL Statement of Facts are true and accurate.

Under the DPA, CSG also agreed to continue to cooperate with the Offices, to enhance its compliance program and internal controls, and to provide enhanced reporting to the Offices on CSG's remediation and compliance program. Among other things, the enhanced reporting provisions require CSG to meet with the Offices at least quarterly and to submit yearly reports regarding the status of its remediation efforts, the results of its testing of its compliance program, and its proposals to ensure that its compliance program is reasonably designed, implemented, and enforced so that it is effective in deterring and detecting violations of fraud, money laundering, the Foreign Corrupt Practices Act, and other applicable anti-corruption laws.

*Department's Note:* Interested persons can access the CSG DPA and related materials at *https://www.justice.gov/opa/pr/credit-suisse-resolves-fraudulent-mozambique-loan-case-547-million-coordinated-global.*

**Comments From the Applicant—Requested Revisions**

*I. Revision to Section I(b)*

Section I(b) of the Proposal provides:

The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which a CS Affiliated QPAM

relies on PTE 84–14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA.

*Applicant's Request:* The Applicant requested clarification that a disclaimer of reliance on QPAM status or PTE 84–14 may be made in a modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, assuming a bilateral signed document exists, and the client is advised in writing what it means not to use the QPAM Exemption. According to the Applicant, if the agreement is bilateral and in writing, and the client's attention is specifically directed toward the disclaimer, the Applicant is hopeful that the Department will deem these conditions sufficiently protective to permit the CS Affiliated QPAMs to disclaim reliance on QPAM status or PTE 84–14 in a modification of a contract, arrangement, or agreement. Accordingly, the Applicant requested the following additional language be added to the end of Section I(b):

> Notwithstanding the above, a CS Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: The modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the CS Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

*Department's Response:* The Department has revised the exemption consistent with the Applicant's request.

*II. Revision to Section III(i)(8)*

Section III(i)(8) of the Proposal provides, in pertinent part:

> A copy of the Audit Report must be provided [to] CSAG's Board of Directors and either the Risk Committee or the Audit Committee of CSAG's Board of Directors; and a senior executive officer at either the Risk Committee or the Conduct and Financial Crime Control Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report.

*Applicant's Request:* The Applicant requested that the Department permit certification by the Risk Committee or the Audit Committee, rather than the Conduct and Financial Crime Control Committee. As represented by the Applicant, the Audit Committee is uniquely positioned to receive and review the Audit Report, as its specified function is to assist the Board of Directors in fulfilling its oversight role by monitoring and assessing the integrity of Credit Suisse's financial statements. Among the particular responsibilities of the Audit Committee is monitoring the qualifications, independence, and performance of external auditors such as the Independent Auditor required by the Proposal. The Conduct and Financial Crime Control Committee does not serve a comparable purpose. Its function is solely to manage Credit Suisse's exposure to financial crime risk. The Applicant submitted that the Audit Committee is better suited to fulfill the objectives of the exemption condition. Accordingly, the Applicant requested that the reference to the Conduct and Financial Crime Control Committee be replaced with the Audit Committee. In addition, to the extent that these committees include only independent Board members and not executive employees, the Applicant requested that certification be permitted by the chairperson of the committee or the senior executive officer who acts as liaison with the committee.

*Department's Response:* The Department has revised the exemption consistent with the Applicant's request including so that the chairperson of a committee may provide the certification.

*III. Revision to Section III(j)(7)*

Section III(j)(7) of the Proposal provides, in relevant part:

> For Covered Plans that were provided a previous form of investment management agreement prior to the effective date of this exemption, and sign and return such agreement with a CS Affiliated QPAM within 120 days after the effective date of this exemption, the CS Affiliated QPAM shall provide the documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019–07 that meets the terms of this condition.

*Applicant's Request:* The Applicant requested clarification with respect to Section III(j)(7), which is intended to deal with new clients of a CS Affiliated QPAM who were provided an investment management agreement shortly before or after the Proposal was published, but in all cases prior to the effective date of the exemption, if granted. The Applicant requests that where that version requires modification to meet the terms of the exemption, the CS Affiliated QPAM may provide amendments required by the exemption that need not be signed, along with the documents required by the exemption.

The Applicant requested that this part of Section III(j)(7) read:

> For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the CS Affiliated QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019–07 that meets the terms of this condition.

The Applicant states that handling asset management agreements in this manner will save affected plans time and money.

*Department's Response:* The Department has revised the exemption as requested.

*IV. Revision to Section III(o)*

Proposed Section III(o) provides ''CSAG complies in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Convictions.''

*Applicant's Request:* The Applicant requests that this condition be deleted. The Applicant indicated that a number of regulators have imposed myriad requirements as part of CSAG's plea agreements and settlements entered into in connection with the Convictions, which are described in detail in the Applicant's application for exemptive relief (dated October 19, 2021) and the Applicant's response to the Department's additional questions (dated December 9, 2021). The Applicant indicated that conditioning an administrative exemption upon CSAG's compliance with all such requirements does not further the objectives of the exemption and, indeed, could have a significant adverse effect on plans. If CSAG were to fail to meet a minor or ministerial requirement, the exemption would be lost to plans, regardless of whether the regulator chose to deal with the failure in a different, and less draconian, fashion. The Applicant indicated that the CS Affiliated QPAMs have no control over CSAG and cannot ensure its compliance with requirements imposed by other regulators. As stated by the Applicant, the exemption makes the CS Affiliated QPAMs responsible for their own

compliance with the exemption, not for the compliance with all other laws by the rest of Credit Suisse. The Applicant believes that plans and their fiduciaries should not pay the price for any noncompliance by the non-asset management divisions of Credit Suisse.

The Applicant also contends that this kind of provision could have unintended consequences. In support of that contention, the Applicant indicated that: (1) Any claim by a disgruntled client or employee, or a competitor, that even the most minor requirements of these ancillary orders were not met may throw the validity of the exemption into doubt, causing disruption to the trading with respect to Covered Plans, and (2) this kind of condition, without notice and hearing, creates the sort of cliff effect that the Department has sought to avoid. Loss, by plans, of this trading exemption for failure by a non-asset management part of Credit Suisse to comply with this condition would serve only to penalize plans for conduct that is outside their managers' control.

The Applicant added that loss of the exemption would be automatic upon CSAG's failure to comply with a regulatory requirement. By contrast, regulators have a broad range of potential responses to a failure by CSAG or a non-asset management affiliate to comply with its terms. Each regulator has mechanisms at its disposal, short of nullifying the terms of the agreement, to ensure CSAG's compliance with requirements imposed by that regulator and to monitor satisfaction of them.

The Applicant further explained that there are also bodies of practice and precedent within other regulatory agencies, which allow for effective but modulated enforcement responses in the event of a putative technical breach, that are inconsistent with the unintentionally severe nature of this proposed QPAM condition. For example, the responsible regulator may elect to enforce an agreement without disturbing the agreement itself—for example, requiring specific performance but leaving the plea agreement or other settlement intact—whereas this QPAM individual exemption would terminate immediately upon CSAG's failure to comply. In the Applicant's words, such a severe result would not be in the interest of or protective of plans and their participants, and, accordingly, the Applicant requested that the condition be deleted from the final exemption. Alternatively, the Applicant requested that if the Department decides to retain this provision in a final exemption, that it be limited to the conditions of the plea agreement between CSAG and the Department of Justice.

*Department's Response:* The Department is not revising the condition as requested. The Department views CSAG's compliance in all material respects with the requirements imposed by a U.S. regulatory authority in connection with the Convictions as indicative of whether CSAG is acting in accordance with U.S-mandated requirements, after years of failing to abide by U.S. laws.

However, given the possible costs to Covered Plans that may arise if the CS Affiliated QPAMs were to suddenly no longer able to rely on PTE 84–14, the Department has revised the proposed language to provide that, ''Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that CSAG failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Convictions.

Importantly, the Department disagrees with the Applicant's characterization that ''the exemption makes the CS Affiliated QPAMs responsible for their own compliance with the exemption, not for the compliance with all other laws by the rest of Credit Suisse.'' This individual exemption is primarily focused on the CS Affiliated QPAMs' compliance with the exemption. The Applicant's statement, however, ignores the broader purpose and scope of Section I(g), which is precisely why this individual exemption is needed. This individual exemption is needed because the Applicant will no longer be able to rely upon PTE 2019–07 or use PTE 84–14 once the CSSEL Conviction occurs. The terms of this exemption, therefore, require full compliance with all of the conditions in PTE 84–14. Viewed through the lens of PTE 84–14, this exemption does not make CS Affiliated QPAMs responsible for the compliance of the rest of Credit Suisse. Rather, entities that are covered by the scope of Section I(g) must be vigilant regarding their behavior, because it may signal larger issues regarding integrity of all parts of the organization, including its QPAM affiliates or subsidiaries. The conduct of entities in a position of control or influence over a QPAM are explicitly within the scope of Section I(g). For instance, if a QPAM itself were engaged in misconduct or irregularities that a parent entity became aware of, the Department has concerns about the parent's willingness to take appropriate corrective action, particularly in situations where such an entity has failed to do so with respect to other non-QPAM entities. The Department's concern, which prompted the Department to included Section III(o) in the exemption, is consistent with the principle of integrity underpinning Section I(g) and the foundational principles of PTE 84–14.

Although the Department revised this condition slightly as noted above, misconduct on behalf of CSAG or other Credit Suisse entities or failure to comply in all material respects with the requirements imposed by a U.S regulatory authority in connection with the Convictions also would be considered relevant to the Department in connection with any future exemption requests for extended relief from the Applicant related to Section I(g) ineligibility under exemption.

**Department's Revisions**

*I. Section II*

In Section II, the Department added a reference to ''CS Related QPAMs'' which was inadvertently omitted from the exemption text. Relief for the CS Related QPAMs was indicated in the preamble of the Proposal.[16]

*II. Section III(j)(2)*

The Department determined that a minor change is necessary to Section III(j)(2) in order to ensure that Covered Plans are fully and adequately protected under the exemption. Proposed Section I(j)(2) provides that the CS Affiliated QPAM must agree and warrant to Covered Plans:

> (2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM; or any claim arising out of the failure of such CS Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Convictions. This condition applies only to actual losses caused by the CS Affiliated QPAM's violations[.]

The Department replaced the reference to ''other than the Convictions'' with ''other than the CSAG Conviction.'' Since the CS Affiliated QPAMs are in violation of Section I(g) due to each of the Convictions, this modification is necessary to assist plans and IRAs that wish to withdraw from their arrangement with a CS Affiliated QPAM or recover losses as a result of the second conviction (*i.e.,* the CSSEL Conviction). The Department did not intend to carve out this important protection, which was intentionally

[16] *See* 87 FR 1186 at 1187, 1189, 1192, and 1193.

included in PTE 2019–07 to protect Plans from costs associated with additional misconduct. The Department also emphasizes that it views actual losses as including losses and related costs arising from unwinding transactions with third parties and from transitioning Plan client assets to an alternative asset manager. The Department also views actual losses as including any exposure on behalf of a QPAM's Plan clients to excise taxes under Code section 4975 as a result of a CS Affiliated QPAM's inability to rely upon the relief in PTE 84–14.

*II. Section III(k)*

Section III(k) of the Proposal provides, in relevant part:

> Within 60 days after the effective date of this one-year exemption, each CS Affiliated QPAM provides notice of the exemption as published in the **Federal Register**, along with a separate summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, . . . to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests.

The Department has removed the reference to ''separate.'' This notice of exemption includes a description of the facts that led to the Convictions, so the Department determined that a separate Summary is not needed as long as each QPAM prominently references the pages of the **Federal Register** where the Department's summary resides.

*III. Section III(s)*

The Department corrected a minor typographical error in Section III(s), which referred to Section I instead of Section III.

**Comments From the Applicant—Response to the Department's Requests for Comment in the Proposal**

In the preamble to the Proposal, the Department sought comments from ERISA-covered plans and IRAs, as well as the Applicant, on a variety of topics. The Applicant provided responses to three of those requests. The first request dealt with the validity and magnitude of the costs and harms to Covered Plans as identified by the Applicant. The second request dealt with whether any additional relief should be limited to an individual exemption that permits the types of transactions permitted by PTE 84–14, but that does not otherwise allow Credit Suisse asset managers to refer to themselves as QPAMs under PTE 84–14 with respect to Covered Plans that become clients following the CSSEL Conviction Date. The third request sought comments from interested persons regarding any other investigations or misconduct (including any alleged misconduct) that Credit Suisse is a party to which may result in criminal prosecution. The Department received no responses from ERISA-covered plans and IRAs. Each heading below provides the Applicant's response to these comment requests.

*I. Validity and Magnitude of Costs and Harms*

The Applicant responded that as set forth in the application for relief, the decision to propose an exemption granting relief will avoid significant harm to plan clients, and their participants and beneficiaries, that may result from such clients being compelled to change managers. According to the Applicant, an adverse decision on the exemption is seen as the Department's vote of no confidence in a manager, and thus effectively denies plans their preferred manager, which in itself is harmful to plans. Unplanned asset manager changes would cause Covered Plan clients to incur significant costs that they otherwise would not incur, and that are substantially in excess of the transaction costs normally associated with transitioning to a different manager. Under normal circumstances (*i.e.,* if Credit Suisse did not lose its individual QPAM exemption), clients have generally not felt compelled to move from Credit Suisse.

In connection with the original exemption issued to the CS Affiliated QPAMs, the Applicant provided the following cost data, which it has reviewed to ensure that those data continue to reflect current market conditions. As of December 2021, CS Affiliated QPAMs manage institutional separate accounts for four plans covered by ERISA. The ERISA Covered Plans account for about $350 million assets under management. CS Affiliated QPAMs also manage three pooled funds trusteed by third parties, which account for an aggregate $810 million in assets under management that are subject to ERISA.

According to the Applicant, those clients chose CS Affiliated QPAMs and continue to use CS Affiliated QPAMs based on reviews of the Applicant's performance, its legal and compliance structure, and its controls, among other factors. Assuming such clients could find adequate replacement managers, those replacements might not have the comparable depth, experience in all kinds of investment cycles, consistency—for example, the three most senior investment professionals in the Credit strategy discussed below have worked together at Credit Suisse for more than 20 years—or expertise in these more unusual strategies. Moreover, the costs to those clients of changing managers could be significant, given their chosen strategies with Credit Suisse. Within traditional stock and bond investments, there are hundreds of managers offering similar strategies. In contrast, fewer managers offer the far more specialized strategies pursued by the CS Affiliated QPAMs. Smaller still is the number of managers offering the experience, scale, and performance history of the CS Affiliated QPAMs.

Additionally, selecting a manager typically involves an array of steps. These may include manager searches and circulation of requests for proposals, for which consultants may charge between $25,000 and $50,000 for these unique strategies; extended operational investment; due diligence; meetings with portfolio managers and credit analysts; investment committee approvals; establishment of investment guidelines; fee negotiations; establishing appropriate data feeds and operational support; and other contractual negotiations such as for ISDAs and Master Repurchase Agreements. There are legal costs for the plan and for the trustee. Altogether, these steps have taken as long as 18 months for some clients. Thus, it may take a plan sponsor a significant amount of time to find and implement a new manager if it were required to replace Credit Suisse. Its clients have spent considerable time and resources conducting manager searches, and they have selected Credit Suisse. There may also be collateral consequences for the rest of the plan's portfolio: For example, other strategies within the ERISA plan's portfolio may need to be changed to accommodate the loss of these strategies.

The Applicant addressed the specific costs of liquidating four applicable Credit Suisse strategies: Credit, Commodities, Managed Futures, and Multi-Alternative.

Credit Strategy

According to the Applicant, there could be substantial costs in moving to a new Credit manager, which a fiduciary would typically consider in its evaluation of potentially changing managers. While some new managers might retain certain or even a majority of the securities selected by Credit Suisse, others would liquidate the portfolio so that they can be judged on their own investment choices. Credit Suisse offers a strategy that is a subset

within fixed income relating to senior loans, and the number of managers in that universe is substantially smaller, and smaller still when one looks to the experience and scale of Credit Suisse's business. An average bid/ask in this asset class may be up to 50 basis points. For some unique loans, the spread could approach 250 basis points. Additionally, one cannot overlook the very real possibility that the range and credit quality of the investments in a plan's portfolio with Credit Suisse cannot be replicated with a new manager. In addition, cash settlement times for leveraged loans, the largest portion of the Credit business, can typically be three to four weeks.

Commodities Strategy

Another strategy that Credit Suisse runs is a diversified commodities index strategy. Investors seek exposure to this asset class as a portfolio diversifier and also use it to potentially hedge against unexpected inflation risk. Credit Suisse has been managing this strategy on behalf of institutional clients since 1994 and is one of the few managers in this space with this amount of experience. Credit Suisse believes that it is one of the top five asset managers in this specific field, measured by assets under management. Within its top five peer group, Credit Suisse offers a highly differentiated investment process, with lower volatility versus its investment benchmarks, and a conservative approach to managing the underlying fixed income collateral. In addition, it offers a highly flexible and customizable platform that its clients may benefit from to optimize their portfolio investments.

According to the Applicant, denying the individual exemption could subject existing ERISA investors to additional expenses if they were to unwind existing assets. Unwinding this strategy would entail all of the legal and other general transition costs described above in connection with the Credit strategy, plus approximately 6–10 basis points to liquidate investments and reinvest in the new manager's portfolio.

Managed Futures Strategy

The third strategy is the Managed Futures strategy, which systematically provides exposure to market trends across asset classes, geographies, and time horizons. Uncorrelated to traditional markets, Managed Futures aims to generate profits during periods when growth-risk-exposed assets decline significantly. This profile makes it potentially a good portfolio diversifier that can help reduce overall portfolio risk and improve performance, especially in stressed market scenarios. The strategy, which has a more than five-year track record, is used as an industry benchmark and consistently ranks as a top performer versus its peers. While Credit Suisse competes with about a dozen investment managers in this strategy, each replicates the index differently, and, thus, changing managers is effectively changing strategies. In addition to the legal and other transition costs, the liquidation costs are about 10 basis points, doubled, of course, to 20 basis points, to deal with reinvestment.

Multi-Alternative Strategy

The final strategy is the Multi-Alternative strategy, which seeks to generate attractive risk-adjusted returns through an allocation process that combines discretionary insights with systematic investment tools. It invests across a range of asset classes and alternative investment styles. The strategy aims to limit correlation to stocks and bonds, and to manage volatility and drawdown risk. It also strives to maintain a high degree of liquidity and transparency. Cost efficiency may increase the strategy's return potential relative to higher-cost alternative investment options. While Credit Suisse competes with about a dozen investment managers in this strategy, each replicates the index differently, and, thus, as with the Managed Futures strategy, changing managers is effectively changing strategies. In addition to the legal and other transition costs, the liquidation costs are about 15 basis points, doubled to 30 basis points to deal with reinvestment.

*Department's Note:* The Department's request was intended to solicit actual dollar amounts with respect to the strategies noted above as well as the impacts on ERISA-covered plans and IRAs, as opposed to plans not governed by the prohibited transaction provisions of Title I of ERISA and the Code. While this one-year exemption is intended to avoid unnecessary costs to Covered Plans as a result of an abrupt loss of relief under PTE 84–14, the Department wishes to make clear that specific dollar amounts of such costs, including those associated with exposure to prohibited transactions, must be provided by the Applicant in support of any request for relief beyond the end of this one-year exemption.

*II. Restricting Credit Suisse Asset Managers From Referring to Themselves as QPAMs Under PTE 84–14*

The Applicant responded that prohibiting CS Affiliated QPAMs from referring to themselves as QPAMs to prospective Covered Plan clients would defeat the purpose of the exemption and is not in the interest of or protective of such clients. From the Applicant's perspective, the exemption is intended to provide clients access to one of the most advantageous trading exemptions while ensuring that they are insulated from the influence of the bad actors. If the CS Affiliated QPAMs are no longer able to represent that they are QPAMs, Covered Plan clients are far less likely to retain the QPAM as their manager, even if they otherwise would do so. Sophisticated clients know that counterparties will not enter into certain transactions unless the manager can represent both that it is a QPAM, and that PTE 84–14 applies.

According to the Applicant, the language proposed suggests that the CS Affiliated QPAMs could not represent that they were QPAMs in their communications and representations to counterparties. If that were so, the entire purpose of the exemption—to make trading more efficient and advantageous for Covered Plans—would be thwarted.

The Applicant added that, put differently, the ability to make QPAM representations is critical to the plan fiduciaries' diligence, as reflected in the Requests for Proposals received by the CS Affiliated QPAMs and in plan trading. The Applicant feels certain that the Department would not want to interfere with or hamper the diligence those fiduciaries are required to conduct or undercut the exemption's usefulness to plans.

Representing that a manager is a QPAM means that it meets the definition in Part VI of PTE 84–14—that is a section 3(38) manager, that it has sufficient net equity, and sufficient assets under management. While a conviction under Section I(g) prevents a CS Affiliated QPAM from using PTE 84–14, under the definition in Section VI, it still is a QPAM. The Applicant indicated that affording the CS Affiliated QPAMs use of PTE 84–14 to facilitate the strategies that are most beneficial to their plan clients, in coordination with the imposition of carefully targeted protective conditions to be assessed by an independent auditor, serves the plans' interests while protecting their participants and beneficiaries.

*Department's Note:* The Applicant appears to misconstrue the larger structure of a prohibited transaction exemption and its continued availability only if the requisite conditions are satisfied. The existence of malfeasance within a corporate family is an important consideration for plan

fiduciaries when deciding upon a discretionary asset manager, particularly one calling itself a QPAM and relying upon PTE 84–14. Therefore, the ability of a QPAM and its client plans to continue to rely upon the exemption is directly linked to Section I(g). Regardless of the plan fiduciary's choice to select Credit Suisse as an asset manager, the relief under the exemption is tied to the integrity condition in Section I(g) as a protection not only to plan fiduciaries but to the plan participants whose benefits are ultimately at risk when it appears there may be a malfeasance and legal compliance problem within an entire corporate family. Section I(g) is an integral part of PTE 84–14 that establishes a level of integrity to justify, in the Applicant's words, the availability of ''one of the most advantageous trading exemptions'' and the corresponding ability to don the QPAM badge. Any client plan that chooses to retain the QPAM as an asset manager after a loss of relief under PTE 84–14 may do so but would need to proceed under alternative exemptions or otherwise in full compliance with the prohibited transaction provisions under Title I of ERISA and the Code.

Moreover, the Department strongly disagrees that an asset manager's ability to make QPAM representations is critical to the diligence of plan fiduciaries. In granting PTE 84–14, the Department did not intend that an asset manager's ability to rely on PTE 84–14 would constitute a badge of sophistication or expertise. The class exemption does not contain any sophistication or expertise standards or requirements, nor did the Department include any discussion in prior preambles suggesting that was the intent of any of the exemption's conditions.

Rather, the class exemption was intended as an effective and efficient means for an asset manager to engage in a wide range of beneficial plan transactions that are otherwise prohibited by Title I of ERISA and the Code if the conditions of the exemption are met. Plan fiduciaries should not view an asset manager's status as a QPAM and ability to rely upon PTE 84–14 as an endorsement by the Department of that asset manager, an indication that the asset manager is uniquely qualified to manage the plan's assets, that the asset manager will be more likely to act prudently, or that the asset manager is more likely to act with integrity.

Transactional counterparties that require QPAM status do so for their own reasons, including reasons that are unrelated to the interests of and protection of a plan. If a plan fiduciary views an asset manager's status as a QPAM as beneficial to the management of the plan's assets, the fiduciary should strongly consider the asset manager's ability to comply with, and continue to comply with, the conditions of PTE 84–14 in selecting and/or retaining the QPAM. This includes monitoring the asset manager's ability to comply with Section I(g).

The Department is therefore not persuaded that an exemption which permits transactions that are similar to those covered by PTE 84–14 could not be designed to provide the same efficiencies as PTE 84–14. The Department is also not persuaded that such an approach would be harmful to plans managed by asset managers that do not qualify as QPAMs due to a failure to comply with Section I(g) of the PTE 84–14.

*III. Investigations or Misconduct (Including Any Alleged Misconduct)*

According to the Applicant, the third question invites the general public to raise every potential disagreement they may have with any part of the Credit Suisse worldwide organization, regardless of whether the conduct is criminal, whether regulators or courts have already dismissed those claims, whether the claims have even been brought to the attention of the regulator, whether the commenter is correct that the conduct could be criminal, and whether the conduct has anything to do with asset management. The Applicant submits that the granting of the exemption should not depend upon public allegations of wrongdoing, regardless of where in the world it occurred, including outside the separate asset management division and not involving the CS Affiliated QPAMs.

The Applicant indicated that it brought one matter to the attention of the Department in 2019. CSAG has been responding to an investigation by the Swiss Office of the Attorney General (''SOAG'') concerning the diligence and controls applied to a historical relationship with Bulgarian former clients who are alleged to have laundered funds through CSAG accounts. On December 17, 2020, the SOAG brought charges against CSAG and other parties under Article 102 of the Swiss Criminal Code. Trial in this matter commenced in the Swiss Federal Criminal Court on February 7, 2022, and was scheduled to conclude on or about March 3, 2022. The Applicant represented that Article 102 liability is not classified as a felony or a misdemeanor under Swiss law and is outside the scope of section I(g) of PTE 84–14.

The Applicant indicated that other investigations are described in the Applicant's public securities laws disclosures.

*Department's Note:* The Department did not indicate in its request for comment that reporting investigations or misconduct (including any alleged misconduct) in connection with the exemption request would cause the Department to deny the exemption. However, investigations or misconduct founded upon well-verified facts, in particular, are an appropriate consideration for the Department when determining whether to grant any exemption. Such information may require, at a minimum, additional protective conditions to deal with any actual or potential harm to plans and IRAs that cannot be ignored in light of the statutory criteria for granting an exemption under ERISA section 408(a) and Code section 4975(c)(2).

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA section 408(a) and/or Code section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA section 404, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with ERISA section 404(a)(1)(B); nor does it affect the requirement of Code section 401(a) that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under ERISA section 408(a) and/or Code section 4975(c)(2), the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or

statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The exemption is subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Accordingly, the following exemption is granted under the authority of ERISA section 408(a) and Code section 4975(c)(2) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011):

**One-Year Exemption**

The Department is granting this one-year exemption under the authority of ERISA section 408(a) and Internal Revenue Code (or Code) section 4975(c)(2), and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011).[17] Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. app. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of exemption is issued solely by the Department.

*Section I. Definitions*

(a) The term ''Convictions'' means (1) the judgment of conviction against CSAG for one count of conspiracy to violate section 7206(2) of the Internal Revenue Code in violation of Title 18, United States Code, Section 371, that was entered in the District Court for the Eastern District of Virginia in Case Number 1:14–cr–188–RBS, on November 21, 2014 (the ''CSAG Conviction''); and (2) the judgment of conviction against CSSEL, when it is entered, in Case Number 1:21–cr–00520–WFK (the ''CSSEL Conviction'').

(b) The term ''Covered Plan'' means a plan subject to Part IV of Title I of ERISA (an ''ERISA-covered plan'') or a plan subject to Code section 4975 (an ''IRA''), in each case, with respect to which a CS Affiliated QPAM relies on PTE 84–14, or with respect to which a CS Affiliated QPAM (or any CSAG affiliate) has expressly represented that the manager qualifies as a QPAM or relies on PTE 84–14. A Covered Plan does not include an ERISA-covered plan or IRA to the extent the CS Affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into a contract, arrangement, or agreement with the ERISA-covered plan or IRA. Notwithstanding the above, a CS Affiliated QPAM may disclaim reliance on QPAM status or PTE 84–14 in a written modification of a contract, arrangement, or agreement with an ERISA-covered plan or IRA, where: the modification is made in a bilateral document signed by the client; the client's attention is specifically directed toward the disclaimer; and the client is advised in writing that, with respect to any transaction involving the client's assets, the CS Affiliated QPAM will not represent that it is a QPAM, and will not rely on the relief described in PTE 84–14.

(c) The term ''CSAG'' means Credit Suisse AG.

(d) The term ''CSSEL'' means Credit Suisse Securities (Europe) Limited.

(e) The term ''CS Affiliated QPAM'' means Credit Suisse Asset Management, LLC (''CSAM LLC'') and Credit Suisse Asset Management Limited (''CSAM Ltd.'') and any current or future ''affiliate'' of CSAG or CSSEL (as defined in Part VI(d) of PTE 84–14) that qualifies as a ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) [18] and that relies on the relief provided by PTE 84–14 and with respect to which CSAG or CSSEL is a current or future ''affiliate'' (as defined in Section VI(d) of PTE 84–14), but is not a CS Related QPAM. The term ''CS Affiliated QPAM'' excludes CSAG and CSSEL.

(f) The term ''CS Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in Section VI(a) of PTE 84–14) that relies on the relief provided by PTE 84–14, and with respect to which CSAG or CSSEL owns a direct or indirect five (5) percent or more interest, but with respect to which CSAG or CSSEL is not an ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14) The term ''CS Related QPAM'' excludes CSAG and CSSEL.

(g) The term ''Exemption Period'' means the one-year period that begins on the date of the CSSEL Conviction.

(h) The term ''CSAG Plea Agreement'' means the plea agreement entered into between the United States of America, by and through the United States Department of Justice, and the United States Attorney's Office for the Eastern District of Virginia, and CSSEL in Case Number 1:14–cr–188–RBS.

(i) The term ''CSSEL Plea Agreement'' means the plea agreement entered into between the United States of America, by and through the United States Department of Justice, Criminal Division, Money Laundering and Asset Recovery Section and Fraud Section, and the United States Attorney's Office for the Eastern District of New York, and CSSEL in Case Number 1:21–cr–00520–WFK.

*Section II. Covered Transactions*

The CS Affiliated QPAMs, as defined in Section I(e), and the CS Related QPAMs, as defined in Section I(f), will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14) [19] during the Exemption Period, notwithstanding the ''Convictions'' against CSAG and CSSEL (as defined in Section I(a)), provided that the conditions in Section III are satisfied.

*Section III. Conditions*

(a) The CS Affiliated QPAMs and the CS Related QPAMs (including their officers, directors, agents other than CSG, CSAG, and CSSEL, employees of such QPAMs, and CSAG employees that do work for CS Affiliated or Related QPAMs described in subparagraph (d) below) did not know or did not have reason to know of and did not participate in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not know or have reason to know of and did not participate in the criminal conduct that is the subject of the Convictions. For purposes of this exemption, including paragraph (c) below, ''participate in'' refers not only to active participation in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions, but also to knowing approval of the criminal conduct, or knowledge of such conduct without taking active steps to prohibit such conduct, including reporting the conduct to the individual's supervisors, and to the Board of Directors.

(b) The CS Affiliated QPAMs and the CS Related QPAMs (including their

[17] For purposes of this one-year exemption, references to ERISA section 406, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

[18] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and that has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

[19] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430, (Oct. 10, 1985), as amended at 70 FR 49305 (Aug. 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

officers, directors, agents other than CSAG, employees of such QPAMs, and CSAG employees described in subparagraph (d)(3) below) did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions. Further, any other party engaged on behalf of the CS Affiliated QPAMs and the CS Related QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets did not receive direct compensation, or knowingly receive indirect compensation, in connection with the criminal conduct of that is the subject of the Convictions;

(c) The CS Affiliated QPAMs do not currently and will not in the future employ or knowingly engage any of the individuals who participated in the criminal conduct of CSAG and CSSEL that is the subject of the Convictions;

(d) At all times during the Exemption Period, no CS Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) that is subject to ERISA or the Code and managed by such CS Affiliated QPAM with respect to one or more Covered Plans, to enter into any transaction with CSAG or CSSEL or to engage CSAG or CSSEL to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption. A CS Affiliated QPAM will not fail this condition solely because:

(1) A CSAG affiliate serves as a local sub-custodian that is selected by an unaffiliated global custodian that, in turn, is selected by someone other than a CS Affiliated QPAM or CS Related QPAM;

(2) CSAG provides only necessary, non-investment, non-fiduciary services that support the operations of CS Affiliated QPAMs, at the CS Affiliated QPAM's own expense, and the Covered Plan is not required to pay any additional fee beyond its agreed-to asset management fee. This exception does not permit CSAG or its branches to provide any service to an investment fund managed by a CS Affiliated QPAM or CS Related QPAM; or

(3) CSAG employees are double-hatted, seconded, supervised, or subject to the control of a CS Affiliated QPAM;

(e) Any failure of a CS Affiliated QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Convictions;

(f) A CS Affiliated QPAM or a CS Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ''ERISA-covered plan'') or Code section 4975 (an ''IRA'') in a manner that it knew or should have known would further the criminal conduct that is the subject of the Convictions; or cause the CS Affiliated QPAM or CS Related QPAM or its affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Convictions;

(g) Neither CSAG nor CSSEL will act as a fiduciary within the meaning of ERISA section 3(21)(A)(i) or (iii), or Code section 4975(e)(3)(A) and (C), with respect to ERISA-covered Plan and IRA assets, except that each may act as such a fiduciary (1) with respect to employee benefit plans sponsored for its own employees or employees of an affiliate; or (2) in connection with securities lending services of the New York Branch of CSAG. Neither CSAG nor CSSEL will be treated as violating the conditions of the exemption solely because it acted as an investment advice fiduciary within the meaning of ERISA section 3(21)(A)(ii) or Code section 4975(e)(3)(B);

(h)(1) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), implement, and follow the written policies and procedures described below (the Policies). Notwithstanding the preceding sentence, a CS Affiliated QPAM may not engage in any transaction or arrangement described in Section III(d)(1) through (3) of this exemption before the date the Policies below have been developed, implemented, and followed. The Policies must require and must be reasonably designed to ensure that:

(i) The asset management decisions of the CS Affiliated QPAM are conducted independently of CSAG's and CSSEL's corporate management and business activities, and without considering any fee a CS-related local sub-custodian may receive from those decisions. This condition does not preclude a CS Affiliated QPAM from receiving publicly available research and other widely available information from a CSAG affiliate other than CSSEL;

(ii) The CS Affiliated QPAM fully complies with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, in each case as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The CS Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the CS Affiliated QPAM to regulators, including but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete, to the best of such QPAM's knowledge at that time;

(v) To the best of its knowledge at that time, the CS Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered Plans, or make material misrepresentations or omit material information in its communications with Covered Plans; and

(vi) The CS Affiliated QPAM complies with the terms of this one-year exemption, and CSAG complies with the terms of Section III(d)(2);

(2) Any violation of, or failure to comply with an item in subparagraphs (h)(1)(ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing. This report must be made to the head of compliance and the general counsel (or their functional equivalent) of the relevant CS Affiliated QPAM that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A CS Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the CS Affiliated QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (2);

(3) Each CS Affiliated QPAM must maintain, adjust (to the extent necessary), and implement or continue a program of training during the Exemption Period (the Training), to be conducted at least annually, for all relevant CS Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this exemption (including any loss of exemptive relief provided herein), and the requirement for prompt reporting of wrongdoing; and

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code to perform the tasks required by this exemption; and

(iii) Be conducted in-person, electronically, or via a website;

(i)(1) Each CS Affiliated QPAM submits to an audit by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, and each CS Affiliated QPAM's compliance with, the Policies and Training described herein. The audit requirement must be incorporated in the Policies. The audit must cover the 12-month period that begins on November 21, 2021. The audit must be completed no later than 180 days after the period to which it applies (May 19, 2023);

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by state or federal statute, or involves communications subject to attorney client privilege, each CS Affiliated QPAM and, if applicable, CSAG, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each CS Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this one-year exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each CS Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each CS Affiliated QPAM, a sample of such: (1) CS Affiliated QPAM's transactions involving Covered Plans; (2) each CS Affiliated QPAM's transactions involving CSAG affiliates that serve as a local sub-custodian. The samples must be sufficient in size and nature to afford the auditor a reasonable basis to determine such CS Affiliated QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to CSAG and the CS Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor in connection with its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the CS Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each CS Affiliated QPAM's Policies and Training; each CS Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective CS Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above. The CS Affiliated QPAM must promptly address any noncompliance. The CS Affiliated QPAM must promptly address or prepare a written plan of action to address any determination as to the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective CS Affiliated QPAM. Any action taken or the plan of action to be taken by the respective CS Affiliated QPAM must be included in an addendum to the Audit Report (such addendum must be completed prior to the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time of submission of the Audit Report, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that a CS Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a CS Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular CS Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not solely rely on the Annual Exemption Report created by the Compliance Officer, as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the Exemption Review described in Section III(m);

(6) The auditor must notify the respective CS Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to the Audit Report, the general counsel, or one of the three most senior executive officers of the CS Affiliated QPAM to which the Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that, to the best of such officer's knowledge at the time, the CS Affiliated QPAM has addressed, corrected, and remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. This certification must also include the signatory's determination that, to the best of the officer's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this exemption, and with the applicable provisions of ERISA and the Code. Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may provide the certification required by this exemption, unless the person took active documented steps to stop the misconduct;

(8) A copy of the Audit Report must be provided to CSAG's Board of Directors and either the Risk Committee or the Audit Committee of CSAG's Board of Directors; and a senior executive officer or chairperson of either the Risk Committee or the Audit Committee must review the Audit Report for each CS Affiliated QPAM and must certify in writing, under penalty of perjury, that such person has reviewed each Audit Report;

(9) Each CS Affiliated QPAM provides its certified Audit Report, by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW, Suite 400, Washington, DC 20210, or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. The delivery must take place no later than 45 days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this one-year exemption. Furthermore, each CS Affiliated QPAM must make its Audit Reports unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Any engagement agreement with an auditor to perform the audit required by this exemption must be submitted to OED no later than two (2) months after the execution of such agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and used in connection with the audit, provided such access, inspection, and review is otherwise permitted by law; and

(12) CSAG and/or the CS Affiliated QPAM must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes involving the terminated auditor and CSAG and/or the CS Affiliated QPAMs;

(j) As of the effective date of this one-year exemption, with respect to any arrangement, agreement, or contract between a CS Affiliated QPAM and a Covered Plan, the CS Affiliated QPAM agrees and warrants to Covered Plans:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any prohibited transactions); and to comply with the standards of prudence and loyalty set forth in ERISA section 404 with respect to each such ERISA-covered plan and IRA to the extent that ERISA section 404 is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a CS Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by a CS Affiliated QPAM; or any claim arising out of the failure of such CS Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the CSAG Conviction. This condition applies only to actual losses caused by the CS Affiliated QPAM's violations;

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the CS Affiliated QPAM for violating ERISA or the Code for engaging in prohibited transactions;

(4) Not to restrict the ability of the Covered Plan to terminate or withdraw from its arrangement with the CS Affiliated QPAM, with respect to any investment in a separately-managed account or pooled fund subject to ERISA and managed by such CS Affiliated QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any such arrangement involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming an ERISA-covered plan's or IRA's investment, and such restrictions must be applicable to all such investors and be effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally-recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in a like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the CS Affiliated QPAMs for a violation of such agreement's terms. To the extent consistent with ERISA section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of CSAG and its affiliates, or damages arising from acts outside the control of the CS Affiliated QPAM; and

(7) Within 120 days after the effective date of this one-year exemption, each CS Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For prospective Covered Plans that enter into a written asset or investment management agreement with a CS Affiliated QPAM on or after a date that is 120 days after the effective date of this exemption, the CS Affiliated QPAM must agree to its obligations under this Section III(j) in an updated investment management agreement between the CS Affiliated QPAM and such clients or other written contractual agreement. Notwithstanding the above, a CS Affiliated QPAM will not violate the condition solely because a Covered Plan refuses to sign an updated investment management agreement. For new Covered Plans that were provided an investment management agreement prior to the effective date of this exemption, returning it within 120 days after the effective date of this exemption, and that signed investment management agreement requires amendment to meet the terms of the exemption, the CS Affiliated QPAM may provide the new Covered Plan with amendments that need not be signed with any documents required by this subsection (j) within ten (10) business days after receipt of the signed agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2019–07 that meets the terms of this condition.

(k) Within 60 days after the effective date of this one-year exemption, each CS Affiliated QPAM provides notice of the exemption as published in the **Federal Register**, along with a summary describing the facts that led to the Convictions (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Convictions result in a failure to meet a condition in PTE 84–14 and the CSSEL Conviction results in a failure to meet a condition in PTE 2019–07, to each sponsor and beneficial owner of a Covered Plan that has entered into a written asset or investment management agreement with a CS Affiliated QPAM, or the sponsor of an investment fund in any case where a CS Affiliated QPAM acts as a sub-adviser to the investment fund in which such ERISA-covered plan and IRA invests. All prospective Covered Plan clients that enter into a written asset or investment management agreement with a CS Affiliated QPAM after a date that is 60 days after the effective date of this

exemption must receive a copy of the notice of the exemption, the Summary, and the Statement before, or contemporaneously with, the Covered Plan's receipt of a written asset or investment management agreement from the CS Affiliated QPAM. The notices may be delivered electronically (including by an email that has a link to the one-year exemption).

(l) The CS Affiliated QPAM must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Convictions. If, during the Exemption Period, an entity within the Credit Suisse corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Convictions), relief in this exemption would terminate immediately;

(m)(1) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM must designate a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. For purposes of this condition (m), each relevant line of business within a CS Affiliated QPAM may designate its own Compliance Officer(s). Notwithstanding the above, no person, including any person referenced in the CSAG or CSSEL Statement of Facts that gave rise to the CSAG or CSSEL Plea Agreement, who knew of, or should have known of, or participated in, any misconduct described in the CSAG or CSSEL Statement of Facts, by any party, may be involved with the designation or responsibilities required by this condition, unless the person took active documented steps to stop the misconduct. The Compliance Officer must conduct a review of each twelve-month period of the Exemption Period (the Exemption Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must have a direct reporting line to the highest-ranking corporate officer in charge of compliance for the applicable CS Affiliated QPAM.

(2) With respect to the Exemption Review, the following conditions must be met:

(i) The Annual Exemption Review includes a review of the CS Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption or PTE 2019–07; any material change in the relevant business activities of the CS Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the CS Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for the Exemption Review (an Exemption Report) that (A) summarizes his or her material activities during the prior year; (B) sets forth any instance of noncompliance discovered during the prior year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In the Exemption Report, the Compliance Officer must certify in writing that to the best of his or her knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the prior year and any related correction taken to date have been identified in the Exemption Report; and (D) the CS Affiliated QPAMs have complied with the Policies and Training, and/or corrected (or are correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) The Exemption Report must be provided to appropriate corporate officers of CSAG and to each CS Affiliated QPAM to which such report relates, and to the head of compliance and the general counsel (or their functional equivalent) of CSAG and the relevant CS Affiliated QPAM; and the report must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) The Exemption Review, including the Compliance Officer's written Annual Exemption Report, must cover the twelve-month period beginning on November 21, 2021. The Annual Review, including the Compliance Officer's written Report, must be completed within three (3) months following the end of the period to which it relates;

(n) CSAG imposes its internal procedures, controls, and protocols on CSAG and CSSEL to reduce the likelihood of any recurrence of conduct that is the subject of the Convictions;

(o) Relief in this exemption will terminate on the date that is six months following the date that a U.S. regulatory authority makes a final decision that CSAG failed to comply in all material respects with any requirement imposed by such regulatory authority in connection with the Convictions;

(p) Each CS Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met for six (6) years following the date of any transaction for which the CS Affiliated QPAM relies upon the relief in this exemption;

(q) During the Exemption Period, CSAG must: (1) Immediately disclose to the Department any Deferred Prosecution Agreement (a DPA) or Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Credit Suisse Group AG or CSAG or any of its affiliates (as defined in Section VI(d) of PTE 84–14) in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and (2) immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Within 60 days after the effective date of this exemption, each CS Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, will clearly and prominently inform Covered Plan clients of their right to obtain a copy of the Policies or a description (Summary Policies) which accurately summarizes key components of the CS Affiliated QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed.[20] With respect to this

[20] If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for

Continued

requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A CS Affiliated QPAM will not fail to meet the terms of this one-year exemption solely because a different CS Affiliated QPAM fails to satisfy a condition for relief described in Section III(c), (d), (h), (i), (j), (k), (l), (p) or (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of CSAG or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

*Effective Date:* This exemption will be in effect for one (1) year, beginning on the date of the CSSEL Conviction.

Signed at Washington, DC.

**Timothy P. Hauser,**

*Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, U.S. Department of Labor.*

[FR Doc. 2022–08306 Filed 4–18–22; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) issued during the period of *March 1, 2022 through March 31, 2022.*

This notice includes summaries of initial determinations such as Affirmative Determinations of Eligibility, Negative Determinations of Eligibility, and Determinations Terminating Investigations of Eligibility within the period. If issued in the period, this notice also includes summaries of post-initial determinations that modify or amend initial determinations such as Affirmative Determinations Regarding Applications for Reconsideration, Negative Determinations Regarding Applications for Reconsideration, Revised Certifications of Eligibility, Revised Determinations on Reconsideration, Negative Determinations on Reconsideration, Termination Determinations on Reconsiderations, Revised Determinations on Remand, and Negative Determinations on Remand.

### Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued.

| TA–W–No. | Subject firm | Location | Reason(s) |
|---|---|---|---|
| 96,825 | Geater Machining & Manufacturing, Co. | Independence, IA | Secondary Component Supplier. |
| 96,876 | TD Bank, N.A | Mount Laurel, NJ | Shift in Services to a Foreign Country. |
| 96,876A | TD Bank, N.A | Mount Laurel, NJ | Shift in Services to a Foreign Country. |
| 96,876B | TD Bank, N.A | Mount Laurel, NJ | Shift in Services to a Foreign Country. |
| 96,965 | ON Semiconductor | Gresham, OR | Shift in Production to a Foreign Country. |
| 97,051 | Hess Corporation | Minot, ND | Customer Imports of Articles. |
| 97,064 | Never Again Industries LLC | Chesapeake, VA | Imports of Finished Articles Containing Like or Directly Competitive Components. |
| 97,108 | Gannett Co., Inc | McLean, VA | Shift in Services to a Foreign Country. |
| 98,042 | FCA US LLC, Belvidere Assembly Plant. | Belvidere, IL | Increased Company Imports. |
| 98,070 | eSchool Data | Bohemia, NY | Actual/Likely Increase in Imports following a Shift Abroad. |
| 98,096 | Evergreen Packaging LLC | Pine Bluff, AR | Increased Customer Imports. |
| 98,129 | Plexus Corp | Nampa, ID | Shift in Production to an FTA Country or Beneficiary. |
| 98,136 | Tenneco Inc | Kettering, OH | Shift in Production to an FTA Country or Beneficiary. |
| 98,158 | The Hain Celestial Group, Inc | Ashland, OR | Increased Customer Imports. |
| 98,158A | The Hain Celestial Group, Inc | Ashland, OR | Increased Customer Imports. |
| 98,163 | Hexcel Corporation | Kent, WA | Upstream Supplier. |
| 98,165 | Safariland, LLC | Ontario, CA | Shift in Production to an FTA Country or Beneficiary. |
| 98,167 | Dekko, ECA (Electri-Cable Assemblies) Division. | Shelton, CT | Shift in Production to an FTA Country or Beneficiary. |
| 98,168 | The Hain Celestial Group, Inc | Lake Success, NY | Increased Customer Imports. |
| 98,182 | Electrolux Home Products, Inc | Memphis, TN | Shift in Production to an FTA Country or Beneficiary. |
| 98,189 | Legendary Headwear, LLC | San Diego, CA | Shift in Production to an FTA Country or Beneficiary. |
| 98,190 | FormFactor, Inc | Beaverton, OR | Actual/Likely Increase in Imports following a Shift Abroad. |
| 98,203 | East West Manufacturing | El Paso, TX | Shift in Production to an FTA Country or Beneficiary. |
| 98,219 | BCS Automotive Interface Solutions LLC. | Galesville, WI | Shift in Production to an FTA Country or Beneficiary. |
| 98,229 | Permasteelisa North America | Windsor, CT | Shift in Production to an FTA Country or Beneficiary. |

a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate.

**Negative Determinations for Trade Adjustment Assistance**

The following investigations revealed that the eligibility criteria for TAA have not been met for the reason(s) specified.

| TA–W No. | Subject firm | Location | Reason(s) |
|---|---|---|---|
| 96,955 | Genesis Alkali LLC, a subsidiary of Genesis Energy LP. | Green River, WY | No Shift in Production or Other Basis. |
| 96,962 | New Hampshire Industries | Claremont, NH | No Sales or Production Decline or Other Basis. |
| 97,011 | Biodex Medical Systems, Inc | Shirley, NY | No Shift in Production or Other Basis. |
| 97,011A | Biodex Medical Systems, Inc | Shirley, NY | No Shift in Production or Other Basis. |
| 97,023 | Berg Pipe Panama City Corporation. | Panama City, FL | No Shift in Production or Other Basis. |
| 97,077 | The George Washington University Medical Faculty Associates. | Washington, DC | No Shift in Services or Other Basis. |
| 98,014 | Mosaic Company, Uncle Sam Plant. | Convent, LA | No Import Increase and/or Production Shift Abroad. |
| 98,014A | The Mosaic Company, Faustina Plant. | Donaldsonville, LA | No Employment Decline. |
| 98,071 | Green Valley Pecan Company, Plant & Store Division. | Sahuarita, AZ | No Import Increase and/or Production Shift Abroad. |
| 98,095 | Rockwell Collins, Inc | Cedar Rapids, IA | No Import Increase and/or Production Shift Abroad. |
| 98,102 | 1Concier | McCormick, SC | No Sales or Production Decline/Shift in Production (Domestic Transfer). |
| 98,117 | Lear Corporation, Roscommon Plant. | Roscommon, MI | No Import Increase and/or Production Shift Abroad. |
| 98,143 | WSP USA Inc | New York, NY | Workers Do Not Produce an Article. |
| 98,144 | Stoller USA, Inc | Cedar Rapids, IA | No Import Increase and/or Production Shift Abroad. |
| 98,149 | Westinghouse Electric Company LLC. | Cranberry Township, PA | Workers Do Not Produce an Article. |
| 98,150 | Kenworth Truck Company | Chillicothe, OH | No Sales or Production Decline/Shift in Production (Domestic Transfer). |
| 98,188 | Christian Anderson Companies, LLC. | Eau Claire, WI | Workers Do Not Produce an Article. |
| 98,199 | Anixter Inc., Inventory Non-Stock Buying Division. | Woodbury, NY | Workers Do Not Produce an Article. |
| 98,200 | Marketlink, Inc. DBA Allied Global. | Coral Gables, FL | Workers Do Not Produce an Article. |
| 98,202 | Clarivate, Content Retrieval Division. | Philadelphia, PA | Workers Do Not Produce an Article. |
| 98,210 | Alorica Inc | Newport News, VA | Workers Do Not Produce an Article. |
| 98,214 | Carisbrook Technology Services, LLC. | Wilsonville, OR | Workers Do Not Produce an Article. |
| 98,223 | Silipint Partners, LLC | Bend, OR | No Sales or Production Decline/Shift in Production (Domestic Transfer). |
| 98,225 | Xerox | Webster, NY | Workers Do Not Produce an Article. |

**Termination Determination on Reconsideration**

The following termination determination on reconsideration have been issued.

| TA–W–No. | Subject firm | Location | Reason(s) |
|---|---|---|---|
| 96,655 | United States Steel Corporation | Ecorse, MI | Reconsideration Request Withdrawn. |

**Negative Determinations on Remand**

In the following cases, negative determinations on remand have been issued because the eligibility criteria for TAA have not been met for the reason(s) specified.

| TA–W–No. | Subject firm | Location | Reason(s) |
|---|---|---|---|
| 94,578 | Michigan Bell Telephone Company. | Kalamazoo, MI | No Shift in Services or Other Basis. |
| 94,578A | Wisconsin Bell, Inc | Appleton, WI | No Shift in Services or Other Basis. |

| TA–W–No. | Subject firm | Location | Reason(s) |
|---|---|---|---|
| 94,578B | Indiana Bell Telephone Company Incorporated. | Indianapolis, IN | No Shift in Services or Other Basis. |
| 94,578C | AT&T Services, Inc | Syracuse, NY | No Shift in Services or Other Basis. |
| 94,578D | AT&T Services, Inc | Meridian, CT | No Shift in Services or Other Basis. |

I hereby certify that the aforementioned determinations were issued during the period of *March 1, 2022 through March 31, 2022.* These determinations are available on the Department's website *https://www.dol.gov/agencies/eta/tradeact* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 8th day of April 2022.

**Hope D. Kinglock,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2022–08308 Filed 4–18–22; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents notice of investigations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) started during the period of *March 1, 2022 through March 31, 2022.*

This notice includes instituted initial investigations following the receipt of validly filed petitions. Furthermore, if applicable, this notice includes investigations to reconsider negative initial determinations or terminated initial investigations following the receipt of a valid application for reconsideration.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. Any persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than ten days after publication in **Federal Register**.

### Initial Investigations

The following are initial investigations commenced following the receipt of a properly filed petition.

| TA–W No. | Subject firm | Location | Inv start date |
|---|---|---|---|
| 98,209 | Pacific Life Insurance Company | Lynchburg, VA | 3/1/2022 |
| 98,210 | Alorica Inc | Newport News, VA | 3/2/2022 |
| 98,211 | BetaSeed, Inc/KWS Seeds | Bloomington, MN | 3/2/2022 |
| 98,212 | Pacific Life Insurance Company | Lynchburg, VA | 3/2/2022 |
| 98,213 | Boyd Corporation | Gaffney, SC | 3/4/2022 |
| 98,214 | Carisbrook Technology Services, LLC | Wilsonville, OR | 3/4/2022 |
| 98,215 | ON Semiconductor Corporation | Pocatello, ID | 3/4/2022 |
| 98,216 | HP Inc., Puerto Rico | Puerto Rico, PR | 3/7/2022 |
| 98,217 | Anointed Hands Janitorial Services LLC | Suffolk, VA | 3/8/2022 |
| 98,218 | Congoleum | Trenton, NJ | 3/9/2022 |
| 98,219 | BCS Automotive Interface Solutions LLC | Galesville, WI | 3/11/2022 |
| 98,220 | Decatur Plastic Products, Inc | Gadsden, AL | 3/11/2022 |
| 98,221 | LG Electronics USA, Inc | Huntsville, AL | 3/11/2022 |
| 98,222 | Integrated Textile Solutions | South Boston, VA | 3/14/2022 |
| 98,223 | Silipint Partners, LLC | Bend, OR | 3/14/2022 |
| 98,224 | Measurement Specialties Inc | Hampton, VA | 3/14/2022 |
| 98,225 | Xerox | Webster, NY | 3/14/2022 |
| 98,226 | Greatbatch Medical | Beaverton, OR | 3/15/2022 |
| 98,227 | Peloton Interactive, Inc | Portland, OR | 3/15/2022 |
| 98,228 | Android Industries—Belvidere | Belvidere, IL | 3/16/2022 |
| 98,229 | Permasteelisa North America | Windsor, CT | 3/16/2022 |
| 98,230 | MPT Lansing LLC, Powertrain Division | Lansing, MI | 3/21/2022 |
| 98,231 | Woodcrafters Home Products, LLC | Weslaco, TX | 3/21/2022 |
| 98,232 | Genesys | Indianapolis, IN | 3/22/2022 |
| 98,233 | Prudential Financial/Global Security | El Paso, TX | 3/22/2022 |
| 98,234 | Electrolux | Louisville, KY | 3/23/2022 |
| 98,235 | First Call Resolution | Eugene, OR | 3/23/2022 |
| 98,236 | GenOn | Springdale, PA | 3/24/2022 |
| 98,237 | Little Raymond's Print Shop | Indianapolis, IN | 3/25/2022 |
| 98,238 | PCS Ferguson (ChampionX) | Frederick, CO | 3/25/2022 |
| 98,239 | District Photo | Beltsville, MD | 3/28/2022 |
| 98,240 | Flowserve Corporation | Tulsa, OK | 3/28/2022 |
| 98,241 | My JoVe Corporation | Cambridge, MA | 3/29/2022 |
| 98,242 | Peloton Interactive, Inc | Farmingdale, NY | 3/30/2022 |
| 98,243 | Peloton Interactive, Inc | Mount Vernon, NY | 3/30/2022 |
| 98,244 | Peloton Interactive, Inc | Port Washington, NY | 3/30/2022 |

**Reconsideration Investigations**

The following are reconsideration investigations following the receipt of a properly filed application for reconsideration.

| TA–W No. | Subject firm | Location | Inv start date |
|---|---|---|---|
| 96,950 ..... | Dometic Corporation ..... | Elkhart, IN ..... | 3/16/2022 |

A record of these investigations and petitions filed are available, subject to redaction, on the Department's website *https://www.dol.gov/agencies/eta/tradeact* under the searchable listing or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 8th day of April 2022.

**Hope D. Kinglock,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2022–08307 Filed 4–18–22; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Information Collection Activities; Comment Request

**AGENCY:** Bureau of Labor Statistics, Department of Labor.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that 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 on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of the ''Multiple Worksite Report and the Report of Federal Employment and Wages.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

**DATES:** Written comments must be submitted to the office listed in the Addresses section of this notice on or before June 21, 2022.

**ADDRESSES:** Send comments to Carol Rowan, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE, Washington, DC 20212. Written comments also may be transmitted by email to *BLS_PRA_Public@bls.gov.*

**FOR FURTHER INFORMATION CONTACT:** Carol Rowan, BLS Clearance Officer, at 202–691–7628 (this is not a toll-free number). (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Quarterly Census of Employment and Wages (QCEW) program is a Federal/State cooperative effort which compiles monthly employment data, quarterly wages data, and business identification information from employers subject to State Unemployment Insurance (UI) laws. These data are collected from State Quarterly Contribution Reports (QCRs) submitted to State Workforce Agencies (SWAs). The States send micro-level employment and wages data, supplemented with the names, addresses, and business identification information of these employers, to the BLS. The State data are used to create the BLS sampling frame, known as the longitudinal QCEW data. This file represents the best source of detailed industrial and geographical data on employers and is used as the sampling frame for most BLS surveys. The longitudinal QCEW data include the individual employers' employment and wages data along with associated business identification information that is maintained by each State to administer the UI program as well as the Unemployment Compensation for Federal Employees (UCFE) program.

The QCEW Report, produced for each calendar quarter, is a summary of these employer (micro-level) data by industry at the county level. Similar data for Federal Government employees covered by the UCFE program also are included in each State's report. These data are submitted by all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands to the BLS which then summarizes these micro-level data to produce totals for the States and the Nation. The QCEW Report provides a virtual census of nonagricultural employees and their wages, with approximately 49 percent of the workers in agriculture covered as well.

For employers having only a single physical location or worksite in the State and, thus, operating under a single industrial and geographical code, the data from the States' UI accounting files are sufficient for statistical purposes. However, such data are not sufficient for statistical purposes for those employers having multiple establishments or engaging in different industrial activities within the State. In such cases, the employer's QCR reflects only statewide employment and wages and is not disaggregated by establishment or worksite. Although data at these levels are sufficient for many purposes of the UI program, more detailed information is required to create a sampling frame and to meet the needs of several ongoing Federal/State statistical programs. The Multiple Worksite Report (MWR) is designed to supplement the QCR when more detailed information is needed.

Because of the data captured by the MWR, improved establishment business identification data elements have been incorporated into and maintained by the longitudinal QCEW database. The MWR collects a physical location address, secondary name (trade name, division, subsidiary, etc.), and reporting unit description (store number, plant name or number, etc.) for each worksite of multi-establishment employers.

Employers with more than one establishment reporting under the same UI account number within a State are requested to complete the MWR if the sum of the employment in all of their secondary establishments is 10 or greater. The primary worksite is defined as the establishment with the greatest number of employees. Upon receipt of the first MWR form, each employer is requested to supply business location identification information. Thereafter, this reported information appears on the MWR each quarter. The employer is requested to verify the accuracy of this business location identification information and to provide only the

employment and wages for each worksite for that quarter. By using a standardized form, the reporting burden on many large employers, especially those engaged in multiple economic activities at various locations across numerous States, is reduced.

The function of the Report of Federal Employment and Wages (RFEW) is to collect employment and wages data for Federal establishments covered under the UCFE program. The MWR and RFEW are essentially the same. The MWR/RFEW forms are designed to collect data for each establishment of a multi-establishment employer.

No other standardized report is available to collect current establishment-level monthly employment and wages data by SWAs for statistical purposes each quarter from the private sector nor State and local governments. Also, no other standardized report currently is available to collect installation-level Federal monthly employment and wages data each quarter by SWAs for statistical purposes. Completion of the MWR is required by law in 31 States and territories.

## II. Current Action

Office of Management and Budget clearance is being sought for an extension of the Multiple Worksite Report and the Report of Federal Employment and Wages.

The BLS has taken steps to help reduce employer reporting burden by developing a standardized format for employers to use to send these data to the States in an electronic medium. The BLS established an Electronic Data Interchange (EDI) Collection Center to improve and expedite the MWR collection process. Employers who complete the MWR for multi-location businesses can submit employment and wages information on any electronic medium directly to the data collection center, rather than separately to each State agency. The data collection center then distributes the appropriate data to the respective States. In addition, the BLS developed a web-based system, MWRweb, to collect these data from small to medium-size businesses. The BLS continues to see much greater utilization of this reporting option.

## III. Desired Focus of Comments

The Bureau of Labor Statistics 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.
- 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.

*Title of Collection:* Multiple Worksite Report (MWR) and the Report of Federal Employment and Wages (RFEW).

*OMB Number:* 1220–0134.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profits, Not-for-profit institutions, and the Federal Government.

| Form No. | Total respondents | Frequency | Total responses | Average time per response | Estimated total burden (hours) |
|---|---|---|---|---|---|
| BLS 3020 (MWR/Federal) | 146,727 | 4 | 586,908 | 22.2 minutes | 217,156 |
| BLS 3021 (RFEW/Non-Federal) | 1,715 | 4 | 6,860 | 22.2 minutes | 2,538 |
| Totals: | 148,442 | 4 | 593,768 | | 219,694 |

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, on April 13, 2022.

**Eric Molina,**

*Acting Chief, Division of Management Systems.*

[FR Doc. 2022–08309 Filed 4–18–22; 8:45 am]

**BILLING CODE 4510–24–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. OSHA–2011–0197]**

### Occupational Safety and Health State Plans; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its request to extend OMB's approval of information collection regarding the State Plans program and regulations for the development and enforcement of state occupational safety and health standards.

**DATES:** Comments must be submitted (postmarked, sent, or received) by June 21, 2022.

**ADDRESSES:** *Electronically:* You may submit comments, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Docket:* To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for

assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2017–0012). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Seleda Perryman or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of a continuing effort to reduce paperwork and respondent (*i.e.,* the State plans) burden, conducts a preclearance process to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, the reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. OSHA is soliciting comments concerning the extension of the information collection requirements contained in the series of regulations establishing requirements for the submission, initial approval, continuing approval, final approval, monitoring, and evaluation of OSHA-approved State Plans:

- 29 CFR part 1902, State Plans for the Development and Enforcement of State Standards;
- 29 CFR part 1953, Changes to State Plans for the Development and Enforcement of State Standards;
- 29 CFR part 1954, Procedures for the Evaluation and Monitoring of Approved State Plans; and
- 29 CFR part 1956, State Plans for the Development and Enforcement of State Standards Applicable to State and Local Government Employees in States Without Approved Private Employee Plans.

Section 18 of the Occupational Safety and Health Act (29 U.S.C. 667) offers an opportunity to the states to assume responsibility for the development and enforcement of state standards through the mechanism of an OSHA-approved State Plan. Absent an approved plan, states are precluded from enforcing occupational safety and health standards in the private sector with respect to any issue for which Federal OSHA has promulgated a standard. Once approved and operational, the state adopts standards and provides most occupational safety and health enforcement and compliance assistance in the state under the authority of its plan, instead of Federal OSHA. States also must extend their jurisdiction to cover state and local government employees and may obtain approval of State Plans limited in scope to these workers. To obtain and maintain State Plan approval, a state must submit various documents to OSHA describing program structure and operation, including any modifications thereto as they occur, in accordance with the identified regulations. OSHA funds 50 percent of the costs required to be incurred by an approved State Plan, with the state at least matching and providing additional funding at its discretion.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply—for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

The agency is requesting an adjustment decrease to adjust the number of burden hours associated with the developmental steps necessary for certain states in the developmental process, including Maine, Illinois, and Virgin Islands. In addition, the number of CASPAs and State Plan Changes was modified to depict more realistically the current trends in these numbers. As a result, the total burden hours have decreased slightly from 11,369 to 11,055 (a decrease of 314 burden hours).

*Type of Review:* Extension of a currently approved collection.

*Title:* Occupational Safety and Health Plans.

*OMB Control Number:* 1218–0247.

*Affected Public:* Designated state government agencies that are seeking or have submitted and obtained approval for State Plans for the development and enforcement of occupational safety and health standards.

*Number of Respondents:* 28.

*Frequency:* On occasion; Quarterly; Annually.

*Average Time per Response:* Various.

*Estimated Total Number of Responses:* 1,255.

*Estimated Total Burden Hours:* 11,055.

*Estimated Cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. Please note: While OSHA's Docket Office is continuing to accept and process submissions by regular mail, due to the COVID–19 pandemic, the Docket Office is closed to the public and not able to receive submissions to the docket by hand, express mail, messenger, and courier service. All comments, attachments, and other material must identify the agency name and the OSHA docket number for this ICR (Docket No. OSHA–2011–0861). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or a facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments.

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as their social security number and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All

submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the website and for assistance in using the internet to locate docket submissions.

### V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 11, 2022.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2022–08310 Filed 4–18–22; 8:45 am]

**BILLING CODE 4510–26–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Sunshine Act Meetings

**TIME AND DATE:** 10:00 a.m., Thursday, April 21, 2022.

**PLACE:** Due to the COVID–19 Pandemic, the meeting will be open to the public via live webcast only. Visit the agency's homepage (*www.ncua.gov*) and access the provided webcast link.

**STATUS:** This meeting will be open to the public.

**MATTERS TO BE CONSIDERED:**

1. Board Briefing, Cybersecurity Update.

2. Board Briefing, NCUA's Diversity, Equity and Inclusion Program Update.

**CONTACT PERSON FOR MORE INFORMATION:** Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

**Melane Conyers-Ausbrooks,**

*Secretary of the Board.*

[FR Doc. 2022–08413 Filed 4–15–22; 11:15 am]

**BILLING CODE 7535–01–P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board's Committee on National Science and Engineering Policy hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business as follows:

**TIME AND DATE:** Monday, April 25, 2022, from 12:00 p.m.–1:00 p.m. EDT.

**PLACE:** This meeting will be held by teleconference through the National Science Foundation.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The agenda of the teleconference is: Chair's opening remarks; update on Indicators 2022 cycle releases and cycle end; draft policy paper on economic contributions of international students and workers.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Chris Blair, *cblair@nsf.gov,* 703/292–7000. To watch this meeting on YouTube, use this link: *https://youtu.be/pc_amWL2Q54.* Updates and other meeting information may be found at the National Science Board website *www.nsf.gov/nsb.*

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2022–08442 Filed 4–15–22; 4:15 pm]

**BILLING CODE 7555–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2022–0098]**

### Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Monthly notice.

**SUMMARY:** Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This monthly notice includes all amendments issued, or proposed to be issued, from March 4, 2022, to March 31, 2022. The last monthly notice was published on March 22, 2022.

**DATES:** Comments must be filed May 19, 2022. A request for a hearing or petitions for leave to intervene must be filed by June 21, 2022.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0098. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Butler, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–8025, email: *Rhonda.Butler@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Obtaining Information and Submitting Comments

*A. Obtaining Information*

Please refer to Docket ID NRC–2022–0098, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0098.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS)

is provided the first time that it is mentioned in this document.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0098, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown below, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR), are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

*A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC.

The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed below, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov*, or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law

requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

| | |
|---|---|
| **Arizona Public Service Company, et al; Palo Verde Nuclear Generating Station, Units 1, 2, and 3; Maricopa County, AZ** | |
| Docket No(s) | 50–528, 50–529, 50–530. |
| Application date | February 22, 2022. |
| ADAMS Accession No | ML22053A233. |
| Location in Application of NSHC | Pages 2–4 of the Enclosure. |
| Brief Description of Amendment(s) | The proposed amendments would revise technical specifications (TSs) to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–567, ''Add Containment Sump TS to Address GSI [Generic Safety Issue]-191 Issues,'' for Palo Verde Nuclear Generating Station, Units 1, 2, and 3. The proposed amendments would add a new TS 3.6.7, ''Containment Sump,'' that includes an Action to address the condition of the containment sump made inoperable due to containment accident generated and transported debris exceeding the analyzed limits. The Action provides time to correct or evaluate the condition in lieu of an immediate plant shutdown. The NRC issued a final safety evaluation approving TSTF–567, on July 3, 2018 (ADAMS Package Accession No. ML18109A077). |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | Jennifer L. Spina, Senior Counsel, Pinnacle West Capital Corporation, 500 N. 5th Street, MS 8695, Phoenix, AZ 85004. |
| NRC Project Manager, Telephone Number | Siva Lingam, 301–415–1564. |
| **Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC** | |
| Docket No(s) | 50–369, 50–370, 50–400, 50–413, 50–414. |
| Application date | February 24, 2022. |
| ADAMS Accession No | ML22056A434. |
| Location in Application of NSHC | Pages 2–4 of Enclosure. |
| Brief Description of Amendment(s) | The proposed amendment would adopt Technical Specifications Task Force (TSTF) Traveler TSTF–569, Revision 2, ''Revise Response Time Testing Definition.'' The proposed amendment would revise the technical specification definitions for Engineered Safety Feature Response Time and Reactor Trip System Response Time. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | Tracey Mitchell LeRoy, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street, Mail Code DEC45A, Charlotte, NC 28202. |
| NRC Project Manager, Telephone Number | Zackary Stone, 301–415–0615. |
| **Energy Northwest; Columbia Generating Station; Benton County, WA** | |
| Docket No(s) | 50–397. |
| Application date | February 3, 2022. |
| ADAMS Accession No | ML22034A992. |
| Location in Application of NSHC | Pages 12–14 of Attachment 1. |
| Brief Description of Amendment(s) | The proposed amendment would modify the Columbia Generating Station (Columbia) Technical Specification (TS) requirements related to Completion Times for Required Actions to provide the option to calculate a longer risk-informed completion time. A new program, the ''Risk-Informed Completion Time Program'' would be added to TS Section 5.0, ''Administrative Controls.'' The proposed amendment is consistent with Technical Specifications Task Force (TSTF) Traveler TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b'' (ADAMS Accession No. ML18183A493). However, only those Required Actions described in Attachment 4 and Enclosure 1, as reflected in the proposed TS mark-ups provided in Attachments 2 and 3, are proposed to be changed. This is because some of the modified Required Actions in TSTF–505 are not applicable to Columbia, and there are some plant-specific Required Actions not included in TSTF–505 that are included in this proposed amendment. A model Safety Evaluation was provided by the NRC to the TSTF on November 21, 2018 (ADAMS Package Accession No. ML18269A041). |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | Ryan Verhulp, Assistant General Counsel, Energy Northwest, MD 1020, P.O. Box 968, Richland, WA 99352. |
| NRC Project Manager, Telephone Number | Mahesh Chawla, 301–415–8371. |

LICENSE AMENDMENT REQUEST(S)—Continued

| | |
|---|---|
| **Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Units 1 and 2; Berrien County, MI** | |
| Docket No(s) | 50–315, 50–316. |
| Application date | March 23, 2021, as supplemented by letter dated December 16, 2021. |
| ADAMS Accession Nos | ML21082A496, ML21350A176. |
| Location in Application of NSHC | Pages 8–10 of Enclosure 2. |
| Brief Description of Amendment(s) | The proposed amendment would modify Technical Specification (TS) and the TS Bases for TS 3.3.3, ''Post Accident Monitoring (PAM) Instrumentation.'' The proposed change would allow one channel of TS 3.3.3, ''Post Accident Monitoring (PAM) Instrumentation,'' Function 7, Containment Water Level, to be satisfied by a train of two operable containment water level switches in the event that both containment water level channels become inoperable. This alternate method of satisfying containment water level channel requirements would be limited to the remaining duration of the operating cycle each time it is invoked. The supplemental letter dated December 16, 2021, provided additional information that expanded the scope of the application as originally noticed; but did not change the NRC staff's original proposed no significant hazards consideration determination as published the **Federal Register** on May 18, 2021 (86 FR 26950). |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106. |
| NRC Project Manager, Telephone Number | Scott Wall, 301–415–2855. |
| **Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 1; Hamilton County, TN; Tennessee Valley Authority; Sequoyah Nuclear Plant, Unit 2; Hamilton County, TN** | |
| Docket No(s) | 50–327, 50–328. |
| Application date | February 24, 2022. |
| ADAMS Accession No | ML22055A625. |
| Location in Application of NSHC | Pages E21–E23 of the Enclosure. |
| Brief Description of Amendment(s) | The proposed amendment would incorporate the use of the peer reviewed, plant-specific Sequoyah Nuclear Plant Seismic Probabilistic Risk Assessment and Fire Probabilistic Risk Assessment models into the previously approved 10 CFR 50.69 categorization process. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902. |
| NRC Project Manager, Telephone Number | Perry Buckberg, 301–415–1383. |
| **Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 1; Rhea County, TN** | |
| Docket No(s) | 50–390. |
| Application date | February 17, 2022. |
| ADAMS Accession No | ML22049A031. |
| Location in Application of NSHC | Pages E11 and E12 of the Enclosure. |
| Brief Description of Amendment(s) | The proposed amendment would revise the Watts Bar Nuclear Plant, Unit 1, Technical Specification (TS) 3.3.2, ''ESFAS Instrumentation,'' Table 3.3.2–1, ''Engineered Safety Feature Actuation System Instrumentation,'' Function 6.e(1), ''Auxiliary Feedwater—Trip of all Main Feedwater Pumps—Turbine Driven Main Feedwater Pumps,'' allowable value to be consistent with the value for Watts Bar Nuclear Plant, Unit 2. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902. |
| NRC Project Manager, Telephone Number | Kimberly Green, 301–415–1627. |
| **Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO** | |
| Docket No(s) | 50–483. |
| Application date | February 8, 2022. |
| ADAMS Accession No | ML22039A317 (Package). |
| Location in Application of NSHC | Pages 9–11 of Enclosure 1. |
| Brief Description of Amendment(s) | The proposed amendment would make the following two changes to the Callaway Plant, Unit No. 1 Radiological Emergency Response Plan: (1) Would remove the 15-minute response goal/30-minute activation goal during ''Normal Work Hours'' and allow the current 75-minute response/90-minute activation goal for ''Off-Normal Hours'' to be the standard for all hours of the day and (2) would eliminate the 30-minute follow-up notification for the State of Missouri and Emergency Planning Zone (EPZ) counties and implement a 60-minute follow-up notification until the plant conditions are relatively stable such that the follow-up notification frequency may be reduced to an agreed upon frequency, with the consensus of the State Emergency Management Agency and the EPZ counties, when event condition are relatively stable. There is no change proposed to the 15-minute initial notification requirement that applies after declaration of an emergency is being proposed. Additionally, no change to staffing requirements is being proposed. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | Jay E. Silberg, Pillsbury Winthrop Shaw Pittman LLP, 1200 17th St. NW, Washington, DC 20036. |

LICENSE AMENDMENT REQUEST(S)—Continued

| | |
|---|---|
| NRC Project Manager, Telephone Number ..... | Mahesh Chawla, 301–415–8371. |

## III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

**Constellation Energy Generation, LLC; Braidwood Station, Units 1 and 2, Will County, IL; Byron Station, Unit Nos. 1 and 2, Ogle County, IL; Constellation Energy Generation, LLC; R. E. Ginna Nuclear Power Plant; Wayne County, New York**

| | |
|---|---|
| Docket No(s) ..... | 50–244, 50–454, 50–455, 50–456, 50–457. |
| Amendment Date ..... | March 22, 2022. |
| ADAMS Accession No ..... | ML22026A489. |
| Amendment No(s) ..... | Braidwood 225 (Unit 1), 225 (Unit 2); Byron 227 (Unit 1), 227 (Unit 2); Ginna 148. |
| Brief Description of Amendment(s) ..... | The amendments revised the Braidwood, Byron, and Ginna technical specifications to address the issues identified in two Westinghouse Electric Company, LLC documents. The revisions address issues identified in Westinghouse Nuclear Safety Advisory Letter NSAL–09–5, Revision 1, ''Relaxed Axial Offset Control FQ Technical Specification Actions,'' and NSAL–15–1, Revision 0, ''Heat Flux Hot Channel Factor Technical Specification Surveillance.'' |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |

**Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 3; New London County, CT; Dominion Energy South Carolina, Inc.; Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, SC; Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Unit Nos. 1 and 2; Louisa County, VA**

| | |
|---|---|
| Docket No(s) ..... | 50–338, 50–339, 50–395, 50–423. |
| Amendment Date ..... | March 1, 2022. |
| ADAMS Accession No ..... | ML22041A010. |
| Amendment No(s) ..... | Millstone—283 (Unit 3); Summer—221 (Unit 1); North Anna—291 (Unit 1) and 274 (Unit 2). |
| Brief Description of Amendment(s) ..... | The amendment adopts Technical Specification Task Force (TSTF) Traveler TSTF–569, ''Revise Response Time Testing Definition.'' The amendment revises the technical specification definition for Engineered Safety Feature Response Time and Reactor Trip System Response Time Testing. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |

**Duke Energy Carolinas, LLC; Catawba Nuclear Station, Units 1 and 2; York County, SC; Duke Energy Carolinas, LLC; McGuire Nuclear Station, Units 1 and 2; Mecklenburg County, NC; Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC**

| | |
|---|---|
| Docket No(s) ..... | 50–413, 50–414, 50–369, 50–370, 50–400. |
| Amendment Date ..... | March 4, 2022. |
| ADAMS Accession No ..... | ML22010A281. |
| Amendment No(s) ..... | Catawba—311 (Unit 1) and 307 (Unit 2), McGuire—321 (Unit 1) and 300 (Unit 2), Harris 191 (Unit 1). |
| Brief Description of Amendment(s) ..... | The amendments revised the technical specifications (TSs) in response to the Duke Energy's application dated September 16, 2021. The amendments revised the TSs for each of these facilities based on Technical Specifications Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections.'' |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |

LICENSE AMENDMENT ISSUANCE(S)—Continued

| | |
|---|---|
| **Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC** | |
| Docket No(s) | 50–400. |
| Amendment Date | March 10, 2022. |
| ADAMS Accession No | ML22020A007. |
| Amendment No(s) | 192 (Unit 1). |
| Brief Description of Amendment(s) | The amendment removes, from the renewed facility operating license, License Condition 2.G, ''Reporting to the Commission,'' which required the licensee to report any violations of Operating License Section 2.C within 24 hours to the NRC Operations Center via the Emergency Notification System with a written follow-up within 30 days. Additionally, the amendment deletes Shearon Harris Nuclear Power Plant Technical Specification (TS) 3/4.4.10, ''Structural Integrity,'' revises Administrative Control TS 6.1.2 to eliminate the annual management directive requirement, revises TS Table 4.3–2, ''Engineered Safety Features Actuation System Instrumentation Surveillance Requirements,'' to remove an overly restrictive requirement that impedes the full application of the Surveillance Frequency Control Program for a specific subset of relays, and removes the TS Index and places it under licensee control. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |
| **Entergy Operations, Inc.; Arkansas Nuclear One, Units 1 and 2; Pope County, AR** | |
| Docket No(s) | 50–313, 50–368. |
| Amendment Date | March 15, 2022. |
| ADAMS Accession No | ML22039A282. |
| Amendment No(s) | 274 (Unit 1) and 328 (Unit 2). |
| Brief Description of Amendment(s) | The amendments modified Arkansas Nuclear One (ANO), Unit 1 (ANO–1) Technical Specification (TS) 3.7.8, ''Emergency Cooling Pond (ECP),'' and ANO, Unit 2 (ANO–2) TS 3.7.4.1, ''Emergency Cooling Pond,'' to permit the ECP to be considered operable for up to 65 days for each unit in support of a proactive upgrade on the ECP piping supply to the service water system intake bays. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |
| **NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Linn County, IA** | |
| Docket No(s) | 50–331. |
| Amendment Date | February 3, 2022. |
| ADAMS Accession No | ML22028A282. |
| Amendment No(s) | 316. |
| Brief Description of Amendment(s) | The amendment revises the Duane Arnold Physical Security Plan to align the defensive strategy with the post-shutdown and permanently defueled condition present during the current decommissioning activities. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |
| **NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Linn County, IA** | |
| Docket No(s) | 50–331. |
| Amendment Date | March 10, 2022. |
| ADAMS Accession No | ML22059A746. |
| Amendment No(s) | 317. |
| Brief Description of Amendment(s) | The amendment revises the Duane Arnold Physical Security Plan to reflect the requirements associated with the security changes for the independent spent fuel storage installation (ISFSI) only configuration, consistent with the permanent removal of all spent fuel from the DAEC spent fuel pool. This change will be implemented once all fuel is placed in the ISFSI. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |
| **Nine Mile Point Nuclear Station, LLC and Constellation Energy Generation, LLC; Nine Mile Point Nuclear Station, Unit 2; Oswego County, NY** | |
| Docket No(s) | 50–410. |
| Amendment Date | March 4, 2022. |
| ADAMS Accession No | ML22033A310. |
| Amendment No(s) | 190. |
| Brief Description of Amendment(s) | The amendment revised the technical specifications related to reactor pressure vessel water inventory control (RPV WIC) based on Technical Specifications Task Force Traveler (TSTF) 582, Revision 0, ''RPV WIC Enhancements,'' (TSTF–528) (ADAMS Accession No. ML19240A260), and the associated NRC staff safety evaluation of TSTF 582 (ADAMS Accession No. ML20219A333). |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |

LICENSE AMENDMENT ISSUANCE(S)—Continued

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|---|---|
| **Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; San Luis Obispo County, CA** | |
| Docket No(s) | 50–275, 50–323. |
| Amendment Date | March 23, 2022. |
| ADAMS Accession No | ML22020A315. |
| Amendment No(s) | 240 (Unit 1) and 241 (Unit 2). |
| Brief Description of Amendment(s) | The amendments revised Technical Specification 3.8.1, ''AC [Alternating Current] Sources—Operating,'' to allow a separate one-time Completion Time of 7 days during the planned maintenance for each diesel fuel oil transfer pump (DFOTP) 0–1 and 0–2, with the portable DFOTP staged and available. The one-time Completion Time of 7 days for DFOTP 0–1 and 0–2 supports planned maintenance to maintain high reliability of the DFOTPs. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |
| **PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ** | |
| Docket No(s) | 50–354. |
| Amendment Date | March 14, 2022. |
| ADAMS Accession No | ML21348A713. |
| Amendment No(s) | 231. |
| Brief Description of Amendment(s) | The amendment revised Technical Specification 3/4.7.1.3, ''Ultimate Heat Sink'' (UHS), to modify the limiting condition for operation river temperature, increase the temperature in the action statement for opening the emergency discharge valves, added a new 72-hour allowed outage time for one station service water system pump or one safety auxiliary cooling system pump or one emergency diesel generator inoperable with UHS temperature above 88 degrees Fahrenheit, and revised the UHS average temperature limit and maximum temperature. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |
| **Southern Nuclear Operating Company, Inc.; Joseph M. Farley Nuclear Plant, Units 1 and 2; Houston County, AL** | |
| Docket No(s) | 50–348, 50–364. |
| Amendment Date | March 7, 2022. |
| ADAMS Accession No | ML22032A243. |
| Amendment No(s) | 241 (Unit 1) and 238 (Unit 2). |
| Brief Description of Amendment(s) | The amendments modify the Updated Final Safety Analysis Report of the Joseph M. Farley Nuclear Plant, Units 1 and 2, by allowing the removal of the encapsulation vessels and associated guard piping around the first isolation valves in the recirculation suction lines for the Containment Spray and Residual Heat Removal/Low Head Safety Injection systems. |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |
| **Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL** | |
| Docket No(s) | 50–259, 50–260, 50–296. |
| Amendment Date | March 16, 2022. |
| ADAMS Accession No | ML22020A228. |
| Amendment No(s) | 320 (Unit 1), 343 (Unit 2), 303 (Unit 3). |
| Brief Description of Amendment(s) | The amendments revised Technical Specification (TS) 3.6.2.6 (correlates to boiling water reactor (BWR)/4 TS 3.6.2.5), ''Drywell-to-Suppression Chamber Differential Pressure,'' and TS 3.6.3.2, ''Primary Containment Oxygen Concentration,'' based on TS Task Force (TSTF) Traveler TSTF–568–A, Revision 2, ''Revise Applicability of BWR/4 TS 3.6.2.5 and TS 3.6.3.2'' (ADAMS Accession No. ML19141A122), and the associated NRC safety evaluation for TSTF–568–A (ADAMS Accession No. ML19325C434). |
| Public Comments Received as to Proposed NSHC (Yes/No). | No. |

Dated: April 13, 2022.

For the Nuclear Regulatory Commission.

**Caroline L. Carusone,**

*Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2022–08287 Filed 4–18–22; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2022–0064]**

## Information Collection: NRC Form 790, ''Classification Record''

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, NRC Form 790, ''Classification Record.''

**DATES:** Submit comments by June 21, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure

consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal Rulemaking Website:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0064. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2022–0064 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0064. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2022–0064 on this website.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML22074A192. The supporting statement is available in ADAMS under Accession No. ML22074A195.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal Rulemaking Website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0064 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 790, ''Classification Record.''

2. *OMB approval number:* 3150–0052.

3. *Type of submission:* Extension.

4. *The form number, if applicable:* Form 790.

5. *How often the collection is required or requested:* On occasion. NRC Form 790 is required each time an authorized classifier makes a classification determination to classify, declassify, or downgrade a document.

6. *Who will be required or asked to respond:* NRC licensees, licensees' contractors, and certificate holders who classify and declassify NRC information.

7. *The estimated number of annual responses:* 100.

8. *The estimated number of annual respondents:* 2.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 8.33.

10. *Abstract:* Completion of the NRC Form 790 is a mandatory requirement for NRC licensees, licensees' contractors, and certificate holders who classify and declassify NRC information in accordance with Executive Order 13526, ''Classified National Security Information,'' the Atomic Energy Act, and implementing directives. The NRC uses the information on the form to report statistics related to its security classification program on an annual basis to the Information Security Oversight Office.

## III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: April 13, 2022.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2022–08280 Filed 4–18–22; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2022–53 and CP2022–57]**

### 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 21, 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).:* MC2022–53 and CP2022–57; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 131 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* April 13, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin.

*Comments Due:* April 21, 2022.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2022–08339 Filed 4–18–22; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94712; File No. SR–Phlx–2022–18]**

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make the Market Wide Circuit Breaker Pilot a Permanent Program

April 13, 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 April 12, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 adopt on a permanent basis the pilot program for market-wide circuit breakers in Equity 4, Rule 3101.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange (''NYSE'') to adopt on a permanent basis the pilot program for market-wide circuit breakers (''MWCB'') in NYSE Rule 7.12.[3] The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Equity 4, Rule 3101.

Rules Overview

The MWCB rules, including the Exchange's Rule 3101 under Equity 4, 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

[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] *See* Securities Exchange Act Release No. 94441 (March 16, 2022) (SR–NYSE–2021–40).

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 equities exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Equity 4, Rule 3101(a)–(d)).[4] 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'').[5] 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''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 3101 to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of business on October 18, 2019.[9] The Exchange subsequently filed to extend the pilot for an additional year to the close of business on October 18, 2020,[10] and later, on October 18, 2021.[11] The Exchange last extended the pilot to the close of business on April 18, 2022.[12]

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.[13] 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.[14]

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.[15] On March 16, 2022, the Commission approved NYSE's proposal.[16]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d) of Equity 4, Rule 3101) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 3101, 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 Equity 4, Rule 3101, as follows:

(e) Market-Wide Circuit Breaker (''MWCB'') Testing

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to General 2, Section 12(a) to participate in Exchange Business Continuity and Disaster Recovery

[4] *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'').

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.,* Options 3, Section 9(e).

[6] *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.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–Phlx–2011–129) (Approval Order); and 68816 (February 1, 2013), 78 FR 9760 (February 11, 2013) (SR–Phlx–2013–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[9] *See* Securities Exchange Act Release No. 85579 (April 9, 2019), 84 FR 15258 (April 15, 2019) (SR–Phlx–2019–12).

[10] *See* Securities Exchange Act Release No. 87206 (October 3, 2019), 84 FR 54234 (October 9, 2019) (SR–Phlx–2019–40).

[11] *See* Securities Exchange Act Release No. 90153 (October 9, 2020), 85 FR 65451 (October 15, 2020) (SR–Phlx–2020–46).

[12] *See* Securities Exchange Act Release No. 94435 (March 16, 2022), 87 FR 16281 (March 22, 2022) (SR–Phlx–2022–11).

[13] *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.*

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See supra* note 3.

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 (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) Members not designated pursuant to standards established in General 2, Section 12(a) 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,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] 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 Equity 4, Rule 3101(a)–(d) 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

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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.[19]

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 3101 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 3101 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 3101 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 3101, 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*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] 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.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule

[19] *See* 17 CFR 240.17a–1.

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

[25] 15 U.S.C. 78s(b)(2)(B).

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–Phlx–2022–18 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–18. 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–Phlx–2022–18 and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08285 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94709; File No. SR–LTSE–2022–03]**

## Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt on a Permanent Basis the Pilot Rules for Market-Wide Circuit Breakers in Rule 11.280

April 13, 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 12, 2022, Long-Term Stock Exchange, Inc. (''LTSE'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

LTSE proposes a rule change to adopt on a permanent basis the Pilot Rules for Market-Wide Circuit Breakers in Rule 11.280.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange LLC (''NYSE'') to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers (''MWCB'') in NYSE Rule 7.12.[3] The Exchange proposes to adopt on a permanent basis the Pilot Rules for Market-Wide Circuit Breakers in Rule 11.280.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including the Exchange's Rule 11.280, 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'').[4] 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 theS&P 500 Index (''SPX'').[5] 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%

[26] 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. 94441 (March 16, 2022) (SR–NYSE–2021–40).

[4] *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''). LTSE adopted Pilot Rules as part of its approval as a national securities exchange. *See generally* Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019).

[5] 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).

(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''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Rule 11.280 to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of business on October 18, 2020.[9] The Exchange subsequently amended Rule 11.280, to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2021.[10] The Exchange then further amended Rule 11.280, to extend the Pilot Rules' effectiveness for another five months to the close of business on March 18, 2022,[11] and for another month to the close of business on April 18, 2022.[12]

The MWCB Working Group's 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.[13] 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.[14]

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.[15] On March 16, 2022, the Commission approved NYSE's proposal.[16]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that its MWCB Pilot Rules (*i.e.,* paragraphs (a)–(e) of Rule 11.280) be made permanent. To accomplish this, the Exchange proposes to remove language in paragraph (a) describing the MWCB as part of a pilot. The Exchange does not propose any changes to paragraphs (b)–(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 11.280, as follows:

(f) Market-Wide Circuit Breaker (''MWCB'') Testing

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to Rule 2.250 to participate in mandatory 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 (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) Members not designated pursuant to standards established in Rule 2.250 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.

[6] *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.

[7] *See e.g.* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NYSE–2011–48) (Approval Order); and 68784 (January 31, 2013), 78 FR 8662 (February 6, 2013) (SR–NYSE–2013–10).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[9] *See* Securities Exchange Act Release 87357 (October 18, 2019) 84 FR 57070 (October 24, 2019) (SR–LTSE–2019–03).

[10] *See* Securities Exchange Act Release No. 90125 (October 8, 2020), 85 FR 65114 (October 14, 2020) (SR–LTSE–2020–18).

[11] *See* Securities Exchange Act Release No. 93376 (October 18, 2021), 86 FR 58713 (October 22, 2021) (SR–LTSE–2021–06).

[12] *See* Securities Exchange Act Release No. 34–94403 (March 11, 2022), 87 FR 15279 (March 17, 2022) (SR–LTSE–2022–01)

[13] *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.*

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See supra* note 3.

(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 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,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] 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 11.280(a)–(e) 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 exchanges, 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.[19]

The Exchange believes that proposed paragraph (g) would benefit market participants, promote just and equitable

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* 17 CFR 240.17a–1.

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 11.280 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 11.280 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 11.280 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 11.280, 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*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [20] of the Act and Rule 19b–4(f)(6) thereunder [21] in that it effects a change that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] 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.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–LTSE–2022–03 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–LTSE–2022–03. 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

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

[25] 15 U.S.C. 78s(b)(2)(B).

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–LTSE–2022–03 and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08282 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 94724/April 14, 2022]**

### Securities Exchange Act of 1934; Order Granting Petition for Review and Scheduling Filing of Statements; In the Matter of Financial Industry Regulatory Authority, Inc. Regarding an Order Granting the Approval of Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036

This matter comes before the Securities and Exchange Commission (''Commission'') on petition to review the approval, pursuant to delegated authority, of the Financial Industry Regulatory Authority, Inc. (''FINRA'') proposed rule change to amend the requirements for covered agency transactions under FINRA Rule 4210.

On May 19, 2021, the Commission issued a notice of filing of the proposed rule change with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder.[3] On June 30, 2021, FINRA extended the time period in which the Commission needed to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 23, 2021.[4] On August 9, 2021, FINRA submitted Amendment No. 1 to the proposed rule change. On August 20, 2021, the Commission issued a notice of filing of Amendment No. 1 to the proposed rule change, and proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act[5] to determine whether to approve or disapprove the proposed rule change.[6] On October 26, 2021, FINRA extended the time period in which the Commission needed to approve or disapprove the proposed rule change to January 20, 2022.[7] On January 20, 2022, after consideration of the record for the proposed rule change, as modified by Amendment No. 1, the Division, pursuant to delegated authority,[8] issued an order approving the proposed rule change, as modified by Amendment No. 1 (''Approval Order'').[9]

Pursuant to Rule 430 of the Commission's Rules of Practice,[10] on January 27, 2022 the Bond Dealers of America (''BDA'') and Brean Capital, LLC (''Brean Capital'') filed a notice of intention to petition for review of the Approval Order, and on February 3, 2022 BDA and Brean Capital filed a petition for review of the Approval Order. Pursuant to Rule 431(e) of the Commission's Rules of Practice,[11] the Approval Order is stayed by the filing with the Commission of a notice of intention to petition for review.

Pursuant to Rule 431 of the Commission's Rules of Practice,[12] the petition for review of the Approval Order is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Approval Order on or before May 10, 2022.

For the reasons stated above, it is hereby:

*Ordered* that the petition of BDA and Brean Capital for review of the Division's action to approve the proposed rule change, as modified by Amendment No. 1, by delegated authority be *granted;* and

It is further *ordered* that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before May 10, 2022.

It is further *ordered* that the January 20, 2022 order approving the proposed rule change, as modified by Amendment No. 1 (File No. SR–FINRA–2021–010), shall remain stayed pending further action by the Commission.

By the Commission.

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08334 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94711; File No. SR–BX–2022–007]**

### Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make the Market Wide Circuit Breaker Pilot a Permanent Program

April 13, 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 April 12, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I 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 adopt on a permanent basis the pilot program for market-wide circuit breakers in Equity 4, Rule 4121.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[26] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (SR–FINRA–2021–010).

[4] *See* letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Sheila Swartz, Division of Trading and Markets (''Division''), Commission (June 30, 2021).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Exchange Act Release No. 92713 (Aug. 20, 2021), 86 FR 47665 (Aug. 26, 2021) (SR–FINRA–2021–010).

[7] *See* letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Sheila Swartz, Division, Commission (Oct. 26, 2021).

[8] 17 CFR 200.30–3(a)(12).

[9] *See* Exchange Act Release No. 94013 (Jan. 20, 2022), 87 FR 4076 (Jan. 26, 2021) (SR–FINRA–2021–010).

[10] 17 CFR 201.430.

[11] 17 CFR 201.431(e).

[12] 17 CFR 201.431.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange (''NYSE'') to adopt on a permanent basis the pilot program for market-wide circuit breakers (''MWCB'') in NYSE Rule 7.12.[3] The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Equity 4, Rule 4121.

Rules Overview

The MWCB rules, including the Exchange's Rule 4121 under Equity 4, 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 equities exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Equity 4, Rule 4121(a)–(d)).[4] 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'').[5] 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''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 4121 to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of business on October 18, 2019.[9] The Exchange subsequently filed to extend the pilot for an additional year to the close of business on October 18, 2020,[10] and later, on October 18, 2021.[11] The Exchange last extended the pilot to the close of business on April 18, 2022.[12]

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.[13] 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

[3] *See* Securities Exchange Act Release No. 94441 (March 16, 2022) (SR–NYSE–2021–40).

[4] *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'').

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.,* Options 3, Section 9(e).

[6] *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.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BX–2011–068) (Approval Order); and 68815 (February 1, 2013), 78 FR 9752 (February 11, 2013) (SR–BX–2013–009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[9] *See* Securities Exchange Act Release No. 85585 (April 10, 2019), 84 FR 15643 (April 16, 2019) (SR–BX–2019–008).

[10] *See* Securities Exchange Act Release No. 87208 (October 3, 2019), 84 FR 54213 (October 9, 2019) (SR–BX–2019–034).

[11] *See* Securities Exchange Act Release No. 90145 (October 9, 2020), 85 FR 65462 (October 15, 2020) (SR–BX–2020–029).

[12] *See* Securities Exchange Act Release No. 94434 (March 16, 2022), 87 FR 16299 (March 22, 2022) (SR–BX–2022–005).

[13] *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.*

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.[14]

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.[15] On March 16, 2022, the Commission approved NYSE's proposal.[16]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(d) of Equity 4, Rule 4121) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 4121, 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 Equity 4, Rule 4121, as follows:

(e) Market-Wide Circuit Breaker (''MWCB'') Testing

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to General 2, Section 12(a) to participate in Exchange Business Continuity and Disaster Recovery 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 (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) Members not designated pursuant to standards established in General 2, Section 12(a) 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,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] 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 Equity 4, Rule 4121(a)–(d) 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,

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See supra* note 3.

[17] 15 U.S.C. 78f(b).

[18] 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 (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.[19]

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 4121 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 4121 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 4121 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 4121, 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*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

[19] *See* 17 CFR 240.17a–1.

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give

A proposed rule change filed under Rule 19b–4(f)(6) [22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] 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.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [25] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2022–007 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2022–007. 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–BX–2022–007 and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94710; File No. SR–FINRA–2022–010]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, 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 in FINRA Rule 6121.02 (Market-Wide Circuit Breakers in NMS Stocks)

April 13, 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 April 13, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') 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 FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers in FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks).

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA has prepared summaries, set forth in sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

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

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange LLC (''NYSE'') to adopt on a permanent basis the pilot program for Market-Wide Circuit Breakers (''MWCB'') in NYSE Rule 7.12.[4] FINRA now proposes to adopt the MWCB pilot program as permanent in FINRA Rule 6121.02.

The Pilot Rules

The MWCB rules, including FINRA's Rule 6121.02, 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 6121.02 (a)–(c)).[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, FINRA amended Rule 6121.02 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] FINRA 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

[4] *See* Securities Exchange Act Release No. 94441 (March 16, 2022), 87 FR 16286 (March 22, 2022) (Order Approving File No. SR–NYSE–2021–40). The proposed rule change would also make two non-substantive, technical changes. First, the proposed rule change would update the citation in Rule 6121 for the definition of ''NMS stock'' under Regulation NMS from Rule 600(b)(47) to Rule 600(b)(55) to reflect recent reorganization of the defined terms in Rule 600 of Regulation NMS. Second, consistent with FINRA rulebook style, the proposed rule change would change the reference to the ''Securities and Exchange Commission'' in Rule 6121 to the ''SEC.''

[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) (Order Approving File No. SR–FINRA–2011–054); and 68778 (January 31, 2013), 78 FR 8668 (February 6, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–011).

[9] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility).

[10] *See* Securities Exchange Act Release No. 85547 (April 8, 2019), 84 FR 14981 (April 12, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–010).

[11] *See* Securities Exchange Act Release No. 87078 (September 24, 2019), 84 FR 51669 (September 30, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–023).

[12] *See* Securities Exchange Act Release No. 90160 (October 13, 2020), 85 FR 67072 (October 21, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–033).

[13] *See* Securities Exchange Act Release No. 93300 (October 13, 2021), 86 FR 57867 (October 19, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–027).

[14] *See* Securities Exchange Act Release No. Release No. 94428 (March 16, 2022), 87 FR 16265 (March 22, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–005).

[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.*

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, FINRA now proposes that paragraphs (a) through (c) of Rule 6121.02 be made permanent. To accomplish this, FINRA proposes to remove the text of existing paragraph (d) of Rule 6121.02, which currently provides that the provisions of Rule 6121.02 shall be in effect during a pilot period that expires at the close of business on April 18, 2022. FINRA does not propose any changes to paragraphs (a) through (c) of Rule 6121.02.

Consistent with the Commission's approval of NYSE's proposal, FINRA proposes to add new paragraphs (d), (e), and (f) to Rule 6121.02, as follows:

(d) Market-Wide Circuit Breaker (''MWCB'') Testing.

(1) FINRA will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to Rule 4380 (Mandatory Participation in FINRA BC/DR Testing Under Regulation SCI) with respect to a FINRA Trade Reporting Facility (''TRF'') or the Alternative Display Facility (''ADF'') to participate in FINRA's periodic, scheduled testing of their business continuity and disaster recovery (''BC/DR'') plans 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 quotes, trades or both, as applicable, to the facility or facilities for which the member has been designated pursuant to Rule 4380 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 (d)(1)(A) through (D) above, its attestation should notify FINRA which messages it was unable to process and, if known, why.

(3) Members not designated pursuant to Rule 4380 are permitted to participate in any MWCB test.

(e) In the event that a MWCB is triggered following a Level 1, Level 2, or Level 3 Market Decline, FINRA, 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 SEC within six months of the event.

(f) In the event that there is (1) a Market Decline of more than five percent, or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt, FINRA, together with the MWCB Working Group, will review such event and consider whether any modifications should be made to FINRA Rule 6121.02. If the MWCB Working Group recommends that a modification should be made to FINRA Rule 6121.02, the MWCB Working Group will prepare a report that documents its analysis and recommendations and provide that report to the SEC.

The MWCB testing requirement that FINRA is proposing to add as the new text of paragraph (d) of Rule 6121.02 is consistent with the MWCB testing obligation adopted by the exchanges (*e.g.,* NYSE Rule 7.12(e)) that requires all designated Regulation SCI firms to participate in at least one MWCB test each year. However, the language of proposed Rule 6121.02(d) has been modified from the language of NYSE Rule 7.12(e) in two regards to account for FINRA's unique role in the equity markets, as follows.

First, FINRA's testing requirement would apply on a facility-by-facility basis. Like the exchanges, Regulation SCI requires that FINRA designate firms that must participate in the testing of the firm's business continuity and disaster recovery BC/DR plans. To comply with this Regulation SCI requirement, FINRA adopted Rule 4380, which authorizes FINRA to designate member firms that must participate in annual BC/DR testing according to established criteria designed to ensure participation by firms FINRA reasonably determines are, taken as a whole, the minimum necessary for maintaining fair and orderly markets in the event of the activation of its BC/DR plan. As summarized in *Regulatory Notice* 19–15,[19] FINRA applies specified criteria to designate firms under Rule 4380 on a facility-by-facility basis, including designation of participants of the TRFs[20] and the ADF.[21] As the TRFs and ADFs are the FINRA facilities relevant to quoting and trading NMS stocks, FINRA believes that firms designated under Rule 4380 with respect to any TRF or the ADF should be required to participate in annual MWCB testing.[22] Therefore, in line with the exchanges' MWCB testing rule, paragraph (d)(1) of Rule 6121.02 would provide that members designated pursuant to Rule 4380 for BC/DR testing with respect to a TRF or the ADF are required to participate in at least one industry-wide MWCB test each year.

Second, consistent with the exchanges' rules, such designated members would be required to verify their participation in the annual MWCB test by attesting that they are able to or have attempted to undertake four specified actions related to operation of MWCB halts. The first three of these actions, set forth in paragraphs (d)(1)(A) through (C) of proposed Rule 6121.02, would be identical to the exchanges' testing rules and would require that such members attest that they are able to or have attempted to: (A) Receive and process MWCB halt messages from the SIPs; (B) receive and process resume messages from the SIPs following a

[16] *See* the Study, *supra* note 15, at 46.

[17] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) ((Notice of Filing File No. SR–NYSE–2021–40).

[18] *See supra* note 4.

[19] *See Regulatory Notice* 19–15 (April 19, 2019) (''Designation Notice'').

[20] The TRFs provide FINRA members with a mechanism to report over-the-counter (''OTC'') transactions in NMS stocks. There are currently three active TRFs: (1) FINRA/Nasdaq TRF Carteret, (2) FINRA/Nasdaq TRF Chicago and (3) FINRA/NYSE TRF. While each TRF is operated by an affiliate of a registered national securities exchange, each TRF is a FINRA facility and subject to FINRA's oversight.

[21] The ADF is a display-only facility operated by FINRA that provides FINRA members with a mechanism to display quotations and report OTC transactions in NMS stocks.

[22] For the TRFs, FINRA will designate those TRF participants that account for five percent or more of the total number of trades reported to the TRF over the six-month period immediately preceding designation, provided that the cumulative trade volume represented by designated firms amounts to at least 50 percent of all trade volume reported to the TRF during the applicable six-month period. Trade volume for purposes of Rule 4380 is separately calculated for each TRF. For the ADF, there currently are not any active participants. If the ADF becomes active, FINRA will then study the system's activity to establish appropriate criteria for member designation. *See* Designation Notice, *supra* note 19, at 2.

MWCB halt; and (C) receive and process market data from the SIPs relevant to MWCB halts. The fourth element specified in the exchanges' rules requires that designated member organizations attest that they are able to or have attempted to send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior. The TRFs and the ADF are facilities for reporting OTC transactions in NMS stocks and, in the case of the ADF, displaying quotations in NMS stocks. Therefore, FINRA is proposing a modified requirement in paragraph (d)(1)(D) for designated members to attest that they are able to or have attempted to send quotes, trades or both, as applicable, to the facility or facilities for which they have been designated pursuant to Rule 4380 in a manner consistent with their usual trading behavior.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[23] which requires, among other things, that FINRA rules must be 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 6121.02 (a) through (c) 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 FINRA, 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 FINRA's own analysis of those events, FINRA 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, FINRA 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. FINRA 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, FINRA 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.

FINRA 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, FINRA 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. FINRA believes this indicates that the MWCB Halts on the four March 2020 days did not cause liquidity to evaporate. Finally, FINRA 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, FINRA 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, FINRA 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.

FINRA 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, FINRA 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. FINRA 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.

FINRA believes that proposed new paragraph (d) 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. FINRA 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. FINRA further believes that

[23] 15 U.S.C. 78*o*–3(b)(6).

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. FINRA would preserve such attestations pursuant to its obligations to retain books and records of FINRA.[24]

FINRA believes that proposed paragraph (e) 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 6121.02 and prepare a report of its analysis and recommendations would permit FINRA, along with other market participants and the Commission, to evaluate such event and determine whether any modifications should be made to Rule 6121.02 in the public interest. Preparation of such a report within six months of the event would permit FINRA, along with the MWCB Working Group, sufficient time to analyze such halt and prepare their recommendations.

FINRA 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 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 would recommend that Rule 6121.02 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 6121.02, 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, FINRA believes that the proposed rule change is consistent with the Act.

[24] *See* 17 CFR 240.17a–1.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

FINRA 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 proposed rule change is not intended to address competition, but rather, makes permanent the current MWCB Pilot Rules for the protection of the markets. FINRA 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, FINRA understands that the other SROs have or 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*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [25] and Rule 19b–4(f)(6) thereunder.[26]

A proposed rule change filed under Rule 19b–4(f)(6) [27] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[28] 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.[29]

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–FINRA–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–FINRA–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 (*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

[25] 15 U.S.C. 78s(b)(3)(A).

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6).

[28] 17 CFR 240.19b–4(f)(6)(iii).

[29] 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).

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–FINRA–2022–010 and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08283 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94713; File No. SR–NASDAQ–2022–031]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make the Market Wide Circuit Breaker Pilot a Permanent Program

April 13, 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 April 12, 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 adopt on a permanent basis the pilot program for market-wide circuit breakers in Equity 4, Rule 4121.

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

On March 16, 2022, the Commission approved the proposal of the New York Stock Exchange (''NYSE'') to adopt on a permanent basis the pilot program for market-wide circuit breakers (''MWCB'') in NYSE Rule 7.12.[3] The Exchange now proposes to adopt the same change to make permanent the MWCB pilot program in Equity 4, Rule 4121.

Rules Overview

The MWCB rules, including the Exchange's Rule 4121 under Equity 4, 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 equities exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Equity 4, Rule 4121(a)–(c) and (f)).[4] 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'').[5] 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''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In conjunction with the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 4121 to untie the Pilot Rules' effectiveness from that of the LULD Plan and to extend the Pilot Rules' effectiveness to the close of

[30] 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. 94441 (March 16, 2022) (SR–NYSE–2021–40).

[4] *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'').

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.,* Options 3, Section 9(e).

[6] *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.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131) (Approval Order); and 68786 (January 31, 2013), 78 FR 8666 (February 6, 2013) (SR–NASDAQ–2013–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

business on October 18, 2019.[9] The Exchange subsequently filed to extend the pilot for an additional year to the close of business on October 18, 2020,[10] and later, on October 18, 2021.[11] The Exchange last extended the pilot to the close of business on April 18, 2022.[12]

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.[13] 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.[14]

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.[15] On March 16, 2022, the Commission approved NYSE's proposal.[16]

Consistent with the Commission's approval of NYSE's proposal, the Exchange now proposes that the Pilot Rules (*i.e.,* paragraphs (a)–(c) and (f) of Equity 4, Rule 4121) be made permanent. To accomplish this, the Exchange proposes to remove the preamble to Rule 4121, 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)–(c) and (f) of the Rule.

Consistent with the Commission's approval of NYSE's proposal, the Exchange proposes to add new paragraphs (g), (h), and (i) to Equity 4, Rule 4121, as follows:

(g) Market-Wide Circuit Breaker (''MWCB'') Testing

(1) The Exchange will participate in all industry-wide tests of the MWCB mechanism. Members designated pursuant to General 2, Section 12(a) to participate in Exchange Business Continuity and Disaster Recovery 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 (g)(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 General 2, Section 12(a) are permitted to participate in any MWCB test.

(h) 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.

(i) 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,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act,[18] 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.

[9] *See* Securities Exchange Act Release No. 85578 (April 9, 2019), 84 FR 15271 (April 15, 2019) (SR–NASDAQ–2019–027).

[10] *See* Securities Exchange Act Release No. 86944 (September 12, 2019), 84 FR 49141 (September 18, 2019) (SR–NASDAQ–2019–072).

[11] *See* Securities Exchange Act Release No. 90144 (October 9, 2020), 85 FR 65460 (October 15, 2020) (SR–NASDAQ–2020–068).

[12] *See* Securities Exchange Act Release No. 94433 (March 16, 2022), 87 FR 16283 (March 22, 2022) (SR–NASDAQ–2022–026).

[13] *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.*

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See supra* note 3.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

The Pilot Rules set out in Equity 4, Rule 4121(a)–(c) and (f) 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 (g) 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.[19]

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 any halt triggered under Rule 4121 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 4121 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 (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.

[19] *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 4121 be modified in the public interest. In such situations where the MWCB Working Group recommends that a modification should be made to Rule 4121, 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*

No written comments were either solicited or received.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[20] and subparagraph (f)(6) of Rule 19b–4 thereunder.[21]

A proposed rule change filed under Rule 19b–4(f)(6)[22] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[23] 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.[24]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[25] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–031 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–2022–031. 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–NASDAQ–2022–031 and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08286 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 15 U.S.C. 78s(b)(3)(A)(iii).

[21] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

[25] 15 U.S.C. 78s(b)(2)(B).

[26] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**Release No. 34–94708; File No. SR–NYSE–2022–14]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Modify Certain Pricing Limitations for Securities Listed on the Exchange Pursuant to a Primary Direct Floor Listing

April 13, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 7, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify certain pricing limitations for securities listed on the Exchange pursuant to a Primary Direct Floor Listing. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s.

[3] 17 CFR 240.19b–4.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange recently amended Chapter One of the Listed Company Manual (the ''Manual'') to modify the provisions relating to direct listings to permit a primary offering in connection with a direct listing and to specify how a direct listing qualifies for initial listing if it includes both sales of securities by the company and possible sales by selling shareholders (a ''Primary Direct Floor Listing'').[4] The Exchange also adopted Rule 7.31(c)(1)(D) defining the Issuer Direct Offering (''IDO'') Order for use by a company that wishes to sell its shares through a Primary Direct Floor Listing and modified Rule 7.35A to describe how the IDO Order would participate in a Direct Listing Auction, establish additional requirements for a DMM conducting a Direct Listing Auction for a Primary Direct Floor Listing, and specify how the Indication Reference Price would be determined for a security to be opened in a Direct Listing.[5] Currently, under Rule 7.35A(g)(2), the DMM will not conduct a Direct Listing Auction for a Primary Direct Floor Listing if (i) the Auction Price would be outside of the price range specified by the company in its effective registration statement (the ''Price Range Limitation'') [6] and (ii) if there is insufficient interest to satisfy both the IDO Order and all better-priced sell orders in full.

The Exchange now proposes to modify the Price Range Limitation to provide that a Direct Listing Auction for a Primary Direct Floor Listing may be conducted if the Auction Price is outside of the price range established by the company in its effective registration statement (the ''Issuer Price Range'') but is either (i) at or above the price that is 20% below the lowest price or at or below the price that is 20% above the highest price of the Issuer Price Range [7] or (ii) above the price that is 20% above the highest price of the Issuer Price Range. The Exchange proposes that a Direct Listing Auction for a Primary Direct Floor Listing could proceed in these circumstances provided that the issuer has certified to the Exchange and publicly disclosed that: (i) It does not expect that the Auction Price would materially change the issuer's previous disclosure in its effective registration statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (iii) such registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement.

Background

The Exchange believes that, while many companies are interested in alternatives to the traditional initial public offering (''IPO''), companies and their advisors may be reluctant to use the Primary Direct Floor Listing under current Exchange rules because of concerns about the Price Range Limitation.

One potential benefit of a Primary Direct Floor Listing as an alternative to a traditional IPO is that it could maximize the chances of more efficient price discovery of the initial public sale of securities for issuers and investors. Unlike an IPO, where the offering price is informed by underwriter engagement with potential investors to gauge interest in the offering, but ultimately decided through negotiations between the issuer and the underwriters for the offering, the initial sale price in a Primary Direct Floor Listing is determined based on market interest and the matching of buy and sell orders in an auction open to all market participants.

In that regard, the Commission noted in the Approval Order that:

> [B]ecause the price of securities issued by a company in a Primary Direct Floor Listing will be determined based on market interest and the matching of buy and sell orders, Primary Direct Floor Listings will provide an alternative way to price securities offerings that may better reflect prices in the aftermarket, and thus may allow for efficiencies in IPO pricing and

[4] *See* Securities Exchange Act Release No. 90768 (December 22, 2020), 85 FR 85807 (December 29, 2020) (SR–NYSE–2019–67) (Order Setting Aside Action by Delegated Authority and Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Amend Chapter One of the Listed Company Manual to Modify the Provisions Relating to Direct Listings) (the ''Approval Order'').

[5] *Id.*

[6] The Exchange notes that references in this rule filing to the price range established by the issuer in its effective registration statement are to the price range disclosed in the prospectus in such registration statement. In addition, as explained in more detail below, the Exchange proposes that the 20% threshold be calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of Securities Act Rule 430A.

[7] As discussed further below, the Exchange proposes to define the ''Primary Direct Floor Listing Auction Price Range'' as the price range that includes 20% below the lowest price and 20% above the highest price of the Issuer Price Range.

allocation. . . . The opening auction in a Primary Direct Floor Listing provides for a different price discovery method for IPOs which may reduce the spread between IPO price and subsequent market trades, a potential benefit to existing and potential investors.[8]

A successful IPO of shares requires sufficient investor interest. If an offering cannot be completed due to lack of investor interest, a company is likely to receive negative publicity, and the offering may be delayed or cancelled. The Price Range Limitation—which is imposed on a Primary Direct Floor Listing but not on an IPO—increases the probability of a failed offering because it contemplates there also being too much investor interest. In other words, if investor interest is greater than the company and its advisors anticipated, an offering would need to be delayed or cancelled.

As the Commission has noted with respect to traditional firm commitment underwritten offerings, the IPO price, which is established through negotiation between the underwriters and the issuer, is often lower than the price that the issuer could have obtained for the securities, based on a comparison of the IPO price to the closing price on the first day of trading.[9] The Exchange believes that the price range in a company's effective registration statement for a Primary Direct Floor Listing is similarly determined by the company and its advisors and, therefore, there may be instances of offerings where the price determined by the Direct Listing Auction would exceed the highest price of the price range in the company's effective registration statement.

As described above, under current Exchange Rules, the DMM would not conduct a Direct Listing Auction for a security subject to a Primary Direct Floor Listing if the Auction Price determined is above the highest price of the price range established by the issuer in its effective registration statement. In this case, the offering would be cancelled or postponed until the company amends its effective registration statement. At a minimum, such a delay could expose the company to risks associated with changing investor sentiment in the event of an adverse market event. As a result, the Exchange believes that companies may be reluctant to use this alternative method of going public despite its expected potential benefits because of the restrictions of the Price Range Limitation.

Proposed Rule Change

In light of the above, the Exchange proposes to modify the Price Range Limitation such that a Direct Listing Auction for a Primary Direct Floor Listing could proceed even if the Auction Price is at or above the price that is 20% below the lowest price of the Issuer Price Range and at or below the price that is 20% above the highest price of such price range. Specifically, the Exchange proposes that the DMM could conduct the Direct Listing Auction, provided all other necessary conditions are satisfied, even if the Auction Price is outside of the Issuer Price Range, if the Auction Price would not be more than 20% below the lowest price or more than 20% above the highest price of such range and the company has, in its effective registration statement, specified the quantity of shares registered, as permitted by Securities Act Rule 457.[10] The Exchange further proposes that a Direct Listing Auction could proceed if the Auction Price is a price that is greater than 20% above the highest price of the Issuer Price Range, provided that all other necessary conditions are satisfied, and the company has, in its effective registration statement, specified the quantity of shares registered, as permitted by Securities Act Rule 457. The Exchange also proposes that the 20% threshold be calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of Securities Act Rule 430.

When the Auction Price is either (i) outside of the Issuer Price Range but not more than 20% above or below such price range, or (ii) greater than 20% above the highest price of the Issuer Price Range, the Exchange proposes that the Direct Listing Auction would not proceed unless the company has publicly disclosed and certified to the Exchange that (i) the company does not expect that such offering price would materially change the company's previous disclosure in its effective registration statement; (ii) the price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K; and (iii) the company's registration statement contains a sensitivity analysis explaining how the company's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement.[11] In such cases, the Exchange also proposes to provide the issuer with the opportunity to provide any necessary additional disclosures that are dependent on the price of the offering so that any such disclosures would be available to investors prior to the completion of the offering. Thus, the Exchange proposes that a Direct Listing Auction for a Primary Direct Floor Listing would not take place until the issuer confirms to the Exchange that no additional disclosures are required under federal securities laws based on the Auction Price determined by the DMM.

The Exchange believes that the additional requirements to permit a Direct Listing Auction to take place at an Auction Price that is outside of the Issuer Price Range (whether it is at or within the Primary Direct Floor Listing Auction Price Range or above the highest price of such price range), as proposed, would provide sufficient disclosures to allow investors to evaluate whether to participate in the Direct Listing Auction for a Primary Direct Floor Listing, including the opportunity to see how changes in share price may impact the company's disclosures.

The Exchange believes that its proposal with respect to the Price Range Limitation for a Primary Direct Floor Listing is consistent with SEC Rule 430A and question 227.03 of the SEC Staff's Compliance and Disclosure Interpretations, which generally allow a company to price a public offering 20% outside of the disclosed price range without regard to the materiality of the changes to the disclosure contained in the company's registration statement.[12] The Exchange believes such guidance would also allow for deviation of greater than 20% above the highest price of the price range in a company's registration, provided that such change would not materially change the previous

[8] *See* Approval Order, 85 FR at 85816–17 (footnote omitted).

[9] *See, e.g.,* Approval Order, 85 FR at 85816, n. 113.

[10] Securities Act Rule 457 permits issuers to register securities either by specifying the quantity of shares registered, pursuant to Rule 457(a), or the proposed maximum aggregate offering amount. The Exchange proposes to require that companies selling shares through a Primary Direct Floor Listing will register securities by specifying the quantity of shares registered and not a maximum offering amount.

[11] Sensitivity analysis disclosure may include, but is not limited to, use of proceeds; balance sheet and capitalization; and the company's liquidity position after the offering. A company could state, for example: ''We will apply the net proceeds from this offering first to repay all borrowings under our credit facility and then, to the extent of any proceeds remaining, to general corporate purposes.''

[12] *See* Compliance & Disclosure Interpretation of Securities Act Rules #227.03 at *https://www.sec.gov/corpfin/securities-act-rules.*

disclosure. Accordingly, the Exchange believes that a company listing in connection with a Primary Direct Floor Listing could specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, if an auction prices outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% threshold noted in Rule 430A if such deviation would not materially change the previous disclosures, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.

Given that, as proposed, there may be a Primary Direct Floor Listing that could price outside of the price range of the company's effective registration statement and that there may be no upper limit above which the Direct Listing Auction could not proceed, the Exchange proposes to support price discovery transparency by providing readily available, real time pricing information to investors. Specifically, the DMM's pre-opening indications for a security to be opened in a Direct Listing Auction for a Primary Direct Floor Listing would continue to be published via the securities information processor (''SIP'') and proprietary data feeds. The Exchange would also make the Indication Reference Price available, free of charge, on a public website (such as *www.nyse.com*) on the day such Auction is anticipated to take place.

In addition, to protect investors and enhance disclosure in connection with a Primary Direct Floor Listing, the Exchange proposes to adopt certain requirements for member organizations with respect to Primary Direct Floor Listings. Specifically, the Exchange proposes to require member organizations to provide to a customer, before that customer places an order to participate in the Direct Listing Auction for a Primary Direct Floor Listing, a notice describing the mechanics of pricing a security subject to a Direct Listing Auction for a Primary Direct Floor Listing, including information regarding the availability of pre-opening indications via the SIP and proprietary data feeds and the location of the public website where the Exchange will disseminate information relating to the Indication Reference Price.

The Exchange further proposes to distribute, at least one business day prior to the commencement of trading of a security listing in connection with a Primary Direct Floor Listing, a regulatory bulletin that describes any special characteristics of the offering and the Exchange rules that apply to the pricing of a Primary Direct Floor Listing. The regulatory bulletin would also include information about the notice that member organizations would be required to provide customers, as proposed, and remind member organizations of their obligations pursuant to the Exchange rules that:

- Require member organizations to use reasonable diligence in regard to the opening and maintenance of every account, to know (and retain) the essential facts concerning every customer and concerning the authority of each person acting on behalf of such customer (Rule 2090); and
- Require member organizations in recommending transactions for a security subject to a Direct Listing Auction for a Primary Direct Floor Listing to have a reasonable basis to believe that: (i) The recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member organizations, and (ii) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in such security (Rule 2111).

These member organization requirements are intended to remind members of their obligations to ''know their customers'' and would also serve to increase transparency regarding the pricing mechanisms applicable to a Primary Direct Floor Listing and help provide investors with sufficient price discovery information.

For each Primary Direct Floor Listing, the Exchange proposes that its regulatory bulletin would also inform market participants that the Auction Price could be up to 20% below the lowest price of the price range in the company's effective registration statement and specify what that price is. The Exchange's regulatory bulletin would also indicate whether there is a price range outside of which the Direct Listing Auction for the Primary Direct Floor Listing could not proceed, based on the company's certification as described above.

Amendments to the Manual

Section 102.01B(E) of the Manual provides that companies may be listed on the Exchange through a Primary Direct Floor Listing. More specifically, a company that has not previously had its common equity securities registered under the Act may list its common equity securities on the Exchange at the time of effectiveness of a registration statement pursuant to which the company itself will sell shares in the opening auction on the first day of trading on the Exchange. A Primary Direct Listing is any such listing in which either (i) only the company itself is selling shares in the opening auction on the first day of trading or (ii) the company is selling shares and selling shareholders may also sell shares in such opening auction.

Section 102.01B(E) of the Manual also provides that, with respect to a Primary Direct Floor Listing, the Exchange will deem a company to have met the applicable aggregate market value of publicly-held shares requirement if the company will sell at least $100,000,000 in market value of shares in the Exchange's opening auction on the first day of trading on the Exchange. The Manual further provides that, where a company is conducting a Primary Direct Floor Listing and will sell shares in the opening auction with a market value of less than $100,000,000, the Exchange will determine that such company has met its market-value of publicly-held shares requirement if the aggregate market value of the shares the company will sell in the opening auction on the first day of trading and the shares that are publicly held immediately prior to the listing is at least $250,000,000 with such market value calculated using a price per share equal to the lowest price of the price range established by the issuer in its registration statement.

To effect the changes to the Price Range Limitation described above and facilitate the possibility of a Direct Listing Auction for a Primary Direct Floor Listing pricing up to 20% below the price range disclosed in an issuer's effective registration statement, the Exchange proposes to modify Section 102.01B(E) of the Manual to provide that the Exchange would calculate the market value of such company's shares using a price per share equal to the lowest price of the price range established by the issuer in its registration statement, minus an amount equal to 20% of the highest price included in such price range, which will be referred to as the ''Primary Direct Floor Listing Minimum Price.'' As noted above, the Exchange proposes that a company listing its securities on the Exchange pursuant to a Primary Direct Floor Listing must have specified the quantity of shares registered, as permitted by Securities Act Rule 457, in its effective registration statement. Accordingly, the Exchange further

proposes to amend Section 102.01B(E) to include this requirement.

Amendments To Exchange Rules

To implement the changes to the Price Range Limitation described above, the Exchange also proposes the following changes to Rules 7.31 and 7.35A.

Proposed Changes to Rule 7.31

The Exchange proposes to modify Rule 7.31(c)(1)(D), which defines the IDO Order. Rule 7.31(c)(1)(D) currently provides that an IDO Order is a Limit Order to sell that is to be traded only in a Direct Listing Auction for a Primary Direct Floor Listing, and Rule 7.31(c)(1)(D)(ii) currently provides that the limit price of an IDO Order must be equal to the lowest price of the price range established by the issuer in its effective registration statement. The Exchange proposes to modify Rule 7.31(c)(1)(D)(ii) to provide that the limit price of an IDO Order would be equal to the lowest price of the ''Primary Direct Floor Listing Auction Price Range'' and to redefine the ''Primary Direct Floor Listing Auction Price Range'' as 20% below the lowest price and 20% above the highest price of the price range established by the issuer in its effective registration statement. The Exchange also proposes to define ''Issuer Price Range'' as the price range established by the issuer in its effective registration statement. Thus, Rule 7.31(c)(1)(D)(ii), as modified, would facilitate the proposed changes to the Price Range Limitation by providing that the limit price of an IDO Order would be equal to the price that is 20% below the lowest price of the Issuer Price Range.

The Exchange further proposes to specify in Rule 7.31(c)(D)(ii) that, for purposes of determining the Primary Direct Floor Listing Price Range, the 20% threshold would be calculated based on the maximum offering price set forth in the registration fee table, consistent with the Instruction to paragraph (a) of Securities Act Rule 430A.

Proposed Changes to Rule 7.35A

Rule 7.35A sets forth rules pertaining to Core Open Auctions and Trading Halt Auctions facilitated by a DMM. Rule 7.35A(d) sets forth Exchange rules relating to pre-opening indications published by a DMM in connection with a DMM-facilitated auction. This Rule currently provides that a pre-opening indication will include the security and the price range within which the Auction Price is anticipated to occur and that a pre-opening indication—including for a Direct Listing Auction for a Primary Direct Floor Listing—will be published via the securities information processor and proprietary data feeds.

Rule 7.35A(d)(2)(A) and the subparagraphs thereunder describe the Indication Reference Price for a security to be opened in a DMM-facilitated auction. The Exchange proposes to amend Rule 7.35A(d)(2)(A)(v), which currently provides that, for a security that is a Primary Direct Floor Listing, the Indication Reference Price will be the lowest price of the Primary Direct Floor Listing Auction Price Range. To effect the proposed requirement described above that the Exchange disseminate the Indication Reference Price on a public website, the Exchange proposes to add this requirement to Rule 7.35A(d)(2)(A)(v). The Exchange also notes that, based on the proposed revision to the definition of Primary Direct Floor Listing Auction Price Range in Rule 7.31(c)(1)(D)(ii), the Indication Reference Price for a Primary Direct Floor Listing would be the price that is 20% below the lowest price of the Issuer Price Range, consistent with the proposed changes to the Price Range Limitation described above.

Next, the Exchange proposes to modify Rule 7.35A(g)(2), which specifies the circumstances under which a DMM may not conduct a Direct Listing Auction for a Primary Direct Floor Listing. Structurally, the Exchange proposes to amend Rule 7.35A(g)(2) such that the rule would specify requirements for a Direct Listing Auction for a Primary Direct Floor Listing to proceed, rather than specifying circumstances under which a DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing.

Rule 7.35A(g)(2)(A) currently provides that the DMM will not conduct a Direct Listing Auction for a Primary Direct Floor Listing if the Auction Price would be below the lowest price or above the highest price of the Primary Direct Floor Listing Auction Price Range. The Exchange proposes to modify this rule to specify that the Auction Price for a Direct Listing Auction for a Primary Direct Floor Listing may not be lower than the lowest price of the Primary Direct Floor Listing Auction Price Range. The Exchange notes that, based on the proposed revision to the definition of Primary Direct Floor Listing Auction Price Range in Rule 7.31(c)(1)(D)(ii), Rule 7.35A(g)(2)(A) would thus provide that the Auction Price for a Direct Listing Auction for a Primary Direct Listing would not be more than 20% below the lowest price of the Issuer Price Range, consistent with the proposed changes to the Price Range Limitation outlined above.

To effect the proposed changes described above that would permit the DMM to conduct a Direct Listing Auction for a Primary Direct Floor Listing when the Auction Price is either (i) at or within the Primary Direct Floor Listing Price Range but outside of the Issuer Price Range, or (ii) above the highest price of the Primary Direct Floor Listing Auction Price Range, the Exchange proposes to amend Rule 7.35A(g)(2)(B) to provide that the Direct Listing Auction could proceed in such circumstances if the issuer has previously certified to the Exchange and publicly disclosed that:

- The issuer does not expect that the Auction Price would materially change its previous disclosure in its effective registration statement (proposed Rule 7.35A(g)(2)(B)(i)(a));
- The price range in the preliminary prospectus included in the effective registration statement is a bona fide price range in accordance with Item 501(b)(3) of Regulation S–K (proposed Rule 7.35A(g)(2)(B)(i)(b)); and
- The registration statement contains a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the offering differ from the amount assumed in the price range established by the issuer in its effective registration statement (proposed Rule 7.35A(g)(2)(B)(i)(c)).

Proposed Rule 7.35A(g)(2)(B)(ii) would further provide that, when the Auction Price determined by the DMM is at or within the Primary Direct Floor Listing Auction Price Range but outside of the Issuer Price Range or is above the highest price of the Primary Direct Floor Listing Auction Price Range, the issuer would be required to confirm to the Exchange that no additional disclosures are required under the federal securities laws based on such price. This proposed change would permit issuers to comply with their disclosure obligations under federal securities laws and provide investors with access to the requisite disclosures before the offering would proceed, as detailed above. Upon receiving confirmation from the issuer that any such obligations have been met, the Exchange would relay that information to the DMM to proceed with the Direct Listing Auction.

Finally, the Exchange proposes to add new subparagraph (C) under Rule 7.35A(g)(2). Proposed Rule 7.35A(g)(2)(C)(i) would reflect the requirement set forth in current Rule 7.35A(g)(2)(B) that the DMM may not conduct a Direct Listing Auction for a Primary Direct Floor Listing if there is

insufficient buy interest to satisfy both the IDO Order and all better-priced sell orders in full. The Exchange does not propose to change this requirement, other than adding clarifying text to specify that such orders would be satisfied at the Auction Price.

Proposed Rule 7.35A(g)(2)(C)(ii) would set forth an additional requirement that must be satisfied before the DMM could conduct a Direct Listing Auction for a Primary Direct Floor Listing. This proposed change would reflect the proposed requirements described above regarding the regulatory bulletin to be distributed by the Exchange. Proposed Rule 7.35A(g)(2)(C)(ii) would provide that the DMM would not proceed with a Direct Listing Auction for a Primary Direct Floor Listing until it has been notified by the Exchange that the additional conditions set forth in new Commentary .20 to Rule 7.35A have been satisfied. Proposed Commentary .20 to Rule 7.35A would provide that the Direct Listing Auction for a Primary Direct Floor Listing for a security may not be conducted until the Exchange has notified the DMM that, at least one business day prior to the commencement of trading in such security, the Exchange has distributed a regulatory bulletin describing any special characteristics of the offering and the Exchange rules that apply to the pricing of the Primary Direct Floor Listing; the obligations of member organizations pursuant to Exchange Rules 2090 and 2111; and the requirement that a member organization provide its customers with a notice with information regarding the Direct Listing Auction for a Primary Direct Floor Listing. This proposed change would (i) facilitate the requirements described above to provide member organizations with sufficient information so that they may in turn inform their customers, (ii) remind member organizations of their obligations to ''know their customers,'' (iii) increase transparency around the pricing mechanisms of a Primary Direct Floor Listing, and (iv) help provide investors with sufficient price discovery information.

Proposed Rule 7.35A(g)(2)(C)(iii) would provide that the DMM would not conduct a Direct Listing Auction for a Primary Direct Floor Listing if the Auction Price is outside of the Issuer Price Range and the issuer has not satisfied the conditions set forth in proposed Rules 7.35A(g)(2)(B)(i) and (ii). The Exchange proposes this rule to reinforce that a Direct Listing Auction for a Primary Direct Floor Listing could not proceed in these circumstances unless the issuer has made the requisite disclosures described in proposed Rule 7.35A(g)(2)(B).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Exchange Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act,[14] in particular, in that it is designed 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed modification of the Price Range Limitation would 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 proposed approach is similar to the pricing of an IPO, where the issuer is permitted to price outside of the price range disclosed in its effective registration statement in accordance with the SEC Staff's guidance, as described above.[15] Specifically, the Exchange believes that it is reasonable to permit the Direct Listing Auction for a Primary Direct Floor Listing to proceed if the Auction Price is at or within the Primary Direct Floor Listing Auction Price Range—that is, as low as 20% below the lowest price of the Issuer Price Range or as high as 20% above the highest price of such price range—because a company listing in connection with a Primary Direct Floor Listing could specify the quantity of shares registered, as permitted by Securities Act Rule 457, and, when the Auction Price is outside of the disclosed price range, use a Rule 424(b) prospectus, rather than a post-effective amendment, when either (i) the 20% threshold noted in Rule 430A is not exceeded, regardless of the materiality or non-materiality of resulting changes to the registration statement disclosure that would be contained in the Rule 424(b) prospectus, or (ii) there is a deviation above the price range beyond the 20% noted in Rule 430A if such deviation would not materially change the previous disclosure, in each case assuming the number of shares issued is not increased from the number of shares disclosed in the prospectus.

In addition, in the event that the Auction Price is within the Primary Direct Floor Listing Auction Price Range but outside of the Issuer Price Range or is higher than the highest price of the Primary Direct Floor Listing Auction Price Range (*i.e.,* above the price that is 20% above the highest price of the Issuer Price Range), the Exchange proposes that the Direct Listing Auction for a Primary Direct Floor Listing could still proceed, but would not be conducted until the issuer has met disclosure requirements that would help provide investors with additional information regarding the offering, including a requirement that the issuer's effective registration statement contain a sensitivity analysis explaining how the issuer's plans would change if the actual proceeds from the Primary Direct Floor Listing are lower or higher than the amount assumed by the price range set forth in the registration statement. The Exchange also proposes to require that an issuer must have confirmed to the Exchange that no additional disclosures are required under the federal securities laws based on the Auction Price determined. The issuer would thus have the opportunity to provide any necessary additional disclosures that are dependent on the price of the offering prior to the completion of the offering. Accordingly, the Exchange believes that this proposed change is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market because it would allow an offering to proceed under certain circumstances when the Auction Price is outside of the Issuer Price Range—including where investor interest is greater than the company and its advisors anticipated (thereby promoting capital formation)—while protecting investors by requiring that a company listing shares through a Primary Direct Floor Listing make applicable disclosures under the federal securities laws.

The Exchange also believes that the proposed change is designed to promote investor protection because the Exchange would support price discovery transparency by providing readily available, real time pricing information to investors by

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Compliance & Disclosure Interpretation of Securities Act Rules #227.03, *supra* note 12. The Exchange also notes that, in a recent speech, SEC Chair Gary Gensler emphasized that an overarching principle of regulation is that like activities ought to be treated alike. *See https://www.sec.gov/news/speech/gensler-healthy-markets-association conference-120921* (''Gensler Speech'').

disseminating pre-opening indications via the SIP and proprietary data feeds and publishing the Indication Reference Price on a public website on the day on which the Direct Listing Auction for a Primary Direct Floor Listing is anticipated to take place. Market participants would thus have ready access to up-to-date pricing information leading up to a Direct Listing Auction for a Primary Direct Floor Listing.

In particular, the Exchange believes that making pre-opening indications readily available to market participants would provide price transparency to the market in connection with Primary Direct Floor Listings. Pre-opening indications, which are based on the DMM's assessment of interest eligible to participate in the Direct Listing Auction for a Primary Direct Floor Listing, would provide notice of when price volatility has subsided and price equilibrium has been met with respect to the orders that wish to participate in such Auction. In addition, Exchange rules establishing pre-opening indication procedures already include requirements such as that set forth in Rule 7.35A(d)(4)(D), which provides that the DMM must wait for certain minimum specified periods after publishing a pre-opening indication and before opening a security. As the table below shows, the DMMs in the Selling Shareholder Direct Floor Listings that took place in 2020 and 2021 indicated very tight and reliable anticipated opening price ranges irrespective of the amount of time between the last indication and opening auction:

| Date of direct listing auction | Symbol | Last pre-opening indication | Auction price | Time elapsed between last pre-opening indication and auction open |
|---|---|---|---|---|
| 9/30/2020 | PLTR | 9.95–10.05 | 10 | 10 minutes, 19 seconds. |
| 9/30/2020 | ASAN | 26.75–27 | 27 | 2 minutes, 24 seconds. |
| 3/10/2021 | RBLX | 64.25–64.75 | 64.5 | 3 minutes, 2 seconds. |
| 5/19/2021 | SQSP | 47.5–48 | 48 | 2 minutes, 31 seconds. |
| 5/26/2021 | ZIP | 19.75–20.25 | 20 | 16 minutes, 29 seconds. |
| 9/29/2021 | WRBY | 54–54.5 | 54.05 | 12 minutes, 31 seconds. |

The Exchange thus believes that its existing pre-opening indication process provides significant investor protection measures based on the judgment applied by the DMM in refining the anticipated price range of a security to be opened in a Direct Listing Auction as appropriate and in determining that the price has reached stability, such that the Direct Listing Auction should proceed.[16]

The Exchange believes that its proposal to issue a regulatory bulletin as outlined above would promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and promote investor protection because it would provide member organizations with the necessary information to share with their customers regarding the Primary Direct Floor Listing. Specifically, the proposed regulatory bulletin would be distributed at least one business day prior to the commencement of trading in a security to be listed in connection with a Direct Listing Auction for a Primary Direct Floor Listing and would describe any special characteristics of the offering, as well as the Exchange Rules that apply to the pricing of a Direct Listing Auction for a Primary Direct Floor Listing. The regulatory bulletin would inform prospective participants in the Direct Listing Auction that the Auction Price could be up to 20% below the lowest price of the Issuer Price Range (and specify what that price is) and indicate whether there is a price range outside of which the Direct Listing Auction for a Primary Direct Floor Listing could not proceed based on the company's certification as described above. The Exchange also believes that the regulatory bulletin would further the protection of investors by reminding member organizations of their obligations pursuant to Exchange Rules 2090 and 2111 to ''know their customers,'' providing member organizations and their customers with information regarding the pricing mechanism of a Direct Listing Auction for a Primary Direct Floor Listing, and helping investors receive sufficient price discovery information.

The Staff of the Commission in a Compliance and Disclosure Interpretation has indicated that pricing up to 20% below the lowest price and at a price above the highest price of the price range set forth in the company's effective registration statement is appropriate for a company conducting an IPO, notwithstanding that the price would be outside of the range stated in the company's effective registration. The Exchange believes that investors have become familiar with this approach at least since the Staff last revised Compliance and Disclosure Interpretation 227.03 in January 2009.[17] Accordingly, the Exchange believes that allowing Direct Listing Auctions in connection with a Primary Direct Floor Listing to similarly price up to 20% below the lowest price and at a price above the highest price of the price range in the company's effective registration statement would be consistent with both Chair Gensler's recent call to treat ''like cases alike'' [18] and the protection of investors.

The Exchange also believes that the proposed changes to the Manual are consistent with the protection of investors. Specifically, the proposed change to Section 102.01B(E) to specify that a company offering securities for sale in connection with a Primary Direct Floor Listing must register securities by specifying the quantity of shares registered, as permitted by Securities Act Rule 457(a), would promote investor protection because it would provide certainty regarding the number of shares available in connection with the Primary Direct Floor Listing, even if the Auction Price of such shares may be outside of the price range specified in the issuer's effective registration statement. The Exchange also believes that the proposed change to Section

[16] The Exchange believes that it would be appropriate to permit Market Orders and MOO Orders (as defined in Rules 7.31(a)(1) and 7.31(c)(1)(B)) to participate in a Direct Listing Auction for a Primary Direct Floor Listing, given the safeguards provided by the pre-opening indication process. Although Market Orders and MOO Orders are unpriced orders, the Exchange believes that Market Orders and MOO Orders that participate in a Direct Listing Auction for a Primary Direct Listing would not be subject to extreme price volatility due to the DMM's role in refining pre-opening indications and determining the Auction Price, as well as the DMM's obligation under Rule 7.35A(g) to fill all better-priced interest. Moreover, investors submitting Market Orders and MOO Orders would have the benefit of readily available, real time pricing information to inform their decision to participate in the Auction. The Exchange also notes that data from IPOs (which are not subject to the Price Range Limitation) that took place in the last six calendar months indicates that MOOs made up a significant portion of opening auction volume and thus believes that allowing MOOs to participate in a Direct Listing Auction for a Primary Direct Floor Listing could encourage investor participation.

[17] *See* Compliance & Disclosure Interpretation of Securities Act Rules #227.03, *supra* note 12.

[18] *See* Gensler Speech, *supra* note 15.

102.01B(E) to reflect that the market value calculation of a company's shares would be based on a price per share equal to the lowest price of the price range established by the issuer in its registration statement, less an amount equal to 20% of the highest price included in such price range, is consistent with the protection of investors because it would not modify any other applicable listing requirements and would update the Manual to align with the proposed changes to the Price Range Limitation described herein.

Finally, the Exchange believes that its proposed changes with respect to the Price Range Limitation would remove impediments to and perfect the mechanism of a free and open market and a national market system because they would not change the existing process for a DMM-facilitated Direct Listing Auction for a Primary Direct Floor Listing, but would eliminate a potential impediment to companies considering a Primary Direct Floor Listing, thereby encouraging capital formation. In addition, the proposed changes are designed to protect investors and the public interest because they would provide an expanded opportunity for a Primary Direct Floor Listing to proceed so that the issuer's securities can be listed and begin trading on the secondary market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Rather, the proposed change would increase competition by continuing to facilitate new pathways for companies to access the public markets.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–14 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*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 such 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–NYSE–2022–14, and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08281 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

[19] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 11716]**

## Biennial Review Under the United States-Singapore Memorandum of Intent on Environmental Cooperation

**ACTION:** Notice of a biennial review under the Memorandum of Intent between the United States of America and the Republic of Singapore on Cooperation in Environmental Matters, and request for comments.

**SUMMARY:** The U.S. Department of State is providing notice that the United States and Singapore intend to hold a biennial review under the Memorandum of Intent between the United States of America and the Republic of Singapore on Cooperation in Environmental Matters (MOI) on April 21, 2022. The purpose of the meeting is to review the results of environmental cooperation under the MOI guided by the 2020–2021 Plan of Action (POA). The United States and Singapore also expect to approve a new 2022–2023 POA. The meeting's public session will be held on April 21, 2022, at 9:15 p.m. via teleconference. The U.S. Department of State invites interested organizations and members of the public to attend the virtual public session, and to submit in advance written comments or suggestions regarding implementation of the POA, and any issues that should be discussed at the meeting. If you would like to attend the virtual public session, please notify Brian Bedell at the email address listed below under the heading **ADDRESSES**. Specific sign-in instructions will be provided several days in advance of the virtual public session to those who request to attend. Please include your full name and any organization or group you represent. In preparing comments, submitters are encouraged to refer to:

- 2020–2021 POA, *https://2017-2021.state.gov/remarks-and-releases-bureau-of-oceans-and-international-environmental-and-scientific-affairs/2020-2021-plan-of-action-for-environmental-cooperation-under-the-united-states-singapore-memorandum-of-intent-on-environmental-cooperation/index.html.*

• U.S.-Singapore MOI, *https://2001-2009.state.gov/g/oes/rls/or/22193.htm.*

**DATES:** The virtual public session of the Biennial Review will be held by teleconference on April 21, 2022, from 9:15 p.m. to 10:00 p.m. We request comments and suggestions in writing no later than April 19, 2022.

**ADDRESSES:** Requests for sign-in instructions to attend the virtual public session, as well as any comments or questions, should be submitted to: Brian Bedell, Office of Environmental Quality, U.S. Department of State, by electronic mail to *BedellBT@state.gov* with the subject line ''United States-Singapore Biennial Review.''

**FOR FURTHER INFORMATION CONTACT:** Brian Bedell, by telephone; (202) 647–1126, electronic mail; *BedellBT@state.gov.*

**SUPPLEMENTARY INFORMATION:** The MOI was signed on June 13, 2003. Section 3 of the MOI calls for biennial meetings to review the status of environmental cooperation and update the POA, as appropriate. The 2022–2023 POA will be the eighth between the United States and Singapore under the MOI.

**Kevin E. Bryant,**

*Deputy Director, Office of Directives Management, Department of State.*

[FR Doc. 2022–08290 Filed 4–18–22; 8:45 am]

**BILLING CODE 4710–09–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2022–0006]**

### Renewal Package From the State of Utah to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed MOU and request for comments.

**SUMMARY:** This notice announces that FHWA has received and reviewed a renewal package from the Utah Department of Transportation (UDOT) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA determined the renewal package to be complete and developed a draft renewal MOU with UDOT outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on UDOT's request, including its renewal package and the proposed renewal MOU, which includes the proposed assignments and assumptions of environmental review, consultation and other activities.

**DATES:** Please submit comments by May 19, 2022.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.

• *Facsimile (Fax)*: 1–202–493–2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Ed Woolford by email at: *Edward.Woolford@dot.gov* or by telephone at (801) 955–3524. The FHWA Utah Division Office's normal business hours are 7:30 a.m. to 4:30 p.m. (Mountain Time), Monday–Friday, except for Federal holidays. For the State of Utah: Brandon Weston by email at: *brandonweston@utah.gov* or by telephone at (801) 965–4603. State business hours are 8 a.m. to 5 p.m., Monday–Friday, except for State holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this notice may be downloaded from the **Federal Register**'s home page at *www.archives.gov.* An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT docket, as described above, at *www.regulations.gov/.*

#### Background

Section 327 of Title 23, United States Code (U.S.C.), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 *et seq.*) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The UDOT entered the Program on January 17, 2017, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the Program (the original 23 CFR part 773).

On November 16, 2016, FHWA published a notice of UDOT's draft MOU in the **Federal Register** to solicit the view of the public and Federal agencies on FHWA's preliminary decision to approve the application. Following the comment period, FHWA and UDOT considered comments and proceeded to execute the MOU (2017 MOU). Effective January 17, 2017, UDOT assumed FHWA's responsibilities under NEPA, and the responsibilities for reviews under other Federal environmental requirements.

On July 21, 2021, after coordination with FHWA, UDOT submitted a renewal package in accordance with the renewal regulations in 23 CFR 773.115. On November 18, 2021, UDOT requested an extension to the 2017 MOU in order to allow further discussion between the parties on the new language for the renewal MOU. In a letter dated December 8, 2021, FHWA granted an extension of the MOU until April 29, 2022. Under the proposed renewal MOU, FHWA would assign to the State, through UDOT, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or environmental impact statement projects, both on the State highway system (SHS) and Local Agency Program (LAP) projects off the SHS that are funded by FHWA or require FHWA approvals.

2. All Class II, or categorically excluded projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals, and that do not qualify for assignment of responsibilities pursuant to the MOU for environmental reviews and

decisions for actions qualifying for CEs pursuant to the 23 U.S.C. 326 program.

3. All Class III, or environmental assessment projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.

4. Projects funded by other Federal agencies, or projects without any Federal funding, of any Class that also include funding by FHWA or require FHWA approvals and meet the definition of a highway project found at 23 CFR 773.103. For these projects, UDOT would not assume the NEPA responsibilities of other Federal agencies. However, UDOT may use or adopt other Federal agencies' NEPA analyses consistent with 40 CFR 1500–1508, and DOT and FHWA regulations, policies, and guidance.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202 and 203; highway projects under 23 U.S.C. 204, unless the project will be designed and constructed by UDOT; projects that cross State boundaries; projects that cross or are adjacent to international boundaries; and any projects that may be designed and constructed by FHWA under a 23 U.S.C. 308 agreement between the FHWA Central Federal Lands Highway Division and UDOT.

The assignment also would give UDOT the responsibility to conduct the following environmental review, consultation, and other related activities:

*Air Quality*

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any project level conformity determinations (42 U.S.C. 7506).

*Noise*

- Noise Control Act of 1972, 42 U.S.C. 4901–4918
- Compliance with the noise regulations in 23 CFR part 772

*Wildlife*

- Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d

*Hazardous Materials Management*

- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act, 42 U.S.C. 9671–9675
- Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k

*Historic and Cultural Resources*

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101, *et seq.*
- Archeological and Historic Preservation Act of 1966, as amended 16 U.S.C. 470aa–479mm
- Title 54, Chapter 3125, Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001–3013; 18 U.S.C. 1170

*Social and Economic Impacts*

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201–4209

*Water Resources and Wetlands*

- Clean Water Act, 33 U.S.C. 1251–1387 (Sections 401, 402 404, 408, and Section 319)
- Safe Drinking Water Act, 42 U.S.C. 300f–300j–26
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)(14)
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130
- General Bridge Act of 1946, 33 U.S.C. 525–533
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777

*Parklands*

- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774
- Land and Water Conservation Fund Act, 54 U.S.C. 200302–200310

*FHWA-Specific*

- Planning and Environment Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

*Executive Orders (E.O.) Relating to Highway Projects*

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species, as amended by E.O. 13751, Safeguarding the Nation from the Impacts of Invasive Species.
- E.O. 13985—Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- E.O. 13990—Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
- E.O. 14008—Tackling the Climate Crisis at Home and Abroad
- Other E.O.'s not listed, but related to highway projects.

The proposed renewal MOU would allow UDOT to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and E.O.s. The UDOT will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. The UDOT also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. The UDOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects UDOT's desire to continue its participation in the Program. The FHWA and UDOT have agreed to modify some of the provisions in the MOU to, among other things: Clarify the categories of projects for which UDOT is assigned responsibility, designate a Senior Agency Official at UDOT consistent with 40 CFR 1508.1(dd); remove projects for which FHWA retained responsibilities for environmental review following a NEPA decision; remove auditing requirements; revise monitoring requirements; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation,

where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on UDOT's website at *https://www.udot.utah.gov/connect/about-us/program-development-group/environmental-division/*.

The FHWA Utah Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 773; 40 CFR 1507.3, 1508.4.

**Stephanie Pollack,**

*Deputy Administrator, Federal Highway Administration.*

[FR Doc. 2022–08291 Filed 4–18–22; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2022–0005]**

### Renewal Package From the State of Florida to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed MOU and request for comments.

**SUMMARY:** This notice announces that FHWA has received and reviewed a renewal package from the Florida Department of Transportation (FDOT) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA determined the renewal package to be complete and developed a draft renewal MOU with FDOT outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on FDOT's request, including its renewal package and the proposed renewal MOU, which includes the proposed assignments and assumptions of environmental review, consultation and other activities.

**DATES:** Please submit comments by May 19, 2022.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.
- *Facsimile (Fax):* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Karen Brunelle by email at: *Karen.Brunelle@dot.gov* or by telephone at (850) 553–2218. The FHWA Florida Division Office's normal business hours are 8 a.m. to 4:30 p.m. e.t., Monday–Friday, except for Federal holidays. For the State of Florida: Jennifer Marshall, P.E. by email at: *Jennifer.Marshall@dot.state.fl.us* or by telephone at (863) 519–2239. State business hours are the same as above although State holidays may not completely coincide with Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this notice may be downloaded from the **Federal Register**'s home page at *www.archives.gov.* An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT docket, as described above, at *www.regulations.gov/.*

**Background**

Section 327 of Title 23, United States Code (U.S.C.), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 *et seq.*) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The FDOT entered the Program on December 14, 2016, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the Program (the original 23 CFR part 773).

On April 15, 2016, prior to submittal of its application to FHWA, FDOT published in the *Florida Administrative Register* and solicited public comment on its draft application to participate in the Program. After considering and addressing public comments, FDOT submitted its application to FHWA on May 31, 2016. The application served as the basis for developing the MOU identifying the responsibilities and obligations FDOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on November 1, 2016, soliciting the views of the public and Federal agencies on FHWA's preliminary decision to approve the application. Following the comment period, FHWA and FDOT considered comments and proceeded to execute the MOU (2016 MOU). Effective December 14, 2016, FDOT assumed FHWA's responsibilities under NEPA, and the responsibilities for reviews under other Federal environmental requirements.

On May 12, 2021, after coordination with FHWA, FDOT submitted a renewal package in accordance with the renewal regulations in 23 CFR 773.115. On October 20, 2021, FDOT sent a letter requesting an extension to the 2016 MOU in order to allow further discussion on additional language in the renewal MOU. In a letter dated

December 8, 2021, FHWA granted an extension of the MOU until April 29, 2022. Under the proposed renewal MOU, FHWA would assign to the State, through FDOT, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or environmental impact statement (EIS) projects, both on the State highway system (SHS) and Local Agency Program (LAP) projects off the SHS that are funded by FHWA or require FHWA approvals. The Class I projects under the proposed renewal MOU include two projects excluded from assignment under the 2016 MOU. Since that time, Records of Decision have been issued, and statutes of limitation for initiation of legal proceedings have passed, for both these projects. Therefore, responsibility and liability for any future environmental review are assigned to FDOT.

2. All Class II, or categorically excluded projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.

3. All Class III, or environmental assessment projects, both on the SHS and LAP projects off the SHS that are funded by FHWA or require FHWA approvals.

4. Projects funded by other Federal agencies, or projects without any Federal funding, of any Class that also include funding by FHWA or require FHWA approvals and meet the definition of a highway project found at 23 CFR 773.103. For these projects, FDOT would not assume the NEPA responsibilities of other Federal agencies. However, FDOT may use or adopt other Federal agencies' NEPA analyses or documents consistent with 40 CFR 1500–1508, current law, and DOT and FHWA regulations, policies, and guidance.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202 and 203; highway projects under 23 U.S.C. 204, unless the project will be designed and constructed by FDOT; projects that cross State boundaries; projects that cross or are adjacent to international boundaries; any projects that may be designed and constructed by FHWA under a 23 U.S.C. 308 agreement between the FHWA Eastern Federal Lands Highway Division and FDOT; projects under the Recreational Trails Program at 23 U.S.C. 206; and any projects advanced by direct recipients of Federal-aid highway funds other than FDOT except when pursuant to a LAP Agreement between FDOT and the direct recipient.

The assignment also would give FDOT the responsibility to conduct the following environmental review, consultation, and other related activities:

*Air Quality*

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any project level conformity determinations (42 U.S.C. 7506)

*Noise*

- Noise Control Act of 1972, 42 U.S.C. 4901–4918
- Compliance with the noise regulations in 23 CFR 772
- Airport Noise and Capacity Act of 1990, 49 U.S.C. 47521–47534

*Wildlife*

- Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 180l–1891d *et seq.,* with Essential Fish Habitat requirements at 16 U.S.C. 1855(b)(2)

*Hazardous Materials Management*

- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act, 42 U.S.C. 9671–9675
- Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k

*Historic and Cultural Resources*

- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101 *et seq.*
- 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR part 774
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa-470mm
- Title 54, Chapter 31, Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001–30131; 18 U.S.C. 1170

*Social and Economic Impacts*

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201–4209

*Water Resources and Wetlands*

- Clean Water Act, 33 U.S.C. 1251–1387 (Sections 319, 401, and 404)
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Safe Drinking Water Act, 42 U.S.C. 300f–300j–26
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777

*Parklands*

- Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- Land and Water Conservation Fund Act, 54 U.S.C. 200302–200310

*FHWA-Specific*

- Environmental Impact and Related Procedures, 23 CFR part 771
- Planning and Environment Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Efficient Project Reviews for Environmental Decision Making 23 U.S.C. 139
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

*Executive Orders (E.O.) Relating to Highway Projects*

- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- E.O. 11990, Protection of Wetlands
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species.
- E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
- E.O. 14008, Tackling the Climate Crisis at Home and Abroad
- Other E.O.'s not listed, but related to highway projects.

The proposed renewal MOU would allow FDOT to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and E.O.'s. The FDOT will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. The FDOT also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. The FDOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects FDOT's desire to continue its participation in the Program. The FHWA and FDOT have agreed to modify some of the provisions in the MOU to, among other things: Clarify the categories of projects for which FDOT is assigned responsibility, including two Class I projects previously excluded from assignment under the 2016 MOU; exclude certain highway projects from assignment, including projects under the Recreational Trails Program and certain direct recipient projects; designate a Senior Agency Official at FDOT consistent with 40 CFR 1508.1(dd); remove auditing requirements; revise monitoring requirements; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation, where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on FDOT's website at *https://www.fdot.gov/environment/nepaassignment.shtm.* The FHWA Florida Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 773; 40 CFR 1507.3, 1508.4.

**Stephanie Pollack,**

*Deputy Administrator, Federal Highway Administration.*

[FR Doc. 2022–08293 Filed 4–18–22; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2022–0007]**

### Renewal Package From the State of California to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed MOU and request for comments.

**SUMMARY:** This notice announces that FHWA has received and reviewed a renewal package from the California Department of Transportation (Caltrans) requesting renewed participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA determined the renewal package to be complete and developed a draft renewal MOU with Caltrans outlining how the State will implement the Program with FHWA oversight. The public is invited to comment on Caltrans' request, including its renewal package and the proposed renewal MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

**DATES:** Please submit comments by May 19, 2022.

**ADDRESSES:** To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for submitting comments.
- *Facsimile (Fax):* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Shawn Oliver by email at: *Shawn.Oliver@dot.gov* or by telephone at (916) 498–5048. The FHWA California Division Office's normal business hours are 8:00 a.m. to 4:30 p.m. (Pacific Time), Monday-Friday, except for Federal holidays. For the State of California: Chris Benz-Blumberg by email at *Chris.Benz-Blumberg@dot.ca.gov* or by telephone at (916) 956–8660. State business hours are the same as above although State holidays may not completely coincide with Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this notice may be downloaded from the **Federal Register**'s home page at *www.archives.gov.* An electronic version of the application materials and proposed MOU may be downloaded by accessing the DOT docket, as described above, at *www.regulations.gov/.*

#### Background

Section 327 of Title 23, United States Code (U.S.C.), allows the Secretary of the DOT to assign, and a State to assume, the responsibilities under the NEPA (42 U.S.C. 4321 *et seq.*) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The

FHWA is authorized to act on behalf of the Secretary with respect to these matters.

Caltrans entered the Program on July 1, 2007, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the Program (the original 23 CFR part 773).

On April 11, 2007, FHWA published a notice of Caltrans' draft MOU in the **Federal Register** to solicit the view of the public and Federal agencies on FHWA's preliminary decision to approve the application. Following the comment period, FHWA and Caltrans considered comments and proceeded to execute the MOU. Effective July 1, 2007, Caltrans assumed FHWA's responsibilities under NEPA, and the responsibilities for reviews under other Federal environmental requirements. Subsequently, Caltrans has applied to renew its participation in the Program. Caltrans entered into renewal MOUs with FHWA on October 1, 2012, and December 23, 2016 (2016 MOU).

On June 1, 2021, after coordination with FHWA, Caltrans submitted a renewal package in accordance with the renewal regulations in 23 CFR 773.115. On October 21, 2021, Caltrans requested an extension to the 2016 MOU in order to allow further discussion between the parties on the new language for the renewal MOU. In a letter dated December 8, 2021, FHWA granted an extension of the MOU until April 29, 2022. Under the proposed renewal MOU, FHWA would assign to the State, through Caltrans, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or environmental impact statement projects, both on the State highway system (SHS) and Local Assistance projects off the SHS that are funded by FHWA or require FHWA approvals.

2. All Class II, or categorically excluded (CE) projects, both on the SHS and Local Assistance projects off the SHS that are funded by FHWA or require FHWA approvals, and that do not qualify for assignment of responsibilities pursuant to the MOU for environmental reviews and decisions for actions qualifying for CEs pursuant to the 23 U.S.C. 326 program.

3. All Class III, or environmental assessment projects, both on the SHS and Local Assistance projects off the SHS that are funded by FHWA or require FHWA approvals.

4. Projects funded by other Federal agencies, or projects without any Federal funding, of any Class that also include funding by FHWA or require FHWA approvals and meet the definition of a highway project found at 23 CFR 773.103. For these projects, Caltrans would not assume the NEPA responsibilities of other Federal agencies. However, Caltrans may use or adopt other Federal agencies' NEPA analyses consistent with 40 CFR 1500–1508, and DOT and FHWA regulations, policies, and guidance.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202 and 203; highway projects under 23 U.S.C. 204, unless the project will be designed and constructed by Caltrans; projects that cross State boundaries; projects that cross or are adjacent to international boundaries; and any projects that may be designed and constructed by FHWA under a 23 U.S.C. 308 agreement between the FHWA Central Federal Lands Highway Division and Caltrans.

The assignment also would give Caltrans the responsibility to conduct the following environmental review, consultation, and other related activities:

*Air Quality*

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any project level conformity determinations.

*Noise*

- Noise Control Act of 1972, 42 U.S.C. 4901–4918
- FHWA noise regulations in 23 CFR part 772

*Wildlife*

- Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668–668d
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d

*Historic and Cultural Resources*

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306101, *et seq.*
- Archaeological Resources Protection Act of 1979, 16 U.S.C. 470aa–470mm
- Archeological and Historic Preservation Act, 54 U.S.C. 312501–312508
- Native American Grave Protection and Repatriation Act, 25 U.S.C. 3001–3013; 18 U.S.C. 1170

*Social and Economic Impacts*

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act, 7 U.S.C. 4201–4209

*Water Resources and Wetlands*

- Clean Water Act, 33 U.S.C. 1251–1387 (Sections 401, 402 404, and Section 319)
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–26
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g) and 133(b)
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130

*Parklands*

- Section 4(f), 23 U.S.C. 138 and 49 U.S.C. 303
- Land and Water Conservation Fund Act, 54 U.S.C. 200302–200310

*Hazardous Materials Management*

- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act, 42 U.S.C. 9671–9675
- Resource Conservation and Recovery Act, 42 U.S.C. 6901–6992k

*FHWA-Specific*

- Planning and Environment Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

*Executive Orders (E.O.) Relating to Highway Projects*

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

- E.O. 13112, Invasive Species
- E.O. 13985—Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- E.O. 13990—Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis
- E.O. 14008—Tackling the Climate Crisis at Home and Abroad
- Other EOs not listed, but related to highway projects.

The proposed renewal MOU would allow Caltrans to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and EOs. Caltrans will continue to handle routine consultations with the Tribes and understands that a Tribe has the right to direct consultation with FHWA upon request. Caltrans also may assist FHWA with formal consultations, with consent of a Tribe, but FHWA remains responsible for the consultation. Caltrans also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

The MOU content reflects Caltrans' desire to continue its participation in the Program. The FHWA and Caltrans have agreed to modify some of the provisions in the MOU to, among other things: clarify the categories of projects for which Caltrans is assigned responsibility, designate a Senior Agency Official at Caltrans consistent with 40 CFR 1508.1(dd); remove projects for which FHWA retained responsibilities for environmental review following a NEPA decision; update record retention requirements; provide for enhanced reporting to FHWA on issues including environmental justice analysis and associated mitigation, where applicable; revise provisions related to data and information requests; and revise provisions related to FHWA-initiated withdrawal of assigned projects.

Prior MOUs in this Program had 5-year terms. Changes to 23 U.S.C. 327(c)(5) under the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act, Pub. L. 117–58), enacted on November 15, 2021, require that MOUs have a term of 10 years for a State that has assumed the responsibility for environmental review under the Program for 10 years or longer. Caltrans has participated in this program for 15 years. Therefore, this proposed renewal MOU will have a term of 10 years.

A copy of the proposed renewal MOU and renewal package may be viewed on the DOT Docket, as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on Caltrans' website at: *https://dot.ca.gov/programs/environmental-analysis/nepa-assignment.*

The FHWA California Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 773; 40 CFR 1507.3, 1508.4.

**Stephanie Pollack,**

*Deputy Administrator, Federal Highway Administration.*

[FR Doc. 2022–08294 Filed 4–18–22; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Mendocino, California

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:** The FHWA, on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a DEIS and Section 4(f) evaluation will be prepared for the Albion River Bridge Replacement/Rehabilitation Project (Project) on State Route (SR) 1, in Mendocino County, California, from post mile 43.3 to post mile 44.2.

**DATES:** This notice will be accompanied by a 30-day public scoping comment period from April 15, 2022, to May 16, 2022. The deadline for public comments is Monday, May 16, 2022.

*Virtual Scoping Meeting:* The virtual scoping meeting will be held on Thursday, May 5, 2022, from 6:00 p.m. to 7:30 p.m. via WebEx by accessing the following online meeting information below: To attend the Virtual Public Scoping Meeting online, enter this WebEx address into your web browser:

- *bit.ly/Albion_Public_Meeting* and enter this password: albionriver1

To attend the Virtual Public Scoping Meeting by phone, call this WebEx dial-in phone number:

- +1–408–418–9388 and enter this meeting code at the prompt: 2484 877 6866

**ADDRESSES:** To submit comments on the NOI, please submit them by one of the following means to ensure you do not duplicate your submissions:

- *Mail:* California Department of Transportation, Attention: Liza Walker, Caltrans District 1, 1656 Union Street, Eureka, CA 95501.
- *Email: albionbridge@dot.ca.gov.*

The comments received during this 30-day comment period will be published in the DEIS without change, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Liza Walker, Environmental Branch Chief, Caltrans District 1, 1656 Union Street, Eureka, CA 95501, telephone (707) 441–5672 or email *albionbridge@dot.ca.gov.*

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the assigned National Environmental Policy Act (NEPA) agency, will prepare a DEIS and Section (4f) evaluation on a proposal for a bridge replacement/rehabilitation project in Mendocino County, California. The proposed project would involve either the replacement or rehabilitation of the existing bridge, as well as a no-action alternative, on SR 1 between post mile 43.3 to post mile 44.2.

*Purpose and Need for the Proposed Action:* The purpose of this Project is to either replace or rehabilitate the seismically and structurally deficient Albion River Bridge with a structure that would ensure the safety and reliability of this critical link on SR 1 of the state highway system. The Project is needed to address several critical deficiencies associated with the existing bridge. Correcting these deficiencies would improve safety for all users and reduce the chance of catastrophic bridge failure.

*Preliminary Description of the Proposed Action and Alternatives:* A reasonable range of alternatives for detailed study in the DEIS is currently being considered and will be refined in consideration of agency and public comments received during the 30-day NOI comment period. In addition to the No Action Alternative, potential project alternatives include bridge replacement and bridge rehabilitation. A preliminary description of these potential alternatives is provided below.

The No Action Alternative assumes no improvements other than those implemented as part of routine maintenance. The Bridge Replacement Alternatives would replace the existing Albion River Bridge with a new bridge. Various bridge replacement concepts will be considered during the scoping process, including a west alignment constructed to the west of the existing bridge, an east alignment constructed to the east of the existing bridge, and on-alignment constructed slightly west of the existing alignment. The Bridge Rehabilitation Alternatives would require major work to extend the service life of the existing Albion River Bridge. The Bridge Rehabilitation Alternatives would include rehabilitation of the bridge for motor vehicle use by widening the bridge and upgrading the bridge rails, or rehabilitation of the bridge as a pedestrian-only bridge alongside one of the bridge replacement alternatives. The operability of the bridge would need to be maintained while addressing structural deficiencies, geometric deficiencies, and operational reliability of the bridge.

*Summary of Expected Impacts:* The DEIS will include an evaluation of the potential social, economic, and environmental effects resulting from the implementation of the Project. Based on preliminary review of existing conditions within and in proximity to the Project location, the implementation of the Project could result in effects to cultural and historic resources; community resources; parks and recreational areas; threatened and endangered species; wetlands; coastal resources; navigable waters; hazardous waste and contaminated materials; floodplains; noise; air quality; and visual resources. The analyses and evaluations conducted for the DEIS will identify the potential for effects; whether the anticipated effects would be adverse; and mitigation measures for adverse effects. Evaluations under Section 4(f) of the USDOT Act of 1966, 23 CFR part 774, will be prepared, and consultation under Section 106 of the National Historic Preservation Act of 1966, 54 U.S.C. 300101–307108, will be undertaken concurrently with the NEPA/CEQA environmental review processes.

*Anticipated Permits and Other Authorizations:* Potential permits and approvals for the Project include: U.S. Army Corps of Engineers (USACE) permits under section 404 of the Clean Water Act, 33 U.S.C. 1344, and section 10 of the Rivers and Harbors Act, 33 U.S.C. 403, for construction in the Albion River and potential wetland impacts; U.S. Coast Guard (USCG) Bridge Permit, which establishes allowable clearances for bridges over navigable waterways such as the Albion River; National Marine Fisheries Service (NMFS) section 7 Endangered Species Act, 16 U.S.C. 1536, NMFS Essential Fish Habitat Consultation for potential impacts to species due to construction in the Albion River, consultation for potential impacts on threatened and/or endangered species; U.S. Fish and Wildlife Service (USFWS) section 7 Endangered Species Act, 16 U.S.C. 1536, consultation for potential impacts to federally-listed threatened species; as well as any other relevant California State and Local Agency permits and authorizations.

*Schedule for the Decision-Making Process:* The Project schedule will be established as part of the requirements of the environmental review process under 23 U.S.C. 139 Efficient environmental reviews for project decision-making.

The anticipated project schedule is outlined below:

- Public Scoping Meetings (May 2022)
- Scoping Report Publication (June 2022)
- Notice of Availability of the DEIS (May 2023)
- Public Hearing (June 2023)
- End of DEIS Comment Period (July 2023)
- Publish Single Final EIS (FEIS)/ROD (March 2024)

*A Description of the Public Scoping Process:* Public and agency outreach will include a formal Public Scoping Meeting scheduled in May 2022. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Native American Tribes and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A Public Hearing on the DEIS will also be scheduled during circulation of the environmental document.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: April 12, 2022.

**Christina Leach,**

*Acting Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.*

[FR Doc. 2022–08270 Filed 4–18–22; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2021–0086]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Investigation-Based Crash Data Studies

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice and request for comments on an extension with modification of a currently approved information collection.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This document describes a currently approved collection of information for which NHTSA intends to seek approval from OMB for extension with modification on NHTSA's Investigation-Based Crash Data Studies: Crash Investigation Sampling System (CISS), Special Crash Investigation (SCI) and Special Study Data Collection. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on January 26, 2022. No comments were received.

**DATES:** Comments must be submitted on or before May 19, 2022.

**ADDRESSES:** Written comments and recommendations for the proposed information collection, including

suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain*. To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

**FOR FURTHER INFORMATION CONTACT:** For additional information or access to background documents, contact Dinesh Sharma, Crash Investigation Division (NSA–110), (202) 366–2333, National Highway Traffic Safety Administration, W53–493, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted to OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on January 26, 2022.

*Title:* Investigation-Based Crash Data Studies.

*OMB Control Number:* 2127–0706.

*Form Number:* Form 1278 and 1280.

*Type of Request:* Request for extension with modification of a currently approved information collection.

*Type of Review Requested:* Regular.

*Length of Approval Requested:* Three years from date of approval.

*Summary of the Collection of Information:* NHTSA is authorized, under 49 U.S.C. 30182 and 23 U.S.C. 403 to collect data on motor vehicle traffic crashes to aid in the identification of issues and the development, implementation, and evaluation of motor vehicle and highway safety countermeasures. For decades, NHTSA has been investigating crashes and collecting crash data through its Investigation-Based Crash Data Studies, namely the Crash Investigation Sampling System (CISS), Special Crash Investigation (SCI), and specific issue-based Special Study data collection studies. Although each of these systems satisfy different purposes and collect data in different manners, they all utilize the same core variables (*e.g.* forms), procedures and protocols for data collection.

On November 15, 2021, the Infrastructure Investment and Jobs Act (Pub. L. 117–58), also referred to as the Bipartisan infrastructure Law (BIL), was signed into law. The Crash Data section (section 24108) of the BIL authorizes the Secretary of Transportation (NHTSA by delegation) to use funds to enhance the collection of data under CISSS by, among other things, including additional data collection sites.

NHTSA is seeking approval to modify the existing information collection to: (a) Increase the number of crashes investigated by the crash technicians for 2021 and future years, (b) add Special Study cases into this package, and (c) add Special Crash Investigation cases into this package. NHTSA has also adjusted estimates to include the burden incurred by tow yards, hospitals, and law enforcement agencies in responding to the collections. The combined impact is an increase of 6,458 burden hours to NHTSA's overall total.

The CISS is a nationally representative sample of passenger vehicle crashes which focus on detailed investigation of passenger vehicle crashes. It provides nationally representative data on fatal and nonfatal motor vehicle crashes for use in developing and evaluating federal motor vehicle safety standards and other safety countermeasures. The CISS began implementation in 2015 and by 2018 was collecting crash data from thirty-two (32) fully operational sites. As a result of the BIL, the CISS data collection sites will be expanded from 32 to 56 sites. The CISS collects data at both the crash level through scene analysis and vehicle level through vehicle damage assessment together with injury source evidence and standardized coding.

The SCI Program is used to provide NHTSA with the most in-depth and detailed level of crash investigation data collected by the Agency. Generally, SCI investigations are conducted for crashes of special interest, such as those involving new or emerging safety technologies (*e.g.,* those involving vehicles equipped with crash avoidance technologies or Automated Driving Systems (ADS)), school buses, motorcoaches, alternative fuel and hybrid vehicles, adaptive control equipped vehicles, fires, child restraints, and those relevant to safety defect investigations. The crash investigations are conducted to document crash circumstances, identify injury sources, evaluate safety countermeasure effectiveness and support Agency rulemaking actions. Investigations are also conducted to provide early detection of alleged or potential vehicle safety defects. Reports are generated from investigations and all are made available to the public. The crashes chosen for SCI investigation may be chosen throughout the year as they arise or be part of a planned effort to look into a particular type of crash (such as crashes involving air bag deployment-related fatalities and injuries).

In addition to the above-referenced CISS and SCI data collections, NHTSA also conducts investigation-based special studies using the CISS and SCI infrastructure to answer questions on a specific topical aspect of vehicle and highway safety. In the special study cases, data is typically gathered remotely where documents and investigation details are requested from investigating agencies and the data is compiled, coded, and reported on collectively in a summary report detailing the issue. These special studies will utilize the same infrastructure CISS and SCI, as well as the same core variables (*e.g.,* forms) and procedures and protocols. The cases may be selected from an agency's data set (*i.e.,* CISS, SCI, or Fatality Analysis Reporting System (FARS)) or through other means (*i.e.,* internet searches, news articles, and public notification). The cases may or may not be selected to provide a nationally-representative sample of crashes. In the past, using the National Automotive Sampling System-Crashworthiness Data System (NASS–CDS) infrastructure, NHTSA conducted several investigation-based special studies, including studies on child occupant protection, air bag effectiveness, and pedestrian safety among others. NASS–CDS, operated from 1979 through 2015, and was the predecessor to CISS. Three currently planned special studies will collect information on crashes that involve medium-duty trucks (trucks between 10,001 and 26,000 lbs.), pedestrians or pedalcyclists, and first responders or construction or maintenance workers struck while performing official duties on the road.

NHTSA will also use the information collected through the CISS infrastructure to support NHTSA's Non-Traffic Surveillance (NTS). CISS Technicians review over a hundred and fifty thousand crash reports each year, and some of these reports are not applicable to the CISS program, but they may be applicable to the NTS data collection. NTS is a virtual data collection system designed to provide

counts and details regarding fatalities and injuries that occur in non-traffic crashes and in non-crash incidents. Non-traffic motor vehicle crashes are a class of crashes that occur off the public trafficways. These crashes, subsequently referred to as ''non-traffic crashes,'' are mostly single-vehicle crashes on private roads, two vehicle crashes in parking facilities, or collisions with pedestrians in driveways. In addition, there are non-traffic incidents such as a vehicle falling on a person underneath or an unintentional carbon monoxide poisoning inside the vehicle. Non-traffic crash data is obtained through NHTSA's CISS, SCI, Crash Reporting Sampling System (CRSS), and FARS.

For the standard investigation-based crash data studies acquisition process, once a crash has been selected for investigation, crash technicians locate, visit, measure, and photograph the crash scene; locate, visit, inspect, and photograph involved vehicle(s); conduct a telephone or personal interview with the involved individuals or a surrogate (another person who can provide occupant or crash information, such as parents for a minor or parent or spouse for a deceased individual); and obtain and record crash injury information received from various medical data sources. These data are used to describe and analyze circumstances, mechanisms, and consequences of a cross section of towed, light passenger motor vehicle crashes in the United States. The collection of interview data aids in this effort.

For the special studies, the data is typically gathered following similar procedures, but is targeted to a specific issue (*e.g.,* child occupant protection, crash causation factors) as opposed to an entire investigation. Special Studies investigations also typically only involve obtaining information from law enforcement, who provide access to and a copy of the crash report where the data is not electronic. They do not involve interviewing people involved in crashes, obtaining medical records or inspecting the vehicles. Each special study has specific requirements (*i.e.,* types of crashes and/or data collected); however, the gathering of crash reports for these studies is similar to the gathering of crash reports in the CISS and SCI programs.

*Description of the Need for the Information and Proposed Use of the Information:* NHTSA investigates real-world crashes and collects detailed crash data through CISS, SCI, and Special Studies data collection programs to identify the primary factors related to the source of crashes and their injury outcomes. These detailed factors are utilized to develop and evaluate effective safety countermeasures including the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes. The data collected also give motor vehicle researchers an opportunity to specify areas in which improvements may be possible, design countermeasure programs, and evaluate the effects of existing and proposed safety measures.

*60-Day Notice:* NHTSA published a 60-day notice in the **Federal Register** on January 26, 2022 (87 FR 4099). NHTSA received no comments. However, NHTSA is revising burden estimates as a result of additional funding for CISS data collection. In the 60-day notice, NHTSA estimated that there would be 32 data collection sites in each of the next three years. As a result of the additional funding provided by the BIL, NHTSA now plans to phase in 24 additional data collection sites in CISS over the next 3 years. This 30 day notice increases the burden hours for interviewees, Police, Tow Yards and Medical Facilities for an additional 24 data collection sites. The total data collection sites will incrementally increase from 32 to 56 over the next three years. The increase in burden hours and cost for these additional data collection sites are reflected in the Burden to Respondent section of this document.

*Burden to Respondents:* NHTSA has provided a description of the affected public, estimated number of respondents, description of frequency, and estimates of the total burden hours and costs for each of the three Investigation-Based Crash Data Acquisition Systems (CISS, SCI, and Special Studies) below. In aggregate, NHTSA estimates that the total annual burden is 12,063 hours and $0.

*Program:* CISS.

*Affected Public:* People involved in select motor vehicle crashes, law enforcement jurisdictions that provide access to and a copy of the crash report where the data is not electronic; hospitals that provide a copy of the injured occupant's medical treatment of injuries; and tow or salvage lot facilities that provide access to the storage facility to inspect the vehicle.

*Estimated Number of Respondents:* 24,186.

*Frequency:* On Occasion.

*Estimated Total Annual Burden Hours:* 11,787 hours (6,956 + 822 + 298 + 2,783 + 928).

The CISS crash data acquisition system includes 5 information collections. The first information collection covers the collection of information from individuals involved in crashes via interview. The estimated number of interview respondents is obtained by multiplying the approximate number of crashes investigated each year by the average number of interviews per crash. Based on existing data, each CISS crash involves an average of approximately 2.25 individuals. NHTSA estimates that CISS conducts investigations on 9,275 crashes per year. Therefore, NHTSA estimates that there will be 20,869 respondents per year (9,275 crashes × 2.25 respondents per crash).

The respondents are contacted only once; however, in rare circumstances follow-up questions may be needed to clarify data. The interview requires approximately 20 minutes of a respondent's time on average. CISS conducts interviews for approximately 9,275 crashes per year, which NHTSA estimates takes about 45 minutes per crash (2.25 respondents × 20 minutes). Therefore, the estimated total annual burden hours for the collection of information from individuals involved in crashes for CISS is 6,956 hours ((9,275 crashes × 45 minutes) ÷ 60 minutes/hour).

In addition to interviews, crash technicians and investigators must obtain official records to initiate and complete the cases. These records include police crash reports and medical records. The second information collection under CISS is for the collection of crash records from sampled police jurisdictions. NHTSA estimates that there are 316 sample police jurisdictions annually. To estimate the burden to sampled police jurisdictions, NHTSA multiplied the average number of visits per year by the average burden per visit and the number of police jurisdictions. On average, each of the 316 sampled police jurisdictions are queried weekly (or 52 times per year) and each query is estimated to take 3 minutes. Accordingly, NHTSA estimates the total annual burden for sampled police jurisdictions to be 2.6 hours per respondent (3 minutes × 52 visits) and 822 hours for all respondents (2.6 hours × 316 police jurisdictions = 821.6 hours).

The third information collection under CISS is for the collection of crash records from non-sampled police jurisdictions. Based on existing CISS data, there are 340 non-sampled jurisdictions annually. To estimate the burden to non-sample police jurisdictions, NHTSA multiplied the average number of visits per year by the average burden per visit and the number of non-sampled police jurisdictions. On

average, each of the 595 non-sampled police jurisdictions are visited twice annually and each query is estimated to take 15 minutes. Accordingly, NHTSA estimates the total burden for non-sampled police jurisdictions to be 30 minutes per respondent (15 minutes × 2 visits) and 289 hours for all respondents ((30 minutes × 595 non-sampled police jurisdictions) ÷ 60 minutes/hour) = 298 hours).

The fourth information collection under CISS is for the collection of medical records from hospitals. Based on existing data, CISS collects an average of 16,695 records each year from an average of 481 hospitals. NHTSA estimates that a hospital spends 10 minutes for each record requested. Accordingly, NHTSA estimates the total annual burden to be 2,783 hours ((16,695 records × 10 minutes) ÷ 60 minutes/hour) and estimates that each hospital will, on average, spend 5.78 hours providing the requested information each year (2,783 hours ÷ 481 hospitals).

The fifth information collection under CISS is for the collection from tow yards necessary to gain access to and locate a vehicle that was involved in a crash. Typically, a tow facility operator just needs to give the crash technician permission to enter the yard to inspect the vehicle and involves approximately 5 minutes of staff time. CISS data shows an average of 11,130 visits to tow facilities per year, and NHTSA estimates 1,926 tow facilities will be visited annually. Accordingly, NHTSA estimates the total annual burden to be 928 hours ((11,130 visits × 5 minutes) ÷ 60 minutes/hour) and estimates that each tow facility will, on average, spend 28.90 minutes providing the requested information each year ((928 hours × 60 minutes) ÷ 1,926 facilities).

Accordingly, NHTSA estimates that the total burden associated with the CISS data acquisition system is 11,787 hours (6,956 + 822 + 298 + 2,783 + 928).

*Estimated Total Annual Burden Cost:* $0.

There are no capital, start-up, or annual operation and maintenance costs involved in this collection of information. The respondents would not incur any reporting costs from the information collection beyond the opportunity or labor costs associated with the burden hours. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

**Program: Special Crash Investigation (SCI)**

*Affected Public:* People involved in select motor vehicle crashes, law enforcement jurisdictions that provide access to and a copy of the crash report where the data is not electronic; hospitals that provide a copy of the injured occupant's medical treatment of injuries; and tow or salvage lot facilities that provide access to the storage facility to inspect the vehicle.

*Estimated Number of Respondents:* 500.

*Frequency:* On occasion (typically once per year).

*Estimated Total Annual Burden Hours:* 109 hours (67 + 17 + 17 + 8).

The SCI crash data acquisition system includes 4 information collections. The first information collection covers the collection of information from individuals involved in crashes via interview. The estimated number of interview respondents is obtained by multiplying the approximate number of crashes investigated each year by the average number of interviews per crash. Based on existing data, each SCI crash involves an average of approximately 2 individuals. NHTSA estimates that SCI conducts investigations on approximately 100 crashes per year. Therefore, NHTSA estimates that there will be 200 respondents per year (100 crashes × 2 respondents per crash).

The respondents are contacted only once; however, in rare circumstances follow-up questions may be needed to clarify data. The interview requires approximately 20 minutes of a respondent's time on average. SCI conducts interviews for approximately 100 crashes per year, which NHTSA estimates takes about 40 minutes per crash (2 respondents × 20 minutes). Therefore, the estimated total annual burden hours for the collection of information from individuals involved in crashes for SCI is approximately 67 hours ((100 crashes × 40 minutes) ÷ 60 minutes/hour = 66.67).

In addition to interviews, crash technicians and investigators must obtain official records to initiate and complete the cases. These records include police crash reports and medical records. The second information collection under SCI is for the collection of crash records from police jurisdictions. The SCI investigators contact an estimated 100 police jurisdictions once per year and require approximately 10 minutes of staff time per police jurisdiction. To estimate the burden to these police jurisdictions, NHTSA multiplied the average number of visits per year by the average burden per visit and the number of police jurisdictions. Accordingly, NHTSA estimates the total annual burden for police jurisdictions to be 10 minutes per respondent (10 minutes × 1 query per year) and 17 hours for all respondents ((10 minutes × 100 police jurisdictions) ÷ 60 minutes/hour = 16.67 hours).

The third information collection under SCI is for the collection of medical records from hospitals. Based on existing data, SCI collects an average of 100 records each year from 100 hospitals (1 request per hospital per year). NHTSA estimates that a hospital spends 10 minutes for each record requested. Accordingly, NHTSA estimates the total annual burden to be 17 hours ((100 records × 10 minutes) ÷ 60 minutes/hour = 16.67 hours) and estimates that each hospital will, on average, spend 10 minutes providing the requested information each year (10 minutes × 1 record request per year).

The fourth information collection under SCI is for the collection from tow yards necessary to gain access to and locate a vehicle that was involved in a crash. Typically, a tow facility operator just needs to give the crash technician permission to enter the yard to inspect the vehicle and involves approximately 5 minutes of staff time. SCI conducts approximately 100 visits to tow facilities per year, and NHTSA estimates that 100 tow facilities will be visited annually (1 request per facility per year). Accordingly, NHTSA estimates the total annual burden to be 8 hours ((100 visits × 5 minutes) ÷ 60 minutes/hour = 8.33 hours) and estimates that each tow facility will, on average, spend 5 minutes providing the requested information each year.

Accordingly, NHTSA estimates that the total burden associated with the SCI data acquisition system is 109 hours (67 + 17 + 17 + 8).

*Estimated Total Annual Burden Cost:* $0.

There are no capital, start-up, or annual operation and maintenance costs involved in this collection of information. The respondents would not incur any reporting costs from the information collection beyond the opportunity or labor costs associated with the burden hours. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

**Special Studies**

*Affected Public:* Law enforcement jurisdictions that provide access to and a copy of the crash report where the data is not electronic.

*Estimated Number of Respondents:* 1,000.

*Frequency:* On occasion (typically once per year).

*Estimated Total Annual Burden Hours:* 167 hours.

There is only one information collection for Special Studies in this ICR. This ICR only covers special studies involving remote-level investigations.[1] Accordingly, these remote-level investigations do not involve interviews of individuals involved in crashes, collection of medical records from hospitals, or visits to tow facilities. Instead, these special studies only involve the collection of information from police jurisdictions.

NHTSA estimates that the special studies will involve, on average, 1,000 police jurisdictions each year and require approximately 10 minutes of staff time per police jurisdiction. The total annual hour burden on jurisdictions for special studies information is estimated to be 167 hours (1 visit × 10 minutes × 1,000 jurisdictions ÷ 60 minutes/hour = 166.67).

*Estimated Total Annual Burden Cost:* $0.

There are no capital, start-up, or annual operation and maintenance costs involved in this collection of information. The respondents would not incur any reporting costs from the information collection beyond the labor costs associated with the burden hours. The respondents also would not incur any recordkeeping burden or recordkeeping costs from the information collection.

*Estimated Total Annual Burden Hours All Programs:* 12,063 hours.

The total estimated annual burden hours to all respondents for this ICR is 12,063 hours. The table below provides a summary of the estimated annual burden hours.

TABLE 2—SUMMARY OF BURDEN HOUR ESTIMATES

| Information collection title | Number of respondents | Number of responses (per respondent) | Burden per response (minutes) | Burden per respondent | Total burden (hours) |
|---|---|---|---|---|---|
| CISS: Interviews with Individuals Involved in Crashes | 20,869 | 20,869 *(1)* | 20 | 20 minutes | 6,956 |
| CISS: Collection of Police Records from Sampled Jurisdictions. | 316 | 16,432 *(52)* | 3 | 156 minutes | 821.6 |
| | | | | (2.6 hours) | 822 |
| CISS: Collection of Police Records from Non-Sampled Jurisdictions. | 595 | 1,190 *(2)* | 15 | 30 minutes | 298 |
| CISS: Collection of Medical Records | 480 | 16,695 *(34.76)* | 10 | 5.78 hours | 2,783 |
| CISS: Access to Tow Yards | 1,960 | 11,130 *(5.68)* | 5 | 28.39 minutes | 928 |
| SCI: Interviews with Individuals Involved in Crashes | 200 | 200 *(1)* | 20 | 20 minutes | 67 |
| SCI: Collection of Police Records | 100 | 100 *(1)* | 10 | 10 minutes | 17 |
| SCI: Collection of Medical Records | 100 | 100 *(1)* | 10 | 10 minutes | 17 |
| SCI: Access to Tow Yards | 100 | 100 *(1)* | 5 | 5 minutes | 8 |
| Special Studies: Collection of Police Records | 1,000 | 1,000 *(1)* | 10 | 10 minutes | 167 |
| Total | | | | | 12,063 |

*Estimated Total Annual Burden Cost All Programs:* $0.

NHTSA estimates that there are no costs to respondents other than costs associated with burden hours.

*Public Comments Invited:* You are asked to comment on any aspects of this information collection, including (a) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including 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.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

**Chou Lin Chen,**

*Associate Administrator, National Center for Statistics and Analysis.*

[FR Doc. 2022–08275 Filed 4–18–22; 8:45 am]

**BILLING CODE 4910–59–P**

[1] If NHTSA intends to conduct a special study that is not remote, it will seek separate clearance.

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[PHMSA–2019–0098]**

### Lithium Battery Air Safety Advisory Committee; Notice of Public Meeting

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), U.S. Department of Transportation (DOT).

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a meeting of the Lithium Battery Air Safety Advisory Committee (Committee).

**DATES:** The meeting will be held on May 4, 2022, from 9:00 a.m. to 5:30 p.m. Eastern Daylight Time. Requests to attend the meeting must be sent by April 19, 2022, to the point of contact identified in the **FOR FURTHER INFORMATION CONTACT** section. Persons requesting to speak during the meeting must submit a written copy of their remarks to DOT by April 19, 2022. Requests to submit written materials to be reviewed during the meeting must be received no later than April 19, 2022.

**ADDRESSES:** The meeting will be held virtually. Details to access the virtual meeting will be posted on the Committee website located at: *https://www.phmsa.dot.gov/hazmat/rulemakings/lithium-battery-safety-advisory-committee.* If the guidelines concerning personal health and safety in Federal facilities during the COVID–19 pandemic change, PHMSA may hold a hybrid meeting. Details on a hybrid meeting will also be posted on the Committee website. The E-Gov website is located at *https://www.regulations.gov.* Mailed written comments intended for the Committee

should be sent to Docket Management Facility; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590–0001.

**FOR FURTHER INFORMATION CONTACT:** Steven Webb or Aaron Wiener, PHMSA, U.S. Department of Transportation. Telephone: (202) 366–8553. Email: *lithiumbatteryFACA@dot.gov.* Any committee related request should be sent to the email address listed in this section.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Lithium Battery Air Safety Advisory Committee was created under the Federal Advisory Committee Act (FACA, Pub. L. 92–463), in accordance with Section 333(d) of the FAA Reauthorization Act of 2018 (Pub. L. 115–254).

**II. Agenda**

The meeting agenda will address the following duties of the Committee as specifically outlined in section 333(d) of the FAA Reauthorization Act:

(a) Facilitate communication among manufacturers of lithium batteries and products containing lithium batteries, air carriers, and the federal government.

(b) Discuss the effectiveness and the economic and social impacts of lithium battery transportation regulations.

(c) Provide the Secretary with information regarding new technologies and transportation safety practices.

(d) Provide a forum to discuss Departmental activities related to lithium battery transportation safety.

(e) Advise and recommend activities to improve the global enforcement of air transportation of lithium batteries, and the effectiveness of those regulations.

(f) Provide a forum for feedback on potential U.S. positions to be taken at international forums.

(g) Guide activities to increase awareness of relevant requirements.

(h) Review methods to decrease the risk posed by undeclared hazardous materials.

A final agenda will be posted on the Lithium Battery Air Safety Advisory Committee website at least 15 days in advance of the meeting.

**III. Public Participation**

The meeting will be open to the public. DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than April 19, 2022. To accommodate as many speakers as possible, time for each commenter may be limited. There will be five minutes allotted for oral comments from members of the public joining the meeting. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, PHMSA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to Lithium Battery Air Safety Advisory Committee members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Copies of the meeting minutes and committee presentations will be available on the Lithium Battery Air Safety Advisory Committee website. Presentations will also be posted on the E-Gov website in docket number PHMSA [PHMSA–2019–0098], within 30 days following the meeting.

*Written comments:* Persons who wish to submit written comments on the meetings may submit them to docket [PHMSA–2019–0098] in the following ways:

*1. E-Gov Website:* This site allows the public to enter comments on any **Federal Register** notice issued by any agency.

*2. Mail*

*Instructions:* Identify the docket number [PHMSA–2019–0098] at the beginning of your comments. Note that all comments received will be posted without change to the *E-Gov website,* including any personal information provided. Anyone can 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.). Therefore, consider reviewing DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477), or view the Privacy Notice on the *E-Gov website* before submitting comments.

*Docket:* For docket access or to read background documents or comments, go to the *E-Gov website* at any time or visit the DOT dockets facility listed in the **ADDRESSES** category, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

If you wish to receive confirmation of receipt of your written comments, please include a self-addressed, stamped postcard with the following statement: ''Comments on [PHMSA–2019–0098].'' The docket clerk will date stamp the postcard prior to returning it to you via the U.S. mail.

*Privacy Act Statement*

DOT may solicit comments from the public regarding certain general notices. DOT posts these comments, without edit, including any personal information the commenter provides, to the *E-Gov website,* as described in the system of records notice (DOT/ALL–14 FDMS).

Issued in Washington, DC, on April 14, 2022.

**William S. Schoonover,**

*Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 2022–08335 Filed 4–18–22; 8:45 am]

**BILLING CODE 4910–9X–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 an update to the identifying information of three persons currently included on the Specially Designated Nationals and Blocked Persons List. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for 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 Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; or Assistant Director for Regulatory Affairs, tel. 202–622–4855.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions

programs are available on OFAC's website (*www.treasury.gov/ofac*).

**Notice of OFAC Actions**

On April 11, 2022, OFAC updated the Specially Designated Nationals and Blocked Persons List entries for the following persons, whose property and interests in property subject to U.S. jurisdiction continue to be blocked pursuant to the prohibitions in E.O. 13726.

*Entities:*

1. AL–WADI, Faysal (a.k.a. WADI, Faisal Mohamed M; a.k.a. WADY, Faisl Mohamed), Malta; DOB 15 Dec 1978; alt. DOB 15 Dec 1976; POB Libya; nationality Libya; Gender Male; Passport 530037 (Libya); National ID No. 037956A (Malta) (individual) [LIBYA3].

2. WADI, Musbah Mohamad M (a.k.a. WADY, Mosbah Mohamed), Malta; Cyprus; Omar Almohar, Tripoli, Libya; DOB 12 Jul 1993; POB Libya; nationality Libya; Gender Male; Passport 524945 (Libya); alt. Passport RL2957C0 (Libya) (individual) [LIBYA3].

3. MUSBAH, Nourddin Milood M (a.k.a. MOHAMED, Nour Addin Meloud), Malta; Cyprus; Ben Ashoor, Tripoli, Libya; DOB 02 Sep 1974; nationality Libya; Gender Male; Passport 998635 (Libya); alt. Passport PK31LZK9 (Libya) (individual) [LIBYA3].

Dated: April 11, 2022.

**Andrea Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2022–08317 Filed 4–18–22; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of a person currently included in OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See Supplementary Information section for 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 Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

**Notice of OFAC Actions**

On April 14, 2022, OFAC updated the SDN List entry for the following person, whose property and interests in property subject to U.S. jurisdiction continue to be blocked.

**Entity**

1. LAZARUS GROUP (a.k.a. ''APPLEWORM''; a.k.a. ''APT–C–26''; a.k.a. ''GROUP 77''; a.k.a. ''GUARDIANS OF PEACE''; a.k.a. ''HIDDEN COBRA''; a.k.a. ''OFFICE 91''; a.k.a. ''RED DOT''; a.k.a. ''TEMP.HERMIT''; a.k.a. ''THE NEW ROMANTIC CYBER ARMY TEAM''; a.k.a. ''WHOIS HACKING TEAM''; a.k.a. ''ZINC''), Potonggang District, Pyongyang, Korea, North; Digital Currency Address—ETH 0x098B716B8Aaf21512996dC57EB 0615e2383E2f96; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 [DPRK3].

Dated: April 14, 2022.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2022–08323 Filed 4–18–22; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Conduit Arrangements

**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 conduit arrangements.

**DATES:** Written comments should be received on or before June 21, 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:* Conduit Arrangements Regulations.

*OMB Number:* 1545–1440.

*Regulation Number:* T.D. 8611.

*Abstract:* This regulation provides rules that permit the district director to recharacterize a financing arrangement as a conduit arrangement. The recharacterization will affect the amount of U.S. withholding tax due on financing transactions that are part of the financing arrangement. This regulation affects withholding agents and foreign investors who engage in multi-party financing arrangements.

*Current Actions:* There is no change in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,000.

*Estimated Time per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 10,000 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 14, 2022.

**Kerry L. Dennis,**

*Tax Analyst.*

[FR Doc. 2022–08315 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Requesting Comments on Form 8586

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8586, Low-Income Housing Credit.

**DATES:** Written comments should be received on or before June 21, 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 1545–0984 or Low-Income Housing Credit in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at 202–317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Low-Income Housing Credit.

*OMB Number:* 1545–0984.

*Form Number:* 8586.

*Abstract:* Internal Revenue Code section 42 permits owners of residential rental projects providing low-income housing to claim a tax credit for part of the cost of constructing or rehabilitating such low-income housing. Form 8586 is used by taxpayers to compute the credit and by the IRS to verify that the correct credit has been claimed.

*Current Actions:* There is no change to the burden previously approved.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, and businesses, or other for-profit organizations.

*Estimated Number of Respondents:* 779.

*Estimated Time per Respondent:* 8 hrs., 48 min.

*Estimated Total Annual Burden Hours:* 6,855.

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 14, 2022.

**Andres Garcia Leon,**

*Supervisory Tax Analyst.*

[FR Doc. 2022–08325 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Requesting Comments on Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4

**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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution; Form 5305–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; Notice 98–4, Simple IRA Plan Guidance.

**DATES:** Written comments should be received on or before June 21, 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 1545–1502 Form 5304–SIMPLE; Form 5305–SIMPLE; Notice 98–4,in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, 202–317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Form 5304–SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution, Form 5305–SIMPLE; Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for Use With a Designated Financial Institution; SIMPLE IRA Plan Guidance (Notice 98–4).

*OMB Number:* 1545–1502.

*Form Number:* Form 5304–SIMPLE, Form 5305–SIMPLE, and Notice 98–4.

*Abstract:* Form 5304–SIMPLE is a model SIMPLE IRA agreement that was created to be used by an employer to permit employees who are not using a designated financial institution to make salary reduction contributions to a SIMPLE IRA described in Internal Revenue Code section 408(p). Form 5305–SIMPLE is also a model SIMPLE IRA agreement, but it is for use with a designated financial institution. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE IRA, including information regarding the notification and reporting requirements under Code section 408.

*Current Actions:* There are no changes to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations not-for-profit institutions, and individuals. Estimated Number of Respondents: 600,000.

*Estimated Time per Respondent:* 3 hours, 31 minutes.

*Estimated Total Annual Burden Hours:* 2,113,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2022.

**Andres Garcia Leon,**

*Supervisory Tax Analyst.*

[FR Doc. 2022–08327 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 7004

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

**DATES:** Written comments should be received on or before June 21, 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 1545–0233 or Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at 202–317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns.

*OMB Number:* 1545–0233.

*Form Number:* 7004.

*Abstract:* Form 7004 is used by corporations and certain nonprofit institutions to request an automatic extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to ensure that the proper amount of tax was computed and deposited.

*Current Actions:* There are no changes being made to this form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit organizations and non-profit institutions.

*Estimated Number of Respondents:* 1,818,037.

*Estimated Time Per Respondent:* 6 hr., 46 min.

*Estimated Total Annual Burden Hours:* 12,326,291.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2022.

**Andres Garcia Leon,**

*Supervisory Tax Analyst.*

[FR Doc. 2022–08324 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Requesting Comments on Obligations Principally Secured by an Interest in Real Property

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning modifications of commercial mortgage loans held by a real estate mortgage investment conduit.

**DATES:** Written comments should be received on or before June 21, 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 1545–2110 or Obligations principally secured by an interest in real property, in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, 202–317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Obligations principally secured by an interest in real property.

*OMB Number:* 1545–2110.

*Form Number:* TD 9463.

*Abstract:* This collection covers final regulations under section 1.860G–2 that expand the list of permitted loan modifications to include certain modifications that are often made to commercial mortgages. The collection of information in this regulation is in section 1.860G–2(b)(7). To establish that the 80-percent test is met at the time of modification, the servicer must obtain an appraisal or some other form of commercially reasonable valuation (the appraisal requirement). This information is required to show that modifications to mortgages permitted will not cause the modified mortgage to cease to be a qualified mortgage.

*Current Actions:* There is no change to the burden previously approved.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 375.

*Estimated Time per Respondent:* 8 hrs.

*Estimated Total Annual Burden Hours:* 3,000.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*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 14, 2022.

**Andres Garcia Leon,**

*Supervisory Tax Analyst.*

[FR Doc. 2022–08329 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 14411

**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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 14411, Systemic Advocacy Issue Submission form.

**DATES:** Written comments should be received on or before June 21, 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 1545–1832 or Systemic Advocacy Issue Submission Forming in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, 202–317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Systemic Advocacy Issue Submission.

*OMB Number:* 1545–1832.

*Form Number:* 14411.

*Abstract:* Systemic Advocacy Issue Submission Form, is an optional use form for taxpayers (individual and business), tax professionals, trade and business associations, etc. to submit systemic problems. These problems may pertain to experiences with the Internal Revenue Service's processes procedures or make legislative recommendations.

*Current Actions:* There are no changes to the existing collection.

*Type of Review:* Extension of a previously approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, not-for-profit institutions, farms, Federal, State, Local or Tribal governments.

*Estimated Number of Responses:* 420.

*Estimated Time Per Response:* 48 minutes.

*Estimated Total Annual Burden Hours:* 336 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2022.

**Andres Garcia Leon,**

*Supervisory Tax Analyst.*

[FR Doc. 2022–08328 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for TD 8656

**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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning final regulation TD 8656, Imposition of the Accuracy-Related Penalty.

**DATES:** Written comments should be received on or before June 21, 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.* Please include the information collection's ''OMB number 1545–1426'' in the Subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Sara Covington, (202) 317–4542, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *sara.l.covington@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Section 6662—Imposition of the Accuracy-Related Penalty.

*OMB Number:* 1545–1426.

*Regulation Project Number:* TD 8656.

*Abstract:* These regulations provide guidance on the accuracy-related penalty imposed on underpayments of tax caused by substantial and gross valuation misstatements as defined in Internal Revenue Code sections 6662(e) and 6662(h). Under section 1.6662–6(d) of the regulations, an amount is excluded from the penalty if certain requirements are met and a taxpayer maintains documentation of how a transfer price was determined for a transaction subject to Code section 482.

*Current Actions:* There is no changes in the paperwork burden previously approved by OMB.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

Estimated total annual recordkeeping burden hours under section 482 is 125 hrs., and under section 6662(e) is 20,000 hrs.

Estimated total annual burden time/per/recordkeeper under section 482 is 15 mins and under section 6662(e)varies from 15hrs to 10 hrs., depending on individual circumstances, an estimated average of 8 hrs.

Estimated Number of Respondents (recordkeepers) under section 482 is 500 recordkeepers and under section 6662 (e) is 2000 recordkeepers.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2022.

**Sara L. Covington,**

*IRS Tax Analyst.*

[FR Doc. 2022–08296 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8611

**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 proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8611, Recapture of Low-Income Housing Credit.

**DATES:** Written comments should be received on or before June 21, 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 1545–1035 or Recapture of Low-Income Housing Credit in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this collection should be directed to LaNita Van Dyke, at 202–317–6009, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Recapture of Low-Income Housing Credit.

*OMB Number:* 1545–1035.

*Form Number:* 8611.

*Abstract:* IRC section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or if it fails to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credits taken in prior years.

Current Actions: There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 9 hours, 33 minutes.

*Estimated Total Annual Burden Hours:* 956.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2022.

**Andres Garcia Leon,**

*Supervisory Tax Analyst.*

[FR Doc. 2022–08326 Filed 4–18–22; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0003]**

## Agency Information Collection Activity: Application for Burial Benefits (Under 38 U.S.C. Chapter 23)

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before June 21, 2022.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0003'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0003'' in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* 38 U.S.C. 2302, 2303, 2304, 2307, and 2308.

*Title:* Application for Burial Benefits (Under 38 U.S.C. Chapter 23), VA Form 21P–530EZ.

*OMB Control Number:* 2900–0003.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The major use of the form is to determine a claimant's eligibility to for monetary burial benefits, including the burial allowance, plot or interment allowance, and transportation reimbursement for a deceased Veteran.

The respondent burden has increased due to the estimated number of receivables averaged over the past year.

VA Form 21P–530EZ has been updated as follows:

- Updated instructions to reflect the regulation change and updates to the form
- Split Section I into Section I—Veteran's Information and Section II—Claimant's Information
- Moved Veteran's Information Questions to Section I
- Changed Section Titles to Section III—Veteran's Service Information; Section IV—Information Regarding Final Resting Place; Section V—Claim for Burial Allowance; Section VI—Claim for Plot and/or Transportation Allowance
- Question 18—added Tribal trust land, name of cemetery or tribal trust land and zip code FNP≤
- Question 20A—removed VA Hospitalization Death/Amount paid from (now covered under non-service-connected burial allowance)
- Moved Question 20A to Section VI (now question 23)

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 64,223.50 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 128,447.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2022–08311 Filed 4–18–22; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

Vol. 87 Tuesday,
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Part II

## Securities and Exchange Commission

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Establish the Securities Financing Transaction Clearing Service and Make Other Changes; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94695; File No. SR–NSCC–2022–801]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Establish the Securities Financing Transaction Clearing Service and Make Other Changes

April 12, 2022.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) under the Securities Exchange Act of 1934 (''Act''),[2] notice is hereby given that on March 28, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the advance notice as described in Items I, II and III below, which Items have been prepared by the clearing agency.[3] The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice consists of proposed modifications to the NSCC Rules & Procedures (''Rules'') [4] that would (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the securities financing transaction clearing service (''Securities Financing Transaction Clearing Service'' or ''SFT Clearing Service'') to make central clearing available at NSCC 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 (collectively, ''Securities Financing Transactions'' or ''SFTs''), and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

### II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, the clearing agency included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. 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 and B below, of the most significant aspects of such statements.

*(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others*

NSCC reviewed the proposal with various Members and market participants (*e.g.,* agent lenders, brokers, matching service providers, and books and records service providers) in order to benefit from their expertise and industry knowledge. Written comments relating to this proposal have not been received from Members or any other person. 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.

NSCC reserves the right not to respond to any comments received.

*(B) Advance Notice Filed Pursuant to Section 806(e) of the Clearing Supervision Act*

Nature of the Proposed Change

The purpose of this proposed rule change is to (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the SFT Clearing Service to make central clearing available at NSCC for SFTs, and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

(i) Background

NSCC is proposing to introduce central clearing for SFTs, which are, broadly speaking, securities lending transactions where 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. In particular, the proposed SFT Clearing Service would expand central clearing at NSCC to include SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by a Sponsoring Member (as defined below and in the proposed rule change), or Agent Clearing Members (as defined below and in the proposed rule change) on behalf of Customers (as defined below and in the proposed rule change), as applicable.

SFTs involve the owner of securities (typically a registered investment company, pension plan, sovereign wealth fund or other institutional firm) transferring those securities temporarily to a borrower (typically a hedge fund). SFTs are often facilitated and intermediated by broker-dealers and agent lenders (*i.e.,* custodial banks or other institutions that lend out securities as agent on behalf of institutional firms). In return for the lent securities, the borrower transfers collateral, and a net rate payment is typically transferred to either the lender or the borrower that reflects the liquidity of the lent securities, as well as interest on any cash collateral.[5] NSCC

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] NSCC filed this advance notice as a proposed rule change (SR–NSCC–2021–010) with the Commission pursuant to Section 19(b)(1) of the Act, 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder, 17 CFR 240.19b–4. A copy of the proposed rule change is *available at https://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] This rate payment is typically calculated in a manner similar to interest on the principal balance

understands that SFTs provide liquidity to markets and facilitates the ability of market participants to make delivery on short-sales, and thereby avoid failures to deliver, ''naked'' shorts, and similar situations. On a typical Business Day, The Depository Trust Company (''DTC''), an NSCC affiliate, processes deliver orders related to securities lending transactions on securities having a value of approximately $150 billion.

Capital Efficiency Opportunities

The Basel III[6] capital and leverage requirements, as implemented by the U.S. banking regulators, constrain the ability of agent lenders and brokers to intermediate and facilitate SFTs.[7] NSCC believes central clearing of SFTs would be able to address these constraints, which may otherwise impair market participants' ability to engage in SFTs.

For example, NSCC believes it is uniquely positioned to create balance sheet netting opportunities for market participants (*i.e.,* the ability to offset cash payables and receivables versus NSCC) by becoming the legal counterparty to both pre-novation counterparties to an SFT through novation. Specifically, market participants that borrow securities through NSCC and then onward lend those securities, or other securities, to another NSCC Member through the proposed SFT Clearing Service may have the ability to net down the cash collateral return obligations and entitlements related to such SFTs. By contrast, for bilateral SFTs, market participants may be required to record those payables and receivables on their balance sheets on a gross (rather than netted) basis. A netted balance sheet can create significant capital benefits for market participants because it can reduce the amount of regulatory capital they must hold against SFTs under the U.S. ''supplementary leverage ratio'' and other capital requirements that favor a netted balance sheet.[8]

In addition, under Basel III, bank holding companies that have broker-dealer subsidiary borrowers are required to reserve capital against their exposures to institutional firm lenders of securities in relation to the cash collateral posted by such borrowers. Those capital requirements can vary depending on the credit profile of the institutional firm lender, and generally are well in excess of those applied to exposures to qualifying central counterparties, such as NSCC.[9] The counterparty risk weight of a qualifying central counterparty, like NSCC, is 2%,[10] which may result in considerable capital savings to these bank holding companies, to the extent they participate in central clearing.

Moreover, agent lending banks and bank holding company parents of broker-dealer borrowers that participate in central clearing could receive beneficial treatment under the single counterparty credit limits, which exempt exposures to qualifying central counterparties.[11]

In light of the potential for central clearing to alleviate the aforementioned capital constraints otherwise applicable to bilateral SFTs, NSCC believes that central clearing of SFTs may increase the capacity of market participants to engage in SFTs.[12]

Fire Sale Risk Mitigation

In addition to creating capital efficiency opportunities for market participants, NSCC believes that broadening the scope of central clearing at NSCC to SFTs would also reduce the potential for market disruption from fire sales.

In the case of securities lending transactions, the primary risk of fire sales[13] relates to the reinvestment of cash collateral by institutional firms that are the lenders in securities lending transactions. Those institutional firms will typically reinvest the cash collateral they receive from the borrower into other securities. If the borrower of the securities thereafter defaults, the institutional firm lenders generally need to quickly liquidate the securities representing the reinvestment in order to raise cash to purchase the originally lent security. A substantial number of disconnected and competing liquidations by multiple lenders can create fire sale conditions for the securities being liquidated, which can harm not only the institutional firm lenders by potentially lowering the amount of cash they can raise in the sale of such securities, but also create market losses for all holders of such securities.[14]

Moreover, if an institutional firm lender should default and fail to return the cash collateral back to its borrowers, the borrowers would typically be looking to liquidate the borrowed securities in order to make themselves whole for the cash collateral they delivered to the institutional firm lender. Competing and disconnected sales of such securities could similarly create fire sale conditions and not only harm the borrowers to the extent the value of the securities decline, but also create market losses for all holders of the borrowed securities.

NSCC believes that broadening the scope of central clearing at NSCC to SFTs would reduce the potential for market disruption from fire sales for a number of reasons. First, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions (as defined below and in the proposed rule change). Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. Second, NSCC would only need to liquidate the defaulter's net positions. By contrast, in the context of a default by a broker-dealer intermediary that runs a matched book in the bilateral securities market, both the ultimate lender and the ultimate borrower need to liquidate the defaulter's gross positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. Lastly, NSCC would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as

of a loan and accrues on a daily basis. As a result, the rate payment is typically calculated as the product of a specified balance (typically the amount of cash collateral unless the collateral consists of securities) and a specified rate (reflecting both the liquidity of the securities and the ability of the lender to re-use the cash collateral), divided by 360 or a similar day count fraction.

[6] Basel III is an internationally agreed set of measures developed by the Basel Committee on Banking Supervision in response to the financial crisis of 2007–2009.

[7] *See, e.g.,* 12 CFR part 3 (Office of the Comptroller of the Currency—Capital Adequacy Standards); 12 CFR part 217 (Federal Reserve—Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks); 12 CFR part 252, subpart Q (Single Counterparty Credit Limits); 12 CFR part 324 (Federal Deposit Insurance Corporation—Capital Adequacy of FDIC-Supervised Institutions).

[8] *See* 12 CFR 217.10(c)(4)(ii)(E)–(F).

[9] *See* 12 CFR 217.32 and 217.37 generally.

[10] *See* 12 CFR 217.35(c)(3).

[11] *See* 12 CFR 252.77(a)(3).

[12] Members should discuss this matter with their accounting and regulatory capital experts.

[13] Fire sale risk is the risk of rapid sales of assets in large amounts that temporarily depress market prices of such assets and create financial instability.

[14] *See* Financial Stability Board, Strengthening Oversight and Regulation of Shadow Banking: Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos, at 5 (August 29, 2013) *available at https://www.fsb.org/wp-content/uploads/r_130829b.pdf?page_moved=1.* *See* also United States Securities and Exchange Commission: Securities Lending and Short Sale Roundtable Transcript (September 29, 2009), Former Chairman Schapiro's Remarks, at 2–3, *available at https://www.sec.gov/news/openmeetings/2009/roundtable-transcript-092909.pdf.*

applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario.

Liquidity Drain Risk Mitigation

Liquidity risk may also arise if, in the context of a stressed market scenario, borrowers or lenders concerned about their counterparties' creditworthiness seek to unwind their securities lending transactions and obtain the return of their cash collateral or securities. This occurred to a certain extent in 2008, when borrowers began demanding to return borrowed securities in exchange for the cash collateral the borrowers had posted to institutional firm lenders.[15] These ''runs'' may require institutional firm lenders to quickly sell off securities that are the subject of their cash reinvestments to raise cash to return to the borrowers, thereby also creating potential fire sale conditions with respect to the reinvestment securities, as described above. Similarly, borrowers may need to purchase or re-borrow securities in stressed market conditions, leading to potentially significant losses.

NSCC believes that having SFTs be centrally cleared by NSCC would lower the risk of a liquidity drain in a stress scenario. Specifically, NSCC believes that having it clear SFT activity would provide confidence to borrowers and lenders that they will receive back their cash or securities and thereby lessen parties' inclination to rush to unwind their transactions in a stressed market scenario.

Addition of New Membership Categories for Institutional Firm SFT Activity

When evaluating the opportunity to expand its cleared offerings to SFTs, NSCC engaged in extensive discussions with numerous market participants, including agent lenders, brokers, institutional firms, and critical third parties, such as matching service providers and books and records service providers. NSCC also organized several industry working groups to discuss the possibility of clearing SFTs. Each constituency has a unique perspective on the proposed SFT Clearing Service. By capturing their differing viewpoints in the design, NSCC has sought to ensure that the proposed SFT Clearing Service would reflect their needs and facilitate industry adoption of the proposed SFT Clearing Service.

There was a considerable amount of discussion between NSCC and market participants regarding the appropriate model(s) through which institutional firms should access central clearing. Some market participants expressed interest in allowing Members to sponsor institutional firms into NSCC membership in a manner similar to that provided for under the sponsoring member/sponsored member program at the Government Securities Division (''GSD'') of Fixed Income Clearing Corporation (''FICC''), an NSCC affiliate (''FICC's Sponsoring Member/Sponsored Member Program'').[16] Under FICC's Sponsoring Member/Sponsored Member Program, sponsoring members may submit to FICC transactions entered into on a principal-to-principal basis between the sponsoring member and the sponsored member.[17] On the other hand, certain other market participants, including in particular certain agent lending banks, requested that the central clearing service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transaction on behalf of the institutional firm, rather than as principal counterparty). As NSCC understands it, agent-style trading is the way such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients today.[18]

NSCC considered all of this input, as well as the recent experiences of FICC in expanding the suite of both transactions and participants eligible for FICC's Sponsoring Member/Sponsored Member Program,[19] and ultimately decided to incorporate both the sponsoring/sponsored membership type (to facilitate principal style trading for institutional firms and their sponsoring members) as well as the Agent Clearing Member membership type (to facilitate agent-style trading by agent lenders on behalf of institutional firm clients) into the proposed SFT Clearing Service.[20] NSCC expects these proposed new membership types would help expand access to central clearing for institutional firms and facilitate industry adoption of the proposed SFT Clearing Service.

The proposed SFT Clearing Service would also allow for the submission of broker-to-broker activity as well as client-to-client activity (credit intermediated by Sponsoring Members and/or Agent Clearing Members) into the NSCC system.

(ii) Key Parameters of the Proposed SFT Clearing Service

Overnight SFTs

NSCC is proposing central clearing for SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by Sponsoring Members, or Agent Clearing Members on behalf of customers. NSCC has determined that overnight term SFTs with a daily pair off option are more appropriate for the proposed SFT Clearing Service than open transactions with mark-to-market collections. This is because, as NSCC understands it, open transactions are not eligible for balance sheet netting given they do not have a scheduled off-leg/settlement date. As described above, the proposed SFT Clearing Service is designed to offer both balance sheet netting and capital efficiency opportunities to market participants. NSCC therefore finds it appropriate to make overnight term SFTs with a scheduled date for Final Settlement (as defined below and in the proposed rule change) of the next Business Day, rather than open transactions, eligible for central clearing through the proposed SFT Clearing Service.

For example, assume that a Transferor (as defined below and in the proposed rule change) and Transferee (as defined below and in the proposed rule change)

[15] *See, e.g., id.*

[16] *See* Rule 3A (Sponsoring Members and Sponsored Members) of the FICC GSD Rulebook (''GSD Rules''), *available at https://dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[17] FICC's Sponsoring Member/Sponsored Member Program also allows sponsoring members to submit to FICC transactions entered into between a sponsored member and a third-party netting member. However, based on feedback from market participants, NSCC has decided to address this type of trading via the proposed agent clearing model for SFT.

[18] In addition, certain other agent lenders who are not themselves banks or broker-dealers (and so are not eligible to become Members of NSCC) preferred a model where the institutional firm client becomes the direct member of NSCC with no obligations running between the agent lender and the clearing agency.

[19] *See* Securities Exchange Act Release Nos. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR–FICC–2017–003) (Expand the types of entities that are eligible to participate in FICC as Sponsored Members), 85470 (March 29, 2019), 84 FR 13328 (April 4, 2019) (SR–FICC–2018–013) (Expand Sponsoring Member Eligibility in the GSD Rulebook), and 88262 (February 21, 2020), 85 FR 11401 (February 27, 2020) (SR–FICC–2019–007) (Close-Out and Funds-Only Settlement Processes Associated with the Sponsoring Member/Sponsored Member Service).

[20] NSCC decided at this time not to incorporate a direct model for institutional firm clearing into the proposed SFT Clearing Service because in its experience with a similar model in FICC (the CCIT Service), the requirements that a clearing agency, such as NSCC, would be required to apply to an institutional firm that participated as a direct member (*e.g.,* Clearing Fund and loss allocation) would, as a general matter, not likely be compatible with the regulatory requirements and investment guidelines applicable to many of the regulated institutional firms that NSCC anticipates would be interested in participating in the proposed SFT Clearing Service.

enter into an SFT pursuant to which: (i) In the Initial Settlement (as defined below and in the proposed rule change) on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. In the Final Settlement on Tuesday, the Transferee will return 100 shares of security X to the Transferor for $100 per share. The Rate Payment (as defined below and in the proposed rule change) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

SFT Counterparties

The proposed SFT Clearing Service would only be available for SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member (as defined below and in the proposed rule change), and (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer. As used in the Rules, ''Member'' includes full-service NSCC clearing members, but not Sponsored Members.[21] In addition, as proposed, the only SFTs entered into by Sponsored Members that would be eligible for novation to NSCC would be SFTs between the Sponsored Member and its Sponsoring Member.[22]

Approved SFT Submitters

Consistent with the manner in which NSCC accepts cash market transactions, SFTs would be required to be submitted to NSCC on a locked-in/matched basis by an Approved SFT Submitter (as defined below and in the proposed rule change) in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Approved SFT Submitters would be selected by the SFT Members (as defined below and in the proposed rule change), subject to NSCC's approval. An Approved SFT Submitter could either be a Member or a third-party vendor. SFTs submitted to NSCC by an Approved SFT Submitter would be valid and binding obligations of each SFT Member designated by the Approved SFT Submitter as a party thereto.

Eligible Equity Securities and Per Share Price Minimum

NSCC will maintain eligibility criteria for the securities that may underlie an SFT that NSCC will accept for novation. Consistent with NSCC's general approach to eligibility for securities, the eligibility criteria would not be a rule, but a separate document maintained by NSCC and available to Members. It is currently contemplated that eligible securities for SFTs in the proposed SFT Clearing Service will be limited to CNS-eligible securities.

In light of the fact that central clearing of SFTs would be a new service for NSCC, and market participants would be able to elect which of their eligible SFTs to novate to NSCC (*i.e.,* central clearing of SFTs would not be mandatory for Members), NSCC is not able to anticipate at this time the size and composition of the SFT portfolios that would be novated to NSCC. Due to this lack of history, NSCC would, as an initial matter, provide proposed SFT Clearing Service for only those SFTs where the underlying securities are CNS-eligible equity securities that have a per share price of $5 or more. NSCC selected $5 as the per share price minimum for underlying equity securities that could be the subject of a novated SFT because $5 is a common share price minimum adopted in brokerage margin eligibility schedules.

This proposed share price limitation would be implemented systemically by NSCC as one of the eligibility criteria for determining whether an equity security is eligible to be the subject of a novated SFT (rather than as a rule), and such per share price limitation could be modified by NSCC[23] at a later date after NSCC gains more experience with the nature of the SFT portfolios submitted for clearing. In addition, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below $5, such SFT would continue to be novated to NSCC, but the Required SFT Deposit (as defined below and in the proposed rule change) for the affected Members would include an amount equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds $5.

Cash Collateral

Consistent with the cash market transactions NSCC clears today where cash is used to satisfy Members' purchase obligations in eligible securities, cash would likewise be the only eligible form of collateral for novated SFTs under the proposed SFT Clearing Service.[24] More specifically, NSCC would limit the SFTs that it is willing to novate to SFTs that have SFT Cash (as defined below and in the proposed rule change) equal to or greater than 100% market value of the lent securities, and would not novate any obligations to return collateral consisting of securities.[25]

NSCC would novate the Final Settlement obligations of an SFT as of the time the Initial Settlement of such SFT is completed, unless the SFT is a Bilaterally Initiated SFT (as defined below and in the proposed rule change) or a Sponsored Member Transaction (as defined below and in the proposed rule change), in which case novation of the Final Settlement obligations would occur upon NSCC reporting to the Approved SFT Submitter that the SFT has been validated and novated to NSCC.

As described above, each SFT would be collateralized by cash equal to no less than 100% of the market value of the lent securities. In addition, in order to address regulatory and investment guideline requirements applicable to certain institutional firms,[26] a Member would be permitted (but not required) to transfer an additional cash haircut above 100% (*e.g.,* 102%) to such institutional firms, *i.e.,* Independent Amount SFT Cash (as defined below and in the proposed rule change), as part of the Initial Settlement of the SFT. The Sponsoring Member or Agent Clearing Member, as applicable, that receives the Independent Amount SFT Cash in the Initial Settlement would also receive a commensurate Clearing Fund call, *i.e.,* an Independent Amount SFT Cash Deposit Requirement (as

[21] As defined in Rule 1 (Definitions and Descriptions), the term ''Member'' means any Person specified in Section 2.(i) of Rule 2 who has qualified pursuant to the provisions of Rule 2A. As such, the term ''Member'' does not include a Sponsored Member. *Supra* note 4.

[22] *See* Section 5 of proposed Rule 56, which provides that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members.

[23] The per share price limitation could be modified by NSCC without any regulatory filings; however, any change in the per share price limitation would be announced by NSCC via an Important Notice posted to its website.

[24] This is referred to as ''SFT Cash'' in the proposed rule text.

[25] *See* Section 5(a) of proposed Rule 56 and the definition of ''Securities Financing Transaction''.

[26] As an example, a registered investment company that lends securities through an agent may be required under Section 17(f) of the Investment Company Act of 1940 and Rule 17f–2 thereunder to collect cash collateral equal to no less than 102% of the market value of the lent securities. *See, e.g.,* The Adams Express Company, SEC No-Action Letter (Oct. 8, 1984). Other institutional firms may be subject to similar requirements under their established investment guidelines or applicable rules, regulations or guidance.

defined below and in the proposed rule change), from NSCC to reflect the value received by such Member above the market price of the equity security lent. NSCC's novation of Final Settlement obligations related to Independent Amount SFT Cash would be tied to the time the Sponsoring Member or Agent Clearing Member, as applicable, satisfies the related Independent Amount SFT Cash Deposit Requirement in cash.

RVP/DVP Settlement at DTC

The Final Settlement obligations of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle receive-versus-payment/delivery-versus-payment (''RVP/DVP'') at DTC.[27] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. DTC would accept delivery instructions for an SFT from NSCC, as agent for DTC participants that are SFT Members.[28]

Pre-novation counterparties to an SFT that is due to settle may elect to pair off (*i.e.,* offset) the Final Settlement obligations of such SFT against the Initial Settlement obligations of a new SFT between the same parties on the same securities. NSCC believes that such offsets would minimize the operational burden of settling overnight obligations. NSCC would calculate and process the difference in cash collateral between the paired off SFTs, *i.e.,* Price Differential (as defined below and in the proposed rule change). Price Differential would also be processed in accordance with DTC rules and procedures, including provisions relating to risk controls. DTC would accept Price Differential payment orders for an SFT from NSCC, as agent for DTC participants that are SFT Members.

Settlement of the Rate Payment obligations and payment obligations arising from certain mandatory corporate actions and cash dividends would be processed as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a full pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off the parties' Final Settlement obligations on the Settling SFT (as defined below and in the proposed rule change) with a Linked SFT (as defined below and in the proposed rule change) pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday, the Transferee will return 100 shares of security X to the Transferor for $99 per share. The Rate Payment for the Linked SFT would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a partial pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to partially pair off the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 25 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 25 shares of security X to the Transferor against $99 per share. In the Final Settlement on Tuesday for the remaining Settling SFT, the Transferee will return 75 shares of security X to the Transferor for $100 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in relation to the shares subject to pair off (*i.e.,* 25 shares of security X). In addition, the Rate Payment for the Settling SFT (*i.e.,* 100 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday for the Linked SFT, the Transferee will return 25 shares of security X to the Transferor for $99 per share. The Rate Payment on the Linked SFT (*i.e.,* 25 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Buy-In, Recall and Accelerated Settlement

It is occasionally the case in the securities lending market that a borrower is solvent and able to satisfy its general obligations as they become due but unable to deliver the lent securities to the lender within the timeline requested by the lender. The contractual remedy that has developed in the bilateral securities lending market for these situations is a ''buy-in.'' Under this remedy, the lender may purchase securities equivalent to the borrowed securities in the market and charge the borrower for the cost of this purchase. This serves to benefit the lender because it allows the lender to recover the securities within its required timeline, and it benefits the borrower by avoiding a situation in which the borrower's failure to perform under a single transaction results in an event of default and close-out of all of its securities lending transactions (and potentially other positions through a cross-default). Similarly, in the bilateral space, securities borrowers may have the need to accelerate settlement of securities lending transactions if they lose a ''permitted purpose'' for such loans under Regulation T. The proposed SFT Clearing Service would seek to retain the buy-in and acceleration

[27] As described below, the Final Settlement and other obligations of each Sponsored Member Transaction would, at the direction of NSCC, settle on the books and records of the relevant Sponsoring Member.

[28] On March 28, 2022, DTC submitted a proposed rule change to provide DTC participants that are also NSCC Members with settlement services in connection with NSCC's proposed SFT Clearing Service. *See* SR–DTC–2022–002, which was filed with the Commission but has not yet been published in the **Federal Register**. A copy of this proposed rule change is *available at https://www.dtcc.com/legal/sec-rule-filings.aspx.*

mechanisms, as they ensure the smooth functioning of securities markets without causing unnecessary and disorderly defaults or regulatory violations.[29]

Consistent with their rights under industry-standard documentation for bilateral SFTs, as proposed, Transferors would have the right to submit a Recall Notice (as defined below and in the proposed rule change) to NSCC in respect of a novated SFT for which Final Settlement obligations have not yet been satisfied. If the Transferee does not return the lent securities by the Recall Date (as defined below and in the proposed rule change) specified in such notice, and the Transferor would be eligible to Buy-In (as defined below and in the proposed rule change), in accordance with such timeframes and deadlines as established by NSCC for such purpose, such securities.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off (*i.e.,* offset) the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

Later in the day on Tuesday, the Transferor determines it now needs 100 shares of security X back in its inventory, and so the Approved SFT Submitter submits a Recall Notice to NSCC, prior to the deadline established by NSCC, on behalf of the Transferor for 100 shares of security X with a Recall Date of Thursday. At the end of day on Tuesday, the share price of security X is $98 per share. Upon receipt of the Recall Notice, the SFT would be treated as a Non-Returned SFT (as defined below and in the proposed rule change) by NSCC pursuant to Section 9(e) of proposed Rule 56 (Securities Financing Transaction Clearing Service). Accordingly, pursuant to Section 9(a) of proposed Rule 56, the Final Settlement Date (as defined below and in the proposed rule change) of the SFT would be rescheduled to Thursday, and NSCC would, on Wednesday collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Assume further that the Transferee does not transfer the 100 shares of security X on Wednesday and that the end of day price of security X on Wednesday is $97 per share. On Thursday, NSCC would again collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Thursday as part of NSCC's end-of-day final money settlement process. In addition, since the Recall Notice specified Thursday as the Recall Date, the Transferor would be entitled to purchase (or deem itself to have purchased) 100 shares of security X in accordance with the provisions of Section 9(b) of proposed Rule 56. Assuming that the Transferor paid a price of $95 per share for security X and submitted a written notice to NSCC of its Buy-In Costs (as defined below and in the proposed rule change) on Thursday, the Transferor would owe NSCC a Buy-In Amount (as defined below and in the proposed rule change) of $2 per share ($100 per share of SFT Cash received by the Transferor at the Initial Settlement of the SFT, less the $95 per share Buy-In Costs of the Transferor, minus $3 per share Price Differential paid by the Transferor to NSCC), and such Buy-In Amount would be debited by NSCC from the Transferor and credited to the Transferee as part of NSCC's end-of-day final money settlement process on Friday.

Similarly, consistent with their rights under industry-standard documentation for bilateral SFTs, Transferees would have the right to accelerate the scheduled Final Settlement of a novated SFT through notice from the Approved SFT Submitter to NSCC of such accelerated settlement.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to net the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. Later in the day on Tuesday, the Transferee loses permitted purpose under Regulation T for the borrowing of 100 shares of security X. Therefore, pursuant to Section 11 of proposed Rule 56 (Securities Financing Transaction Clearing Service), the Approved SFT Submitter submits a notice to NSCC on behalf of the Transferee to accelerate the Final Settlement of the Linked SFT to Tuesday. The Transferee then on Tuesday returns 100 shares of security X to NSCC for $99 per share, and NSCC returns 100 shares of security X to the Transferor for $99 per share. The Rate Payment would be passed by NSCC for the Settling SFT as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

[29] NSCC does not believe retaining the buy-in and acceleration mechanisms would undermine novation because NSCC would remain the obligor and obligee in respect of the Final Settlement, Rate Payment, and Distribution Payment (as defined below and in the proposed rule change) entitlements and obligations. These mechanisms simply affect the timing and manner in which those obligations are discharged.

Risk Management of SFT Positions

Under the proposal, NSCC is requiring a deposit to the Clearing Fund [30] for SFT Positions, *i.e.,* Required SFT Deposit. From a market risk standpoint, SFT activity would, except as otherwise noted below, be risk managed by NSCC in a manner consistent with Members' CNS positions but would be margined independently of the Member's other positions,[31] and a Required SFT Deposit would be collected by NSCC for all SFT activity of an SFT Member, subject to a $250,000 minimum deposit.[32] Specifically, NSCC is proposing to calculate an SFT Member's Required SFT Deposit by applying the sections of Procedure XV (Clearing Fund Formula and Other Matters) specified in Section 12 of proposed Rule 56 (*i.e.,* Sections I.(A)(1)(a), (b), (c), (e), (f), (g) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV as such sections apply to CNS Transactions, and the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits for Members on the Watch List); (2) (Excess Capital Premium), (3) (Backtesting Charge), (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)–(b), II.(B), II.(C), and II.(D); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV, as such sections apply to Members). Furthermore, NSCC would require an additional Required SFT Deposit for Non-Returned SFTs that is intended to mirror the premium charged for CNS Fails Positions. NSCC would also apply the Independent Amount SFT Cash Deposit Requirement for SFTs that have Incremental Additional Independent Amount SFT Cash.

For the purpose of applying Section I.(A)(1)(a)(i) of Procedure XV (Value-at-Risk (VaR) charge), unlike the current calculation of the volatility of a Member's Net Unsettled Positions [33] in CNS Transactions, NSCC is proposing that the volatility of an SFT Member's SFT Positions shall be the sum of (a) the highest resultant value between Section I.(A)(1)(a)(i)I. (Core Parametric Estimation) and Section I.(A)(1)(a)(i)III. (Margin Floor) and (b) the resultant value of Section I.(A)(1)(a)(i)II. (Gap Risk Measure). This proposed change is designed to capture idiosyncratic risk associated with an SFT Member's portfolio by enabling NSCC to apply the Gap Risk Measure more frequently.

NSCC is also proposing that, for the purpose of applying Section I.(A)(1)(g) of Procedure XV (Margin Liquidity Adjustment (MLA) charge), SFT Positions shall be aggregated with Net Unsettled Positions in the same asset group or subgroup; provided, however, in the event such aggregation results in a reduction of the aggregate positions in the relevant asset group or subgroup, NSCC shall apply the greater of (a) the sum of MLA charges separately calculated for SFT Positions and Net Unsettled Positions in the asset group or subgroup and (b) the MLA charge calculated from aggregating the SFT Positions and the Net Unsettled Positions in the asset group or subgroup. This proposed change is designed to enable NSCC to better risk manage the SFT activity by assessing the MLA charge in a circumstance where the combined SFT Positions and Net Unsettled Positions in total trigger the applicable MLA charge thresholds, whereas, if calculated separately, the MLA charge would not be triggered.

In addition, NSCC is proposing that each SFT Member, other than an SFT Member that is a Sponsored Member, so long as such Member is an SFT Member, would provide Supplemental Liquidity Deposits to the Clearing Fund, as may be required pursuant to Rule 4A (Supplemental Liquidity Deposits).

Consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) consist of cash.[34] [35] NSCC would also have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required as described above. NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member. For example, as proposed in Section 12 of Rule 56, if NSCC had specific concerns about a particular SFT Member's financial or operational capabilities, but NSCC had not yet come to the determination that ceasing to act for the SFT Member would be appropriate (but could potentially become appropriate within the near term), NSCC may request that a greater portion of the SFT Member's Required SFT Deposit to the Clearing Fund be in the form of cash in order to simplify any potential close-out liquidation required in the event of that SFT Member's default. Separately, pursuant to Section II.(A)1(a) of Procedure XV, if an SFT Member's deposit of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities is in excess of 25% of the SFT Member's Required Fund Deposit, NSCC would subject the deposit to an additional haircut.

The Sponsoring Member Required Fund Deposits (as defined below and in the proposed rule change) and Agent Clearing Member Required Fund Deposits (as defined below and in the proposed rule change) would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers,[36] as applicable, would be permitted. This is to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent

[30] As currently defined in Rule 1 (Definitions and Descriptions), the term ''Clearing Fund'' means the fund created pursuant to Rule 4. *Supra* note 4.

[31] NSCC is not proposing at this time to portfolio margin a Member's SFT Positions with any CNS positions of the Member, except with respect to the MLA charge. NSCC may reconsider this position after it obtains a reasonable amount of experience observing the nature and volume of SFT activity submitted by Members to NSCC for novation through the proposed SFT Clearing Service.

[32] This $250,000 minimum deposit is a requirement that is separate from a Member's minimum (non-SFT) Clearing Fund deposit requirement, although it is designed to be consistent with such requirement.

[33] ''Net Unsettled Positions'' means a Member's net of unsettled Regular Way, When-Issued and When-Distributed positions in CNS Securities that have not yet passed Settlement Date and net positions in CNS Securities that did not settle on Settlement Date. *See* Rule 1, *supra* note 4.

[34] This $250,000 minimum cash deposit requirement is designed to be consistent with the minimum amount of cash that must be used to satisfy a Member's (non-SFT) Clearing Fund deposit requirement. NSCC believes a $250,000 minimum cash deposit would serve to strengthen NSCC's liquidity resources. Cash may also be easier to access upon a Member's default, further reducing the risk of losses and using non-defaulting Member's securities or funds, or NSCC funds.

[35] These requirements are designed to be consistent with FICC GSD's clearing fund requirements of its members given that NSCC anticipates that there would be considerable overlap between the membership of FICC GSD that participate in FICC for purposes of clearing their securities financing transaction activity (including in particular sponsored repo activity) and the Members that would elect to participate in the proposed SFT Clearing Service. Specifically, FICC GSD Rule 4, Section 3 requires (i) a minimum of 40 percent of a member's required fund deposit to be in the form of cash and/or eligible clearing fund treasury securities and (ii) the lesser of $5,000,000 or 10 percent of the required fund deposit, with a minimum of $100,000, be made and maintained in cash. *See* Rule 4 (Clearing Fund and Loss Allocation) of the FICC GSD Rulebook, *supra* note 16.

[36] *See* Section 7(c) of proposed Rule 2C and Section 6(c) of proposed 2D.

the sum of each individual institutional firm's activity.

As proposed and as described above, the Final Settlement obligations and Price Differential of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle RVP/DVP at DTC.[37] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. Therefore each DTC participant's Final Settlement obligation would complete at DTC on a fully collateralized basis, and the associated debits (if any) would be subject to DTC's risk controls.

To the extent the Price Differential is not processed by DTC, for example if a receiver does not satisfy DTC's risk controls, NSCC would debit and credit the Price Differential from and to the SFT Accounts (as defined below and in the proposed rule change) of the SFT Member parties to the SFT as part of its end of day final money settlement.

In the event NSCC ceases to act for a Defaulting SFT Member (as defined below and in the proposed rule change), on the Business Day that NSCC ceased to act, NSCC's daily liquidity need calculation would include all Price Differential debits owed by the Defaulting SFT Member not processed at DTC. On subsequent days of the liquidation of the Defaulting SFT Member's SFT Positions, NSCC's total liquidity need calculations would include all novated SFT activity that has not reached Final Settlement on the Business Day NSCC ceased to act, netted together with all other outstanding settlement activity of the Defaulting SFT Member at NSCC.

Until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[38] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in largely the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. This is because even though the non-payment of the Rate Payment in an SFT Member default context may have an impact on non-defaulting SFT Members, such impact is generally de minimis. To the extent NSCC is required to pay a Price Differential, as well as any Final Settlement obligations, to a non-defaulting SFT Member, NSCC would rely on NSCC's liquidity resources, including the Required SFT Deposit and any Supplemental Liquidity Deposits (''SLD'') that may be collected, when applicable, in order to cover the liquidity need associated with any such Price Differential and Final Settlement obligations, consistent with the Clearing Agency Liquidity Risk Management Framework.[39] [40] In addition, NSCC would anticipate being in regular communication with the non-defaulting SFT Members as to the timing of the satisfaction of any Final Settlement obligations related to a defaulting SFT Member.

(iii) Sponsoring Members and Sponsored Members

NSCC is proposing a sponsored membership program to allow Members to play the role of pre-novation counterparty and credit intermediary for their institutional firm clients in clearing.

NSCC has modeled a number of the aspects of the proposed sponsored member program, including the eligibility criteria and many of the risk management requirements, on FICC's Sponsoring Member/Sponsored Member Program. FICC's Sponsoring Member/Sponsored Member Program allows an FICC Netting Member to sponsor an entity that satisfies certain requirements and submit to FICC for novation certain securities transactions between the Netting Member and the sponsored entity. These securities transactions generally include the off-leg of repurchase transactions on U.S. Government or agency securities or straight purchase and sales of such securities. Such transactions present similar risk management, legal, accounting, and operation considerations to SFTs, as both involve an obligation of a sponsored member and a sponsoring member to exchange cash against securities. Since 2005, FICC has worked with its members to improve its Sponsoring Member/Sponsored Member Program to address these considerations. Based on feedback from Members and its own internal assessments, NSCC believes that leveraging the provisions of FICC's Sponsoring Member/Sponsored Member program and the learning over the past decade and a half would allow NSCC to provide a sponsored member program that has a solid risk management, accounting, legal and operational foundation.

Sponsoring Members

Under the proposal, all Members would be eligible to apply to become Sponsoring Members in NSCC, subject to credit criteria that are designed to be substantially similar to those applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members.'' [41] A Member whose

[37] *Supra* note 27.

[38] *See* proposed Rule 56, Section 14(b)(ix).

[39] *See* Securities Exchange Act Release Nos. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (File No. SR–NSCC–2017–005); 90649 (December 11, 2020), 85 FR 81961 (December 17, 2020) (File No. SR–NSCC–2020–021). This framework sets forth the manner in which NSCC measures, monitors and manages the liquidity risks that arise in or are borne by it, and the qualifying liquidity resources that NSCC maintains in order to cover those risks. Such resources include, for example, cash deposits to the Clearing Fund and SLD that may be collected, when applicable.

[40] For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. Assume further that at midnight on Monday, NSCC ceases to act for the Transferor.

On Tuesday, NSCC executes a sale of 100 shares of security X for $99 per share. In accordance with the normal settlement cycle for purchases and sales of equity securities, this sale will settle on Thursday.

Pursuant to Section 14(b)(viii) of proposed Rule 56 (Securities Financing Transaction Clearing Service), NSCC would likewise settle the Final Settlement obligations of the defaulting Transferor's SFT with the non-defaulting Transferee on Thursday.

Assume further that the end-of-day price of security X on Tuesday is $99 per share. On Wednesday, NSCC would pay $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. Assume further that the end-of-day price of security X on Wednesday is $98 per share.

On Thursday, NSCC would pay an additional $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. The Transferee would then return 100 shares of security X to NSCC and receive $98 per share (*i.e.,* the current market price for security X) from NSCC. As such, the non-defaulting Transferee would be made whole by NSCC for the $100 per share it transferred in the Initial Settlement of the Defaulted-Related SFT (as defined below and in the proposed rule change) since NSCC would have transferred to it $98 per share in Final Settlement plus an additional $2 per share in Price Differential.

NSCC would incur a net loss of $1 per share in this example since it would have sold security X for $99 per share and paid the non-defaulting Transferee a total of $100 per share (*i.e.,* $98 per share in Final Settlement proceeds plus $2 per share in Price Differential). NSCC would be entitled to deduct this amount from the defaulted Transferor's Clearing Fund deposits (including its SFT Deposit).

[41] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become a Sponsoring Member if it satisfies the credit criteria in proposed Rule 2C (Sponsoring Members and Sponsored Members) (*i.e.,* if it has (i)

Continued

application to become a Sponsoring Member has been approved by the Board of Directors or NSCC, as applicable, pursuant to proposed Rule 2C (''Sponsoring Member'') would be permitted to sponsor their institutional firm clients into membership as Sponsored Members. Such Sponsoring Members would then be able to facilitate their institutional firm clients' cleared activity via two back-to-back principal SFTs, *i.e.,* client-to-Sponsoring Member and Sponsoring Member-to-broker (or to another institutional firm client that the Sponsoring Member has sponsored into membership), and each of such transactions would be eligible for novation to NSCC.

Consistent with the requirements applicable to sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member would be responsible for (i) submitting data on its Sponsored Members' SFTs to NSCC or appointing a third-party Approved SFT Submitter to do so, (ii) posting to NSCC all of the Clearing Fund associated with the SFT activity of its Sponsored Members, which would be calculated on a gross basis (*i.e.,* SFT activity would not be netted across Sponsored Members for Clearing Fund purposes), (iii) providing an unconditional guaranty to NSCC for its Sponsored Members' Final Settlement and other obligations to NSCC, and (iv) covering any default loss allocable to its Sponsored Members (in addition to its own default loss allocation as a Member).

Specifically, as proposed, a Sponsoring Member would be permitted to submit to NSCC for novation Sponsored Member Transactions, subject to an activity limit designed to be substantially similar to that applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members.'' Under the proposal, if the sum of the Volatility Charges (as defined below and in the proposed rule change) applicable to a Sponsoring Member's Sponsored Member Sub-Accounts (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member would not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 5 of proposed Rule 2C, Sponsored Member Transactions are SFTs between a Sponsoring Member and its Sponsored Members.

The Sponsoring Member would establish one or more accounts at NSCC for its Sponsored Members' positions arising from such Sponsored Member Transactions, *i.e.,* Sponsored Member Sub-Accounts, which would be separate from the Sponsoring Member's proprietary accounts. For operational and administrative purposes, NSCC would interact solely with the Sponsoring Member as agent of its Sponsored Members.

Sponsoring Members would be responsible for providing NSCC with a Sponsoring Member Guaranty (as defined below and in the proposed rule change) whereby the Sponsoring Member guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Sponsored Member Transactions submitted by the Sponsoring Member for novation. Although Sponsored Members are principally liable to NSCC for their own settlement obligations under such transactions in accordance with the Rules, the Sponsoring Member Guaranty requires the Sponsoring Member to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails perform its settlement obligations.

In addition, a Sponsoring Member would be responsible for posting to NSCC all of the Clearing Fund associated with the Sponsored Member Transactions (which would not be netted across Sponsored Members for Clearing Fund purposes) and covering any default loss allocable to its Sponsored Members, as well as its own default loss allocation as a Member.[42]

As proposed, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would also provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and such Sponsored Member that have been novated to NSCC.[43]

Sponsored Members

Consistent with the requirements applicable to sponsored members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' any Person that has been approved by NSCC to be sponsored into membership by a Sponsoring Member pursuant to proposed Rule 2C (''Sponsored Member'') would be required to be either a ''qualified institutional buyer'' as defined by Rule 144A[44] under the Securities Act of 1933, as amended (''Securities Act''),[45] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the

Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to category 2 sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. A Sponsoring Member applicant would be viewed and surveilled as the credit counterparty to NSCC in respect to its Sponsored Member Sub-Account(s) (as defined below and in the proposed rule change) in light of its responsibility to NSCC as the processing agent and unconditional guarantor of its Sponsored Members' performance to NSCC.

In addition, NSCC may require that a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become a Sponsoring Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be a Sponsoring Member at NSCC that is an Agent Clearing Member or an existing FICC sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be a Sponsoring Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

[42] The following example illustrates how loss allocation would occur with respect to Sponsoring Members and Sponsored Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Sponsored Member Sub-Accounts as if each were a Member. If the allocated losses to a Sponsoring Member's Sponsored Member Sub-Accounts is $1 million and the allocated losses to its Sponsoring Member in its capacity as a Member is $2 million, the Sponsoring Member would be responsible for a total of $3 million loss allocation ($1 million for its Sponsored Member Sub-Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[43] *See* Section 14 of proposed Rule 2C (Sponsoring Members and Sponsored Members).

[44] 17 CFR 230.144A.

[45] 15 U.S.C. 77a *et seq.*

financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph.

(iv) Agent Clearing Members and Customers

NSCC is proposing an agent clearing membership designed to allow Members to play the role of agent and credit intermediary for their institutional firm clients in clearing. This membership type is being proposed in response to the request of certain market participants, including in particular certain agent lending banks, that the proposed SFT Clearing Service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transactions on behalf of its institutional firm clients with a third-party market participant, rather than acting as its institutional firm clients' principal pre-novation counterparty). Agent-style trading is the manner in which such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients. Under the proposal, a Member that enters into transactions on behalf of its institutional firm clients in accordance with the provisions of proposed Rule 2D (''Agent Clearing Member'') would be permitted to submit SFTs executed by it (as agent on behalf of its institutional firm clients, with each such client referred to as a ''Customer'') with a Member participating in the proposed SFT Clearing Service (which could include a Member acting in a proprietary capacity within the proposed SFT Clearing Service as well as an Agent Clearing Member).

All Members would be eligible to apply to become Agent Clearing Members in NSCC, subject to credit criteria that are substantially similar to those applicable to Sponsoring Members as well as category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.[46]

Under the proposal, the requirements to be imposed on Agent Clearing Members would largely mirror those imposed on Sponsoring Members. However, NSCC is not proposing to impose the same types of requirements on an Agent Clearing Member's Customers as it does on Sponsored Members because a Customer would not be a direct member of NSCC.

Specifically, as proposed, an Agent Clearing Member would be permitted to submit to NSCC for novation Agent Clearing Member Transactions (as defined below and in the proposed rule change), on behalf of one or more of its Customers, subject to an activity limit. Specifically, under the proposal, if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member would not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 4 of proposed Rule 2D, Agent Clearing Member Transactions are SFTs that an Agent Clearing Member submits to NSCC on behalf of one or more Customers.

The Agent Clearing Member would establish one or more accounts at NSCC for its Customers' positions, *i.e.,* an Agent Clearing Member Customer Omnibus Account, that would be in the name of the Agent Clearing Member for the benefit of its Customers; however, each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both (*i.e.,* activity would not be netted across Customers for Clearing Fund purposes). Under the proposal, the Agent Clearing Member would act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; however, the Agent Clearing Member would remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions.

In addition, as proposed under the sponsoring/sponsored membership model, the Agent Clearing Member would be responsible for posting to NSCC all of the Clearing Fund and any applicable SLD associated with the activity of its Customers and covering any default loss allocable to its Customers, as well as its own default loss allocation as a Member;[47] however, unlike a Sponsoring Member, an Agent Clearing Member would not be required to provide an unconditional guaranty to NSCC for its Customer's obligations. This is because, as described above, the Agent Clearing Member would be fully liable for all obligations of its Customers under the Agent Clearing Member Transactions that it submitted to NSCC as the Member.

As proposed, NSCC would also provide a mechanism by which an Agent Clearing Member may, upon a default of a Customer and consent of NSCC, transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member.[48]

[46] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become an Agent Clearing Member if it satisfies the credit criteria in proposed Rule 2D (*i.e.,* if it has (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. Similar to the review of a Sponsoring Member applicant, an Agent Clearing Member applicant would also be viewed and surveilled as the credit counterparty to NSCC in light of its role as the Member with respect to its Agent Clearing Member Customer Omnibus Account(s).

In addition, NSCC may require a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become an Agent Clearing Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be an Agent Clearing Member at NSCC that is a Sponsoring Member or an existing FICC sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to the Board of Director's approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be an Agent Clearing Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

[47] The following example illustrates how loss allocation would occur with respect to Agent Clearing Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Agent Clearing Member Customer Omnibus Accounts as if each were a Member. If the allocated losses to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account is $1 million and the allocated losses to the Agent Clearing Member in its capacity as a Member is $2 million, the Agent Clearing Member would be responsible for a total of $3 million loss allocation ($1 million for its Agent Clearing Member Customer Omnibus Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[48] *See* Section 11 of proposed Rule 2D (Agent Clearing Members).

(v) Sponsoring Member/Sponsored Member vs. Agent Clearing Member/ Customers

The direct costs of central clearing (*i.e.,* Clearing Fund, loss allocation, fees and performance on behalf of an institutional firm clients) would be largely equivalent as between what NSCC proposes to apply to a Sponsoring Member and what NSCC proposes to apply to an Agent Clearing Member. Likewise, the capital costs to Sponsoring Members and Agent Clearing Members of intermediating institutional firm activity as between the two buy-side clearing models would be largely equivalent. That being said, because Sponsoring Members would be required to ensure that (i) each of their clients separately onboards with NSCC as a Sponsored Member (which NSCC understands is generally required from an accounting perspective in order for the Sponsoring Member to net on its balance sheet its SFTs with Sponsored Members against the Sponsoring Member's other NSCC-cleared SFTs),[49] (ii) each of their client's SFTs is individually submitted to NSCC for clearing, and (iii) each Sponsored Member continues to remain in compliance with the financial standards applicable to Sponsored Members throughout the course of its membership, Sponsoring Members may incur more legal, onboarding, operational and ongoing administrative costs than Agent Clearing Members with respect to their institutional firm clearing activity.

However, the sponsoring/sponsored membership model allows for principal-style trading between a Sponsoring Member and its Sponsored Member where the Sponsoring Member and Sponsored Member are pre-novation counterparties, which would generally create the opportunity for a Sponsoring Member to make an economic spread between its trade with its Sponsored Member and its offsetting trades with other NSCC Members or Sponsored Members. The opportunity for such economic spread and the ability of a Sponsoring Member to achieve balance sheet netting and capital efficiency on such trading activity through the novation of SFTs to NSCC could, for some market participants, offset the indirect additional costs associated with acting as a Sponsoring Member, rather than acting as an Agent Clearing Member.

On the other hand, as NSCC understands it, for some market participants, particularly agent lenders, their business models are not typically predicated on principal-style trading. Rather, these agency businesses typically charge fees for their services (rather than taking economic spreads) and their business models and their agreed upon investment guidelines with their institutional firm customers may only permit agented (rather than principal-style) trading for securities lending transactions. So, for such market participants, participating in clearing at NSCC as an Agent Clearing Member may be a better fit for their overall business model.

From the perspective of an institutional firm client, the costs of clearing that may be passed through to it by its intermediary (depending on their commercial arrangements) would be largely equivalent. That said, some institutional firms that engage in securities lending may be prohibited from acting as Sponsored Members and engaging in principal-style trading with their intermediary in clearing for regulatory and/or investment guideline reasons. For those institutional firms, being able to transact SFTs as a Customer within an Agent Clearing Member Customer Omnibus Account would offer them a means to access central clearing that would otherwise not be available to them if the sponsoring/sponsored membership model were the only model available for buy-side clearing.

(vi) Proposed Rule Changes

(A) Proposed Rule 2C—Sponsoring Members and Sponsored Members

NSCC is proposing to add Rule 2C, entitled ''Sponsoring Members and Sponsored Members.'' This new rule would govern the proposed sponsored membership and would be comprised of 14 sections, each of which is described below.

Proposed Rule 2C, Section 1 (General)

Section 1 of proposed Rule 2C would be a general provision regarding the Rules applicable to Sponsoring Members and Sponsored Members.

Section 1 of proposed Rule 2C would provide that NSCC will permit the establishment of a sponsored membership relationship between a Member that is approved as a Sponsoring Member and one or more Persons that are accepted by NSCC as Sponsored Members of that particular Sponsoring Member. Section 1 of proposed Rule 2C would further provide that the rights, liabilities and obligations of Sponsoring Members and Sponsored Members shall be governed by proposed Rule 2C, and that references to the term ''Member'' in other Rules would not apply to Sponsoring Members and to Sponsored Members, in their respective capacities as such, unless specifically noted as such in proposed Rule 2C or in such other Rules.

Section 1 of proposed Rule 2C would also provide that a Sponsoring Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as a Sponsoring Member except as contemplated under Sections 7, 8 and 9 of proposed Rule 2C and under the Sponsoring Member Guaranty.

Proposed Rule 2C, Section 2 (Qualifications of Sponsoring Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2C would establish the eligibility requirements for Members that wish to become Sponsoring Members, the membership application process that would be required of each Member to become a Sponsoring Member, the on-going membership requirements that would apply to Sponsoring Members, as well as the requirements regarding a Sponsoring Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2C, any Member would be eligible to apply to become a Sponsoring Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become a Sponsoring Member if it has (1) Net Worth (as defined below and in the proposed rule change) of at least $25 million and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[50] In connection therewith,

[49] *Supra* note 12.

[50] NSCC is proposing these financial minimums for Registered Broker-Dealer Sponsoring Member applicants to reflect the additional responsibility that the applicant would undertake as a Sponsoring Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In its assessment, NSCC considered various factors, such as the amount of a Registered Broker-Dealer Member's capital and its impact on such Member's financial responsibility and operational capability, comparability with the financial requirements of other clearing agencies, and the desire to strike a balance between credit risk mitigation and member accessibility. For the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,''

NSCC is proposing ''Net Worth'' to mean, as of a particular date, the amount equal to the excess of the assets of a Person over the liabilities of such Person, computed in accordance with generally accepted accounting principles, and for Registered Broker-Dealers, Net Worth shall include liabilities that are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix D to Rule 15c3–1 of the Act.[51] As proposed, NSCC may require that a Person be a Member for a certain time period before that Person may be considered to become a Sponsoring Member.

Section 2(b) of proposed Rule 2C would provide that each Member applicant to become a Sponsoring Member would be required to provide an application and other information requested by NSCC. Sponsoring Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already an Agent Clearing Member under proposed Rule 2D or a sponsoring member of FICC.[52] NSCC believes this approach to the Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2C, if the Sponsoring Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2C, NSCC may impose additional financial requirements on a Sponsoring Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as a Sponsoring Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become a Sponsoring Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Sponsoring Member regarding its compliance with the increased financial requirements.[53]

In addition, under Section 2(e) of proposed Rule 2C, NSCC may require each Sponsoring Member or any Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[54]

Section 2(f) of proposed Rule 2C would provide that each Member whose Sponsoring Member application is approved would sign and deliver to NSCC (i) an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Sponsoring Member Agreement''), (ii) a guaranty, in the form and substance acceptable to NSCC, whereby the Member, in its capacity as a Sponsoring Member, guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Rules in respect of the Sponsoring Member's Sponsored Member Sub-Accounts, including, without limitation all of the settlement obligations of its Sponsored Members in respect of such Sponsored Member Sub-Accounts (''Sponsoring Member Guaranty''), and a related legal opinion in a form satisfactory to NSCC. In addition, Section 2(f) of proposed Rule 2C would provide that nothing in the Rules shall prohibit a Sponsoring Member from seeking reimbursement from a Sponsored Member for payments made by the Sponsoring Member (whether pursuant to the Sponsoring Member Guaranty, out of Clearing Fund deposits or otherwise) with respect to obligations as to which the Sponsored Member is a principal obligor under the Rules, or as otherwise may be agreed by the Sponsored Member and Sponsoring Member.

Section 2(g) of proposed Rule 2C would provide that each Sponsoring Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2C would provide that a Sponsoring Member's books and records, insofar as they relate to the Sponsored Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2C would provide that a Sponsoring Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become a Sponsoring Member set forth in the proposed Rule 2C. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Sponsoring Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that

these financial minimums are also designed to be consistent with the requirements applicable to registered broker/dealers that are sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.

[51] 17 CFR 240.15c3–1d.

[52] It is NSCC's understanding that FICC is evaluating a change to the GSD Rules to provide that the application of an FICC sponsoring member applicant that is already an NSCC Sponsoring Member or Agent Clearing Member would not require approval of FICC's board of directors.

[53] If the increased financial requirements are imposed in connection with a Sponsoring Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once a Sponsoring Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Sponsoring Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Sponsoring Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 10 of proposed Rule 2C, suspend, prohibit or limit the Sponsoring Member's access to NSCC's services.

[54] As an example, NSCC may require a Sponsoring Member or a Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability if NSCC has concerns about such Sponsoring Member or Sponsoring Member applicant's overall financial health or credit rating.

fails to so notify NSCC.[55] If the Sponsoring Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Sponsoring Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Sponsoring Member, and otherwise require from the Sponsoring Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that a Sponsoring Member may fail to comply with any of the Rules applicable to Sponsoring Members, it may require the Sponsoring Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Sponsoring Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2C would provide that in the event that a Sponsoring Member fails to remain in compliance with the relevant requirements of the Rules, the Sponsoring Member Agreement or the Sponsoring Member Guaranty, NSCC shall have the right to cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of proposed Rule 2C, unless the Sponsoring Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Sponsoring Member, it is appropriate instead to establish for such Sponsoring Member a time period, which shall be determined by NSCC and which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Sponsoring Member must resume compliance with such requirements. As proposed, in the event that the Sponsoring Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of the proposed Rule 2C.

Section 2(k) of proposed Rule 2C would provide that if the sum of the Volatility Charges applicable to a Sponsoring Member's Sponsored Member Sub-Accounts and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member shall not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement.[56] As proposed, ''Volatility Charge'' would mean, in respect to a Member, the amount of its Required Fund Deposit calculated by NSCC by applying Sections I.(A)(1)(a)(i)–(iii) of Procedure XV (Clearing Fund Formula and Other Matters); ''Net Member Capital'' would mean Net Capital (as defined below and in the proposed rule change), net assets or equity capital, as applicable to a Member, based on the type of regulation, and in particular the capital requirements, to which the Member is subject; and ''Net Capital'' would mean, as of a particular date, the amount equal to the net capital of a Registered Broker-Dealer as defined in Rule 15c3–1(c)(2) of the Act,[57] or any successor rule or regulation thereto.

Section 2(l) of proposed Rule 2C would provide that a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member, with respect to all Sponsored Members or with respect to one or more Sponsored Members from time to time, by providing NSCC with a written notice from a Sponsoring Member to NSCC that the Sponsoring Member is voluntarily electing to terminate its status as a Sponsoring Member with respect to all of its Sponsored Members or with respect to one or more of its Sponsored Members (''Sponsoring Member Voluntary Termination Notice''). The Sponsoring Member shall specify in the Sponsoring Member Voluntary Termination Notice the Sponsored Member(s) in respect of which the Sponsoring Member is terminating its status (the ''Former Sponsored Members'') and a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsoring Member to NSCC with respect to the Former Sponsored Members as of the time such Sponsoring Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2C would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsoring Member Voluntary Termination Notice from such Sponsoring Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsoring Member's status as such with respect to the Former Sponsored Members and the date on which the termination of the Sponsoring Member's status as a Sponsoring Member becomes effective (''Sponsoring Member Termination Date''). As proposed, after the close of business on the Sponsoring Member Termination Date, the Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Former Sponsored Members, and each Former Sponsored Member shall cease to be a Sponsored Member unless it is the Sponsored Member of another Sponsoring Member. If any Sponsored Member Transactions is submitted to NSCC by the Sponsoring Member on behalf of a Former Sponsored Member that is scheduled to settle after the Sponsoring Member Termination Date, such Sponsoring Member's Sponsoring Member Voluntary Termination Notice would be deemed void, and the Sponsoring Member would remain subject to the proposed Rule 2C as if it had not given such Sponsoring Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2C would provide that a Sponsoring Member's voluntary termination of its status as such, in whole or in part, shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the applicable Sponsoring Member Termination Date. Any such Sponsored Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Sponsoring Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after a Sponsoring Member has submitted the Sponsoring Member Voluntary Termination Notice but on or prior to the Sponsoring Member Termination Date, in order for the Sponsoring Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Sponsoring Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal

[55] *See* Addendum P (Fine Schedule), *supra* note 4.

[56] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Sponsoring Members. This is because a Sponsoring Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Sponsoring Member's financial resources, as measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

[57] 17 CFR 240.15c3–1(c)(2).

Notice, which notice, upon submission, shall supersede and void any pending Sponsoring Member Voluntary Termination Notice previously submitted by the Sponsoring Member.

Section 2(n) of proposed Rule 2C would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2C shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Sponsoring Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Sponsoring Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Sponsoring Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Sponsoring Member, NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[58]

Proposed Rule 2C, Section 3 (Qualifications of Sponsored Members, Approval Process and Continuance Standards)

Section 3 of proposed Rule 2C would establish the eligibility requirements for Sponsored Members, the membership application process that would be required of each Sponsored Member, the on-going membership requirements that would apply to Sponsored Members, as well as the requirements regarding a Sponsored Member's election to voluntarily terminate its membership.

Section 3(a) of proposed Rule 2C would provide that a Person shall be eligible to apply to become a Sponsored Member if: (x) It is sponsored into membership by a Sponsoring Member, and (y) it (1) is a ''qualified institutional buyer'' as defined by Rule 144A[59] under the Securities Act,[60] or (2) is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. NSCC would have the right to rely on the representation provided by the Sponsoring Member regarding satisfaction of (y).

Section 3(b) of proposed Rule 2C would provide that each time that a Sponsoring Member wishes to sponsor a Person into membership, it shall provide NSCC with the representation referred to in Section 3(a) of proposed Rule 2C, as well as any additional information in such form as may be prescribed by NSCC. NSCC shall approve or disapprove Persons as Sponsored Members. If NSCC denies the request of a Sponsoring Member to add a Person as a Sponsored Member, such denial shall be handled in the same manner as set forth in Section 1 of Rule 2A (Initial Membership Requirements) with respect to membership applications except that the written statement referred to therein shall be provided to both the Sponsoring Member and the Person seeking to become a Sponsored Member.

Section 3(c) of proposed Rule 2C would provide that each Person to become a Sponsored Member shall sign and deliver to NSCC an agreement whereby the Person shall agree to any terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (the ''Sponsored Member Agreement''). Each Person to become a Sponsored Member that shall be an FFI Member must be FATCA Compliant.

Section 3(d) of proposed Rule 2C would provide that a Sponsored Member shall immediately inform its Sponsoring Member, both orally and in writing, if the Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. A Sponsoring Member shall promptly inform NSCC, both orally and in writing, if a Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. Notification to NSCC by the Sponsoring Member must take place within one (1) Business Day from the date on which the Sponsoring Member first learns of the Sponsored Member's non-compliance. NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that fails to so notify NSCC.[61]

Section 3(e) of proposed Rule 2C would provide that a Sponsored Member may voluntarily elect to terminate its membership by providing NSCC with a written notice from the Sponsored Member to NSCC that the Sponsored Member is voluntarily electing to terminate its membership (''Sponsored Member Voluntary Termination Notice''). The Sponsored Member shall specify in the Sponsored Member Voluntary Termination Notice a desired date for the termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsored Member to NSCC as of the time such Sponsored Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

In addition, Section 3(e) of proposed Rule 2C would provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsored Member Voluntary Termination Notice from such Sponsored Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsored Member and the date on which the termination of the Sponsored Member becomes effective (''Sponsored Member Termination Date''). After the close of business on the Sponsored Member Termination Date, the relevant Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Sponsored Member. If any Sponsored Member Transaction is submitted to NSCC by the relevant Sponsoring Member on behalf of the Sponsored Member that is scheduled to settle after the Sponsored Member Termination Date, such Sponsored Member's Sponsored Member Voluntary Termination Notice would be deemed void, and the Sponsored Member would remain subject to the proposed Rule 2C as if it had not given such Sponsored Member Voluntary Termination Notice.

Section 3(f) of proposed Rule 2C would provide that a Sponsored Member's voluntary termination shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the Sponsored Member Termination Date, and the Sponsoring Member

[58] Section 2(n) of proposed Rule 2C is designed to be consistent with provisions in the Rules relating to the confidentiality of information furnished by participants. *See* Rule 2A (Initial Membership Requirements), *supra* note 4.

[59] 17 CFR 230.144A.

[60] 15 U.S.C. 77a *et seq.*

[61] *See* Addendum P (Fine Schedule), *supra* note 4.

Guaranty shall remain in effect to cover all outstanding obligations of the Sponsored Member to NSCC that are within the scope of such Sponsoring Member Guaranty.

Proposed Rule 2C, Section 4 (Compliance With Laws)

Section 4 of proposed Rule 2C would provide that each Sponsoring Member and Sponsored Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2C, Section 5 (Sponsored Member Transactions)

Section 5 of proposed Rule 2C would provide that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members (''Sponsored Member Transactions'') in accordance with proposed Rule 56, as described below. Section 5 of proposed Rule 2C would further provide that NSCC directs each Sponsored Member and Sponsoring Member to settle all Final Settlement, Rate Payment, Price Differential, and other securities delivery and payment obligations arising under a Sponsored Member Transaction that has been novated to NSCC by causing the relevant cash and securities to be transferred to the Transferor or Transferee, as applicable, on the books and records of the Sponsoring Member, and each Sponsored Member and Sponsoring Member agrees that any such transfer shall satisfy NSCC's corresponding obligation with respect to such Sponsored Member Transaction.

Proposed Rule 2C, Section 6 (Sponsoring Member Agent Obligations)

Section 6 of proposed Rule 2C would provide that a Sponsored Member shall appoint its Sponsoring Member to act as agent with respect to the Sponsored Member's satisfaction of its settlement obligations arising under Sponsored Member Transactions between the Sponsored Member and the Sponsoring Member and for performing all functions and receiving reports and information set forth in the Rules. NSCC's provision of such reports and information to the Sponsoring Member shall constitute satisfaction of any obligation of NSCC to provide such reports and information to the affected Sponsored Members. As proposed, notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member shall be obligated as principal to NSCC with respect to all settlement obligations under the Rules, and the Sponsoring Member shall not be a principal under the Rules with respect to settlement obligations of its Sponsored Members.

Proposed Rule 2C, Section 7 (Clearing Fund Obligations)

Section 7 of proposed Rule 2C would set forth the Clearing Fund obligations.

Section 7(a) of proposed Rule 2C would provide that NSCC shall maintain a ledger maintained on the books and records of NSCC for a Sponsoring Member that reflects the outstanding SFTs that a Sponsoring Member enters into in respect of a Sponsored Member and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement) (each a ''Sponsored Member Sub-Account''). Each Sponsoring Member shall make and maintain so long as such Member is a Sponsoring Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Sponsored Member Sub-Accounts (the ''Sponsoring Member Required Fund Deposit'').

Under Section 7(a), each Sponsoring Member, so long as such Member is a Sponsoring Member, shall also provide SLD to the Clearing Fund, as may be required pursuant to Rule 4A (Supplemental Liquidity Deposits); however, the Supplemental Liquidity Deposits shall be calculated without regard to Sponsored Member Transactions. This is because Sponsored Member Transactions do not independently create liquidity risk for NSCC as NSCC would not be required to complete settlement of any Sponsored Member Transactions in the event that either the Sponsoring Member or Sponsored Member defaults. In the event that the Sponsoring Member defaults, Section 12(b) of proposed Rule 2C (as described below) would permit NSCC to closeout (rather than settle) the Sponsored Member Transactions of the defaulter's Sponsored Members. Likewise, if the Sponsored Member defaults, NSCC would also not be required to complete settlement. Rather, under Section 8 of proposed Rule 2C (as described below), NSCC may offset its settlement obligations to the Sponsoring Member against the Sponsoring Member's obligations under the Sponsoring Member Guaranty to perform on behalf of its defaulted Sponsored Member.

Section 7(a) would also propose that deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 7(b) of proposed Rule 2C would provide that, in the ordinary course, for purposes of satisfying the Sponsoring Member's Clearing Fund requirements under the Rules for its Member activity, its Sponsoring Member activity, and, to the extent applicable, its Agent Clearing Member activity, the Sponsoring Member's proprietary accounts, its Sponsored Member Sub-Accounts, and its Agent Clearing Member Customer Omnibus Account(s), if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Sponsoring Member (but being obligated to give notice to the Sponsoring Member as soon as possible thereafter) and whether or not the Sponsoring Member or any of its Sponsored Members is in default of its obligations to NSCC, treat the Sponsoring Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Sponsoring Member with respect to any account as necessary to ensure that the Sponsoring Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[62]

[62] NSCC believes it unlikely that it would exercise this authority, as the Clearing Fund deposits associated with each Sponsored Member Sub-Account, Agent Clearing Member Customer Omnibus Account and proprietary account of a Sponsoring Member are designed to be sufficient to cover the obligations of such account or sub-account. However, if a Sponsoring Member defaults or fails to perform and the Clearing Fund deposits associated with a given account or sub-account of such Sponsoring Member are not sufficient to discharge the Sponsoring Member's obligations in relation to such account or sub-account, NSCC would look to the Clearing Fund deposits related to the Sponsoring Member's other accounts or sub-accounts. For example, if NSCC ceased to act for a Sponsoring Member and the close-out of the SFT Positions established in the Sponsoring Member's Sponsored Member Sub-Accounts resulted in a loss to NSCC in excess of the Clearing Fund previously posted by the Sponsoring Member in relation to such SFT Positions, NSCC may apply to the excess any other Clearing Fund deposits posted by the Sponsoring Member to NSCC, such as Clearing Fund posted in connection with the proprietary positions of the Sponsoring Member. Similarly, if a Sponsoring Member failed to perform under the Sponsoring Member Guaranty outside the context of a cease-to-act situation and the Clearing Fund previously posted by the Sponsoring Member in relation to the SFT Positions established in the

Section 7(c) of proposed Rule 2C would provide that the Sponsoring Member Required Fund Deposit for each Sponsored Member Sub-Account shall be calculated separately based on the Sponsored Member Transactions in such Sponsored Member Sub-Account, and the Sponsoring Member shall, as principal, be required to satisfy the Sponsoring Member Required Fund Deposit for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 7(d) of proposed Rule 2C would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Sponsoring Member Required Fund Deposit with respect to obligations of a Sponsoring Member under the Rules, including its obligations arising under the Sponsored Member Sub-Accounts, and the obligations of a Sponsoring Member under its Sponsoring Member Guaranty to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as a Sponsoring Member under the Rules, including, without limitation, any obligation of any such Sponsoring Member to provide the Sponsoring Member Required Fund Deposit, such Sponsoring Member's obligations arising under the Sponsored Member Sub-Accounts of such Sponsoring Member and such Sponsoring Member's obligations under its Sponsoring Member Guaranty.

Section 7(e) of proposed Rule 2C would provide that a Sponsoring Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

Proposed Rule 2C, Section 8 (Right of Offset)

Section 8 of proposed Rule 2C would provide that in the ordinary course, with respect to satisfaction of any Sponsored Member's obligations under the Rules, the Sponsoring Member's Sponsored Member Sub-Accounts, the Sponsoring Member's proprietary accounts, and the Sponsoring Member's Agent Clearing Member Customer Omnibus Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of the Sponsoring Member arises under the Sponsoring Member Guaranty to pay or perform thereunder with respect to any Sponsored Member, exercise a right of offset and net any such obligation of the Sponsoring Member under its Sponsoring Member Guaranty against any obligations of NSCC to the Sponsoring Member in respect of such Sponsoring Member's proprietary accounts at NSCC.[63] NSCC would generally anticipate exercising this right if, upon a Sponsoring Member default, the Sponsoring Member owed an amount under the Sponsoring Member Guaranty and was owed an amount by NSCC in relation to the Sponsoring Member's proprietary or other obligations.

Proposed Rule 2C, Section 9 (Loss Allocation Obligations)

Section 9 of proposed Rule 2C would establish loss allocation obligations under the sponsored membership model.

Section 9(a) of proposed Rule 2C would provide that Sponsored Members shall not be obligated for allocations, pursuant to Rule 4 (Clearing Fund), of loss or liability incurred by NSCC. To the extent that a loss or liability is determined by NSCC to arise in connection with Sponsored Member Transactions (*i.e.,* in connection with the insolvency or default of a Sponsoring Member), the Sponsored Members shall not be responsible for or considered in the loss allocation calculation, but rather such loss shall be allocated to other Members in accordance with the principles set forth in Section 4 of Rule 4.

Section 9(b) of proposed Rule 2C would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of a Sponsored Member Sub-Account as if the Sponsored Member Sub-Account were a Member, NSCC shall calculate such loss allocation obligation as if the affected Sponsored Member were subject to such allocations pursuant to Section 4 of Rule 4, but the Sponsoring Member shall be responsible for satisfying such obligations.

Section 9(c) of proposed Rule 2C would provide that the entire amount of the Required Fund Deposit associated with the Sponsoring Member's proprietary accounts at NSCC and the entire amount of the Sponsoring Member Required Fund Deposit may be used to satisfy any amount allocated against a Sponsoring Member, whether in its capacity as a Member, a Sponsoring Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on a Sponsoring Member pursuant to Section 9(b) of proposed Rule 2C, the Sponsoring Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Sponsoring Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account pursuant to proposed Rule 56), its Sponsoring Member Required Fund Deposit, and its Agent Clearing Member Required Fund Deposits, if any, for each of its Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 2C, Section 10 (Restrictions on Access to Services by a Sponsoring Member)

Section 10 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsoring Member's access to NSCC's services.

Section 10(a) of proposed Rule 2C would provide that the Board of Directors may at any time, upon NSCC providing notice to a Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsoring Member in its capacity as a Sponsoring Member from any service provided by

Sponsoring Member's Sponsored Member Sub-Accounts was not sufficient to satisfy the obligations under the Sponsoring Member Guaranty, NSCC may apply to the remainder any other Clearing Fund deposits posted by the Sponsoring Member to NSCC.

NSCC believes this is appropriate because the Clearing Fund deposits of a Sponsoring Member are the proprietary assets of the Sponsoring Member, and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC, regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member's Clearing Fund deposits should be available to satisfy any of the Sponsoring Member's guaranty or other obligations to NSCC.

[63] NSCC believes the most likely circumstance in which it would exercise this authority would be in the context of a Sponsoring Member default. If, in such circumstance, NSCC realizes a profit in closing out the positions associated with a proprietary account of the Sponsoring Member, but incurs a loss in closing out the positions associated with the Sponsored Member Sub-Accounts of the Sponsoring Member, it would offset its obligation to turn over to the Sponsoring Member the gains in relation to the Sponsoring Member's proprietary account against the obligations of the Sponsoring Member under the Sponsoring Member Guaranty.

NSCC either with respect to a particular transaction or transactions or with respect to transactions generally or prohibit or limit such Sponsoring Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsoring Member.

Section 10(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsoring Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Sponsoring Member and to cease to act for such Sponsoring Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsoring Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 10(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsoring Member in its capacity as a Sponsoring Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and NSCC shall cease to act for all of the Sponsored Members of the affected Sponsoring Member (unless such Sponsored Members are also Sponsored Members of other Sponsoring Members). Section 10(c) would also provide that if NSCC suspends, prohibits or limits a Sponsoring Member in its capacity as a Sponsoring Member with respect to such Sponsoring Member's access to services offered by NSCC, NSCC shall decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and shall suspend the Sponsored Members of the affected Sponsoring Member (unless they are also Sponsored Members of other Sponsoring Members) for so long as NSCC is suspending, prohibiting or limiting the Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. In addition, Section 10(c) would provide that NSCC, in in sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions or permit the Sponsored Members to complete their settlement.

This is different from how NSCC would treat Agent Clearing Member Transactions of an Agent Clearing Member under Section 9 of proposed Rule 2D if NSCC ceased to act for the Agent Clearing Member. Specifically, for Agent Clearing Member Transactions, as proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC; however, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 11 (Restrictions on Access to Services by a Sponsored Member)

Section 11 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsored Member's access to NSCC's services.

Section 11(a) of proposed Rule 2C would provide that the Board of Directors may at any time upon NSCC providing notice to a Sponsored Member and its Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsored Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Sponsored Member with respect to access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsored Member.

Section 11(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsored Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend a Sponsored Member and to cease to act for such Sponsored Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsored Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 11(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsored Member, Section 14 of proposed Rule 56 shall apply.

Section 11(d) of proposed Rule 2C would provide that NSCC shall cease to act for a Sponsored Member that is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C.

Proposed Rule 2C, Section 12 (Insolvency of a Sponsoring Member)

Section 12(a) of proposed Rule 2C would provide that a Sponsoring Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent, as required by Section 1 of Rule 20 (Insolvency) for other Members. A Sponsoring Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats a Sponsoring Member as insolvent.

Section 12(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsoring Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsoring Member pursuant to Section 10 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsoring Member, NSCC shall decline to accept or process data from the Sponsoring Member, including Sponsored Member Transactions, and NSCC shall terminate the membership of all of the insolvent Sponsoring Member's Sponsored Members unless they are the Sponsored Members of another Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions and/or permit the Sponsored Members to complete their settlement. This is different from how NSCC would treat Agent Clearing Member Transactions. As described above, NSCC would close-out any Agent Clearing Member Transactions which

have been novated to NSCC. However, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. This is because NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 13 (Insolvency of a Sponsored Member)

Section 13 of proposed Rule 2C would establish NSCC's rights in the event of an insolvency of a Sponsored Member.

Section 13(a) of proposed Rule 2C would provide that a Sponsored Member and its Sponsoring Member (to the extent it has knowledge thereof) shall be obligated to immediately notify NSCC that the Sponsored Member is insolvent or that the Sponsored Member would be unable to perform any of its material contracts, obligations or agreements in the same manner as required by Section 1 of Rule 20 (Insolvency) for other Members. For purposes of Section 13 of proposed Rule 2C, a Sponsoring Member shall be deemed to have knowledge that a Sponsored Member is insolvent or would be unable to perform on any of its material contracts, obligations or agreements if one or more duly authorized representatives of the Sponsoring Member, in its capacity as such, has knowledge of such matters. A Sponsored Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats a Sponsored Member as insolvent.

Section 13(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsored Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsored Member pursuant to Section 11 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsored Member, Section 14 of proposed Rule 56 shall apply with respect to the close-out of the insolvent Sponsored Member's Sponsored Member Transactions.

Proposed Rule 2C, Section 14 (Liquidation of Sponsored Member and Related Sponsoring Member Positions)

Section 14 of proposed Rule 2C would provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and its Sponsored Member that have been novated to NSCC. Specifically, in the event (i) the Sponsoring Member triggers the termination of a Sponsored Member's positions or (ii) NSCC ceases to act for the Sponsored Member and the Sponsoring Member does not continue to perform the obligations of the Sponsored Member, both the Sponsored Member's positions and the Sponsoring Member's corresponding positions arising from the Sponsored Member Transactions between the Sponsoring Member and the Sponsored Member would be terminated. Thereupon, the Sponsoring Member would calculate a net liquidation value of such terminated positions, which liquidation value would be paid either to or by the Sponsored Member by or to the Sponsoring Member. NSCC would not, as a practical matter, be involved in such settlement and would not need to take any market action because the termination of the Sponsored Member's positions and the corresponding Sponsoring Member's positions would leave NSCC flat. Additionally, the Sponsoring Member would indemnify NSCC for any claim by a Sponsored Member arising out of the Sponsoring Member's calculation of the net liquidation value.

Section 14(a) of proposed Rule 2C would specify the scope of positions to which Section 14 of proposed Rule 2C applies. It would state that Section 14 only applies with respect to the liquidation of positions resulting from Sponsored Member Transactions that have been novated to NSCC.

Section 14(a) of proposed Rule 2C would further state that such section would only apply if (i) a Sponsoring Member is a Defaulting Member and NSCC has not ceased to act for the Sponsoring Member and (ii) a Corporation Default has not occurred. This is because, as described above in Section 12(b) of proposed Rule 2C, NSCC would have discretion in the event it ceases to act for a Sponsoring Member to close-out the positions of Sponsored Members for which the defaulting Sponsoring Member was responsible or to allow them to settle. If NSCC does close-out such positions, it would do so in accordance with Section 14 of proposed Rule 56. If a Corporation Default has occurred with respect to NSCC, each Sponsored Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 14(b) of proposed Rule 2C would set out the process by which a Sponsoring Member or NSCC may cause the termination of a Sponsored Member's positions. It would provide that on any Business Day, the Sponsoring Member or NSCC may cause such termination by delivering a notice to NSCC or the Sponsoring Member, respectively. NSCC anticipates that each Sponsored Member and Sponsoring Member would agree in the bilateral documentation between them as to what circumstances or events give rise to the ability of the Sponsoring Member to deliver a notice to NSCC terminating the Sponsored Member's positions.[64]

The notice submitted by a Sponsoring Member to NSCC (or vice versa) would cause the termination of all of the SFT Positions of the Sponsored Member established in the Sponsored Member Sub-Account. The notice would also cause the immediate termination of the corresponding SFT Positions of the Sponsoring Member established in the Sponsoring Member's proprietary SFT Account. The effect of such terminations would be to leave NSCC flat.

[64] It bears noting in this regard that termination of the Sponsored Member's positions would not be the exclusive mechanism by which a Sponsoring Member may limit its credit risk. As described above, under Section 2(m) of proposed Rule 2C, a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member in respect of one or more Sponsored Members. Such a termination would not affect the settlement of the Sponsored Member's existing positions but would restrict the ability of the Sponsored Member to have its future trades accepted for novation by NSCC through such Sponsoring Member. The proposed rule change in Section 14(b) of proposed Rule 2C would not affect the functioning of the proposed rule change in Section 2(m) of proposed Rule 2C or the general ability of a Sponsoring Member and the Sponsored Member to agree on the circumstances of when the Sponsoring Member may terminate its status as Sponsoring Member for the Sponsored Member.

Section 14(b) of proposed Rule 2C would also provide that the termination of the Sponsored Member's positions (and the Sponsoring Member's corresponding positions) would be effected by the Sponsoring Member's establishment of a final net settlement position for each eligible security with a distinct CUSIP number (''Final Net Settlement Position'').

Section 14(c) of proposed Rule 2C would specify how the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C would be liquidated (*i.e.,* how such positions would be converted into an amount payable). It would also provide how the amount payable arising from the liquidation of the Final Net Settlement Positions would be discharged.

Specifically, Section 14(c) of proposed Rule 2C would first provide that the Sponsoring Member would liquidate the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C by establishing (i) a single liquidation amount in respect of the Sponsored Member's Final Net Settlement Positions (a ''Sponsored Member Liquidation Amount'') and (ii) a single liquidation amount in respect of the Sponsoring Member's Final Net Settlement Positions (a ''Sponsoring Member Liquidation Amount''). The Sponsored Member Liquidation Amount would be owed either by NSCC to the Sponsored Member or by the Sponsored Member to NSCC because it would relate to the Sponsored Member's Final Net Settlement Positions with NSCC, while the Sponsoring Member Liquidation Amount would be owed either by NSCC to the Sponsoring Member or by the Sponsoring Member to NSCC because it would relate to the Sponsoring Member's Final Net Settlement Positions with NSCC.

Because the Final Net Settlement Positions of the Sponsoring Member would be identical to, but in the opposite direction of, the Final Net Settlement Positions of the Sponsored Member, the Sponsored Member Liquidation Amount would equal the Sponsoring Member Liquidation Amount. Therefore, if NSCC were to owe the Sponsored Member Liquidation Amount to the Sponsored Member, the Sponsoring Member would owe the Sponsoring Member Liquidation Amount to NSCC. By the same token, if the Sponsored Member were to owe the Sponsored Member Liquidation Amount to NSCC, NSCC would owe the Sponsoring Member the Sponsoring Member Liquidation Amount. In all instances, NSCC would owe and be owed the same amount of money.

Section 14(c) of proposed Rule 2C would also provide how the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount. It would state that the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount based on prevailing market prices of the relevant securities and/or the gains realized and losses incurred by the Sponsoring Member in hedging its risk associated with the liquidation of the Sponsoring Member's Final Net Settlement Positions. Section 14(c) of proposed Rule 2C would further clarify that such Sponsoring Member Liquidation Amount may also take into account any losses and expenses incurred by the Sponsoring Member in connection with the liquidation of the positions.

Section 14(c) of proposed Rule 2C would further provide that, if a Sponsored Member Liquidation Amount is due to NSCC, the Sponsoring Member would be obligated to pay such Sponsored Member Liquidation Amount to NSCC under the Sponsoring Member Guaranty and that this obligation would, automatically and without further action, be set off against the obligation of NSCC to pay the corresponding Sponsoring Member Liquidation Amount to the Sponsoring Member. By virtue of such setoff, the Sponsored Member's obligation to NSCC would be discharged, as would NSCC's obligation to the Sponsoring Member. The Sponsoring Member would, however, have a reimbursement claim against the Sponsored Member in an amount equal to the Sponsored Member Liquidation Amount. This reimbursement claim would arise as a matter of law by virtue of the Sponsoring Member's performance under Sponsoring Member Guaranty, though Sponsoring Members and Sponsored Members may specify terms related to the reimbursement claim in their bilateral submission. NSCC would have no rights or obligations in respect of any such reimbursement claim.

If a Sponsored Member Liquidation Amount were owed by NSCC to the Sponsored Member, Section 14(c) of proposed Rule 2C would provide for the Sponsoring Member to satisfy that obligation by transferring the Sponsored Member Liquidation Amount to the Sponsoring Member's account at its Settling Bank (''Sponsoring Member Settling Bank Omnibus Account''). Section 14(c) of proposed Rule 2C would state that, to the extent the Sponsoring Member makes such a transfer, it would discharge NSCC's obligation to transfer the Sponsored Member Liquidation Amount to the Sponsored Member and the Sponsoring Member's corresponding obligation to transfer the Sponsoring Member Liquidation Amount to NSCC.

Section 14(d) of proposed Rule 2C would provide for the Sponsoring Member to indemnify NSCC and its employees, officers, directors, shareholders, agents, and Members (collectively, the ''Sponsoring/Sponsored Membership Program Indemnified Parties'' or ''SMP Indemnified Parties'') for any and all losses, liability, or expenses arising from any claim by an affected Sponsored Member disputing the Sponsoring Member's calculation of any Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount.

Section 14(e) of proposed Rule 2C would provide that NSCC acknowledges that a Sponsoring Member may take a security interest in NSCC's obligations to a Sponsored Member in respect of its transactions that have been novated to NSCC by such Sponsoring Member and established in the Sponsoring Member's Sponsored Member Sub-Account for the Sponsored Member. Such security interest would not impose new obligations on NSCC but could allow the Sponsoring Member to direct NSCC to submit payments due to the Sponsored Member to the Sponsoring Member, so that the Sponsoring Member can apply such amounts to the Sponsored Member's unsatisfied obligations to the Sponsoring Member.

(B) Proposed Rule 2D—Agent Clearing Members

NSCC is proposing to add Rule 2D, entitled ''Agent Clearing Members.'' This new rule would govern the proposed agent clearing membership and would be comprised of 12 sections, each of which is described below.

Proposed Rule 2D, Section 1 (General)

Section 1 of proposed Rule 2D would be a general provision regarding the Rules applicable to Agent Clearing Members.

Section 1 of proposed Rule 2D would provide that NSCC will permit a Member that is approved to be an Agent Clearing Member to submit transactions to NSCC for novation on behalf of one or more of the Agent Clearing Member's Customers. Section 1 of proposed Rule 2D would further provide that the rights, liabilities and obligations of Agent Clearing Members shall be governed by proposed Rule 2D, and that references to the term ''Member'' in other Rules would not apply to Agent Clearing Members, in their respective

capacities as such, unless specifically noted as such in proposed Rule 2D or in such other Rules.

Section 1 of proposed Rule 2D would also provide that an Agent Clearing Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an Agent Clearing Member except as contemplated under Sections 6, 7 and 8 of proposed Rule 2D.

Proposed Rule 2D, Section 2 (Qualifications of Agent Clearing Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2D would establish the eligibility requirements for Members that wish to become Agent Clearing Members, the membership application process that would be required of each Member to become an Agent Clearing Member, the on-going membership requirements that would apply to Agent Clearing Members, as well as the requirements regarding an Agent Clearing Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2D, any Member would be eligible to apply to become an Agent Clearing Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become an Agent Clearing Member if it has (1) Net Worth of at least $25 million and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[65] As proposed, NSCC may require that a Person be a Member for a certain time period before that Person may be considered to become an Agent Clearing Member.

Section 2(b) of proposed Rule 2D would provide that each Member applicant to become an Agent Clearing Member would be required to provide an application and other information requested by NSCC. Agent Clearing Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already a Sponsoring Member under proposed Rule 2C or a sponsoring member of FICC. NSCC believes this approach to the Board of Directors' approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member applications as well as the NSCC Agent Clearing Member and Sponsoring Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2D, if the Agent Clearing Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2D, NSCC may impose additional financial requirements on an Agent Clearing Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as an Agent Clearing Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become an Agent Clearing Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Agent Clearing Member regarding its compliance with the increased financial requirements.[66]

In addition, under Section 2(e) of proposed Rule 2D, NSCC may require each Agent Clearing Member or any Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[67]

Section 2(f) of proposed Rule 2D would provide that each Member whose Agent Clearing Member application is approved would sign and deliver to NSCC an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Agent Clearing Member Agreement'') and a related legal opinion in a form satisfactory to NSCC.

Section 2(g) of proposed Rule 2D would provide that each Agent Clearing Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2D would provide that an Agent Clearing Member's books and records, insofar as they relate to the Agent Clearing Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in

[65] NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to reflect the additional responsibility that the applicant would undertake as an Agent Clearing Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In addition, NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to be consistent with proposed requirements applicable to Registered Broker-Dealer Sponsoring Member applicants. NSCC believes this approach to financial minimums is appropriate because both Sponsoring Members and Agent Clearing Members would be viewed and surveilled as the credit counterparties to NSCC in respect of the transactions that they submit for clearing in respect of Sponsoring Member Sub-Accounts and Agent Clearing Member Customer Omnibus Accounts, respectively. Although the model of clearing would differ as between Sponsoring Members and Agent Clearing Members, both would be types of Members that would be standing behind the credit of their clients. Accordingly, NSCC believes it is appropriate to use consistent financial minimums.

[66] If the increased financial requirements are imposed in connection with an Agent Clearing Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once an Agent Clearing Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Agent Clearing Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Agent Clearing Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 9 of proposed Rule 2D, suspend, prohibit or limit the Agent Clearing Member's access to NSCC's services.

[67] As an example, NSCC may require an Agent Clearing Member or an Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability if NSCC has concerns about such Agent Clearing Member or Agent Clearing Member applicant's overall financial health or credit rating.

Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2D would provide that an Agent Clearing Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become an Agent Clearing Member set forth in the proposed Rule 2D. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Agent Clearing Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Agent Clearing Member that fails to so notify NSCC.[68] If the Agent Clearing Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Agent Clearing Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Agent Clearing Member, and otherwise require from the Agent Clearing Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that an Agent Clearing Member may fail to comply with any of the Rules applicable to Agent Clearing Members, it may require the Agent Clearing Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Agent Clearing Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2D would provide that in the event that an Agent Clearing Member fails to remain in compliance with the relevant requirements of the Rules or the Agent Clearing Member Agreement, NSCC shall have the right to cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member in accordance with Section 9 of proposed Rule 2D or as a Member more generally, unless the Agent Clearing Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Agent Clearing Member, it is appropriate instead to establish for such Agent Clearing Member a time period, which shall be determined by NSCC and which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Agent Clearing Member must resume compliance with such requirements. As proposed, in the event that the Agent Clearing Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member pursuant to Section 9 of the proposed Rule 2D or as a Member more generally.

Section 2(k) of proposed Rule 2D would provide that if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member shall not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement.[69] As proposed, an ''Agent Clearing Member Customer Omnibus Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding Agent Clearing Member Transactions that an Agent Clearing Member enters into on behalf of Customers and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions, and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement).

Section 2(l) of proposed Rule 2D would provide that an Agent Clearing Member may voluntarily elect to terminate its status as an Agent Clearing Member by providing NSCC with a written notice from an Agent Clearing Member to NSCC that the Agent Clearing Member is voluntarily electing to terminate its status as an Agent Clearing Member (''Agent Clearing Member Voluntary Termination Notice''). The Agent Clearing Member shall specify in the Agent Clearing Member Voluntary Termination Notice a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Agent Clearing Member to NSCC as of the time such Agent Clearing Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2D would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Agent Clearing Member Voluntary Termination Notice from such Agent Clearing Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Agent Clearing Member's status as such and the date on which the termination of the Agent Clearing Member's status as an Agent Clearing Member becomes effective (''Agent Clearing Member Termination Date''). As proposed, after the close of business on the Agent Clearing Member Termination Date, the Agent Clearing Member shall no longer be eligible to submit Agent Clearing Member Transactions. If any Agent Clearing Member Transaction is submitted to NSCC by the Agent Clearing Member that is scheduled to settle after the Agent Clearing Member Termination Date, such Agent Clearing Member's Agent Clearing Member Voluntary Termination Notice would be deemed void, and the Agent Clearing Member would remain subject to the proposed Rule 2D as if it had not given such Agent Clearing Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2D would provide that an Agent Clearing Member's voluntary termination of its status as such shall not affect its obligations to NSCC, or the rights of NSCC, with respect to Agent Clearing Member Transactions submitted to NSCC before the applicable Agent Clearing Member Termination Date. Any such Agent Clearing Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Agent Clearing Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after an Agent Clearing Member has submitted the Agent Clearing Member Voluntary Termination Notice but on or prior to the Agent Clearing Member Termination Date, in order for the Agent Clearing Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Agent Clearing Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, shall supersede and void any pending Agent Clearing Member Voluntary Termination Notice previously

[68] *See* Addendum P (Fine Schedule), *supra* note 4.

[69] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Agent Clearing Members. This is because an Agent Clearing Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Agent Clearing Member's financial resources, as measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

submitted by the Agent Clearing Member.

Section 2(n) of proposed Rule 2D would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2D shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Agent Clearing Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Agent Clearing Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Agent Clearing Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Agent Clearing Member, NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[70]

Proposed Rule 2D, Section 3 (Compliance With Laws)

Section 3 of proposed Rule 2D would provide that each Agent Clearing Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2D, Section 4 (Agent Clearing Member Transactions)

Section 4 of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC on behalf of one or more Customers' Securities Financing Transactions (''Agent Clearing Member Transactions'') in accordance with proposed Rule 56, as described below.

[70] Section 2(n) of proposed Rule 2D is designed to be consistent with provisions in the Rules relating to the confidentiality of information furnished by participants. *See* Rule 2A (Initial Membership Requirements), *supra* note 4.

Proposed Rule 2D, Section 5 (Agent Clearing Member Agent Obligations)

Section 5 of proposed Rule 2D would establish rules-based obligations for Agent Clearing Members and the establishment of Agent Clearing Member Customer Omnibus Accounts.

Section 5(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC for novation Agent Clearing Member Transactions entered into by the Agent Clearing Member as agent on behalf of one or more Customers. Any such submission shall be in accordance with proposed Rule 2D. As proposed, subject to the provisions of the Rules, an Agent Clearing Member's clearing of Agent Clearing Member Transactions for Customers (''Customer Clearing Service'') may be provided by an Agent Clearing Member to its Customers on any terms and conditions mutually agreed to by the Agent Clearing Member and its Customers; provided, that each Agent Clearing Member shall, before providing Customer Clearing Service to any Customer, enter into an agreement with that Customer that binds the Customer to the provisions of the Rules applicable to Agent Clearing Member Transactions and Customers.

Section 5(b) of proposed Rule 2D would provide that, with respect to an Agent Clearing Member that submits Agent Clearing Member Transactions to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the Agent Clearing Member for the benefit of its Customers. Each Agent Clearing Member Customer Omnibus Account would be permitted to contain only (i) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as Transferor or (ii) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as a Transferee. An Agent Clearing Member would not be permitted to combine SFTs entered into as Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account. This is designed to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual Customer's activity (*i.e.,* that the positions are margined on a gross basis).[71]

[71] If an Agent Clearing Member were permitted to maintain SFTs entered into as both Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account, the Required Fund Deposit obligations of the Agent Clearing Member could potentially be reduced by offsetting SFT Positions of different Customers in the same SFT Security.

Section 5(c) of proposed Rule 2D would provide that an Agent Clearing Member shall act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; provided that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions; and provided further, that the liabilities and obligations of NSCC with respect to Agent Clearing Member Transactions entered into by the Agent Clearing Member shall extend only to the Agent Clearing Member. Section 5(c) of proposed Rule 2D would further provide that, without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any Agent Clearing Member Transaction to any Customer on behalf of whom an Agent Clearing Member entered into the Agent Clearing Member Transaction.

Section 5(d) of proposed Rule 2D would provide that nothing in the Rules shall prohibit an Agent Clearing Member from seeking reimbursement from a Customer for payments made by the Agent Clearing Member (whether out of Clearing Fund deposits or otherwise) under the Rules, or as otherwise may be agreed between the Agent Clearing Member and the Customer.

Proposed Rule 2D, Section 6 (Clearing Fund Obligations)

Section 6 of proposed Rule 2D would set forth the Clearing Fund obligations.

Section 6(a) of proposed Rule 2D would provide that NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts for an Agent Clearing Member. Each Agent Clearing Member shall make and maintain so long as such Member is an Agent Clearing Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Agent Clearing Member Customer Omnibus Account(s) (the ''Agent Clearing Member Required Fund Deposit''). Each Agent Clearing Member, so long as such Member is an Agent Clearing Member, shall also provide SLD to the Clearing Fund, as may be required pursuant to Rule 4A (Supplemental Liquidity Deposits), to support the activity in its Agent Clearing Member Customer Omnibus Account(s). Deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 6(b) of proposed Rule 2D would provide that, in the ordinary course, for purposes of satisfying the

Agent Clearing Member's Clearing Fund requirements under the Rules for its Member activity, its Agent Clearing Member activity, and, to the extent applicable, its Sponsoring Member activity, the Agent Clearing Member's proprietary accounts, its Agent Clearing Member Customer Omnibus Account(s), and its Sponsored Member Sub-Accounts, if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Agent Clearing Member (but being obligated to give notice to the Agent Clearing Member as soon as possible thereafter) and whether or not the Agent Clearing Member is in default of its obligations to NSCC, treat the Agent Clearing Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Agent Clearing Member with respect to any account as necessary to ensure that the Agent Clearing Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[72]

Section 6(c) of proposed Rule 2D would provide that the Agent Clearing Member Required Fund Deposit for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the Agent Clearing Member Transactions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the Agent Clearing Member Required Fund Deposit for each of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Section 6(d) of proposed Rule 2D would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Agent Clearing Member Required Fund Deposit with respect to obligations of an Agent Clearing Member under the Rules, including its obligations arising under the Agent Clearing Member Customer Omnibus Account(s), to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as an Agent Clearing Member under the Rules, including, without limitation, any obligation of any such Agent Clearing Member to provide the Agent Clearing Member Required Fund Deposit and such Agent Clearing Member's obligations arising under SFTs established in the Agent Clearing Member Customer Omnibus Accounts of such Agent Clearing Member.

Section 6(e) of proposed Rule 2D would provide that an Agent Clearing Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

Proposed Rule 2D, Section 7 (Right of Offset)

Section 7 of proposed Rule 2D would provide that in the ordinary course, with respect to satisfaction of any Agent Clearing Member's obligations under the Rules, the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts, the Agent Clearing Member's proprietary accounts, and the Agent Clearing Member's Sponsored Member Sub-Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of the Agent Clearing Member arises in respect of any Agent Clearing Member Customer Omnibus Account, exercise a right of offset and net any such obligation against any obligations of NSCC to the Agent Clearing Member in respect of such Agent Clearing Member's proprietary accounts at NSCC.

Proposed Rule 2D, Section 8 (Loss Allocation Obligations)

Section 8 of proposed Rule 2D would establish loss allocation obligations for Agent Clearing Members.

Section 8(a) of proposed Rule 2D would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of the Agent Clearing Member Customer Omnibus Account as if the Agent Clearing Member Customer Omnibus Account were a Member, NSCC shall calculate such loss allocation obligation and the Agent Clearing Member shall be, as principal, responsible for satisfying such obligations.

Section 8(b) of proposed Rule 2D would provide that the entire amount of the Required Fund Deposit associated with the Agent Clearing Member's proprietary accounts at NSCC and the entire amount of the Agent Clearing Member Required Fund Deposit may be used to satisfy any amount allocated against an Agent Clearing Member, whether in its capacity as a Member, an Agent Clearing Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on an Agent Clearing Member pursuant to Section 8(a) of proposed Rule 2D, the Agent Clearing Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Agent Clearing Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account pursuant to proposed Rule 56), its Agent Clearing Member Required Fund Deposit for each of its Agent Clearing Member Customer Omnibus Accounts, and its Sponsoring Member Required Fund Deposit, if any.

Proposed Rule 2D, Section 9 (Restrictions on Access to Services by an Agent Clearing Member)

Section 9 of proposed Rule 2D would establish the rights of NSCC to restrict an Agent Clearing Member's access to NSCC's services.

Section 9(a) of proposed Rule 2D would provide that the Board of Directors may at any time upon NSCC providing notice to an Agent Clearing Member pursuant to Section 5 of Rule 45 (Notices), suspend an Agent Clearing Member in its capacity as an Agent Clearing Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Agent Clearing Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Agent Clearing Member.

Section 9(b) of proposed Rule 2D would provide that Rule 46 shall apply with respect to an Agent Clearing

[72] NSCC believes this is appropriate because the Clearing Fund deposits of an Agent Clearing Member are the proprietary assets of the Agent Clearing Member and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC, regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(B)(iii) ''Sponsoring Members and Sponsored Members,'' an Agent Clearing Member's Clearing Fund deposits should be available to satisfy any of the Agent Clearing Member's obligations to NSCC.

Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Agent Clearing Member and to cease to act for such Agent Clearing Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit an Agent Clearing Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 9(c) of proposed Rule 2D would provide that if NSCC ceases to act for an Agent Clearing Member in its capacity as an Agent Clearing Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions and close-out any Agent Clearing Member Transactions that have been novated to NSCC. Section 9(c) would also provide that if NSCC suspends, prohibits or limits an Agent Clearing Member in its capacity as an Agent Clearing Member with respect to such Agent Clearing Member's access to services offered by NSCC, NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions for so long as NSCC is suspending, prohibiting or limiting the Agent Clearing Member. Furthermore, Section 9(c) would state that, in addition, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member Transactions of a Sponsoring Member under Section 10 of proposed Rule 2C if NSCC ceases to act for the Sponsoring Member. With respect to such transactions, NSCC would have the option to either terminate or settle a Sponsored Member's positions after ceasing to act for the Sponsoring Member. The reason for this difference is that NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customer's novated positions.

Proposed Rule 2D, Section 10 (Insolvency of an Agent Clearing Member)

Section 10(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent as required by Section 1 of Rule 20 (Insolvency) for other Members. An Agent Clearing Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats an Agent Clearing Member as insolvent.

Section 10(b) of proposed Rule 2D would provide that in the event that NSCC determines to treat an Agent Clearing Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Agent Clearing Member pursuant to Section 9 of proposed Rule 2D. If NSCC ceases to act for the insolvent Agent Clearing Member, NSCC shall decline to accept or process data from the Agent Clearing Member, including Agent Clearing Member Transactions. As proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member Transactions. As described above, NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. However, with respect to Agent Clearing Member Transactions, NSCC would close-out any such transactions which have been novated to NSCC. This is because NSCC would have the practical and legal capability to make such an election with respect to Sponsored Member Transactions because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2D, Section 11 (Transfer of Agent Clearing Member Transactions in Agent Clearing Member Customer Omnibus Accounts)

Section 11 of proposed Rule 2D would (i) permit an Agent Clearing Member, upon a default of a Customer and consent of NSCC, to transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member and (ii) govern how the transfer would be effectuated.

Section 11(a) of proposed Rule 2D would clarify the scope to which Section 11 of proposed Rule 2D applies. It would state that Section 11 would not apply if either (i) the relevant Agent Clearing Member is a Defaulting Member or (ii) a Corporation Default has occurred. This is because, as described above with respect to Section 10(b) of proposed Rule 2D, NSCC would close-out all Agent Clearing Member Transactions for which the defaulting Agent Clearing Member was responsible. If a Corporation Default has occurred with respect to NSCC, each Agent Clearing Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 11(b) of proposed Rule 2D would set out the process by which an Agent Clearing Member may transfer the Agent Clearing Member Transactions of a defaulting Customer in one or more of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts. It would provide that, to the extent permitted under applicable laws and regulations, an Agent Clearing Member may, upon a default of a Customer and the consent of NSCC, transfer the Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member. As proposed, any such transfer shall occur by novation, such that the obligations between NSCC and the relevant

Customer in respect of the Agent Clearing Member Transactions shall be terminated and replaced with identical obligations between NSCC and the Agent Clearing Member, acting as principal. Section 11(b) would also provide the Agent Clearing Member shall indemnify NSCC, and its employees, officers, directors, shareholders, agents, and Members, for any and all losses, liability, or expenses incurred by them arising from, or in relation to, any such transfer.

Proposed Rule 2D, Section 12 (Customer Acknowledgments)

Section 12 of proposed Rule 2D would provide that each Agent Clearing Member on behalf of each of its Customers agrees that such Customer, by participating in and entering into Agent Clearing Member Transactions through the Agent Clearing Member, understands, acknowledges, and agrees that: (a) The service provided by NSCC with regard to the Customer Clearing Service would be subject to and governed by the Rules; (b) the Rules shall govern the novation of Agent Clearing Member Transactions and all transactions between the Customer and its Agent Clearing Member resulting in the novation of such transactions, and at the time of novation of an Agent Clearing Member Transaction, the Customer on whose behalf it was submitted would be bound by the Agent Clearing Member Transaction automatically and without any further action by the Customer or by its Agent Clearing Member, and the Customer agrees to be bound by the applicable provisions of the Rules in all respects; (c) NSCC shall be under no obligation to deal directly with the Customer, and NSCC may deal exclusively with the Customer's Agent Clearing Member; (d) NSCC shall have no obligations to the Customer with respect to any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, including with respect to any payment or delivery obligations; and (e) the Customer shall have no right to receive from NSCC, or any right to assert a claim against NSCC with respect to, nor shall NSCC be liable to the Customer for, any payment or delivery obligation in connection with any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, and NSCC shall make any such payments or redeliveries solely to the relevant Agent Clearing Member.

(C) Proposed Rule 56—Securities Financing Transaction Clearing Service

NSCC is proposing to add Rule 56, entitled ''Securities Financing Transaction Clearing Service.'' This new rule would govern the proposed SFT Clearing Service and would be comprised of 18 sections, each of which is described below.

In connection with the proposed SFT Clearing Service, NSCC is proposing to add the following terms and definitions, as described below.

The term ''Aggregate Net SFT Close-out Value'' would mean, with respect to an SFT Member, the sum of the SFT Close-out Value (as defined below and in the proposed rule change) for each SFT Position to which the SFT Member is a party.

The term ''Approved SFT Submitter'' would mean a provider of transaction data on an SFT that the parties to the SFT have selected and NSCC has approved, subject to such terms and conditions as to which the Approved SFT Submitter and NSCC may agree.

The term ''Bilaterally Initiated SFT'' would mean an SFT, the Initial Settlement of which occurred prior to the submission of such SFT to NSCC.

The term ''Buy-In Amount'' would mean a net amount equal to (x) the Buy-In Costs or Deemed Buy-In Costs (as defined below and in the proposed rule change) of the SFT Securities (as defined below and in the proposed rule change) in respect of which a Transferor has effected a Buy-In, less (y) the amount of the SFT Cash for the relevant SFT (unless the Transferor effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, in which case (y) shall be the amount of the Corresponding SFT Cash (as defined below and in the proposed rule change)).

The term ''Contract Price'' would mean, with respect to SFT Securities subject to an SFT, the price of such securities at the time the SFT is submitted to NSCC for novation, which price shall be determined by the SFT Member parties to the relevant SFT and provided by an Approved SFT Submitter to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose; provided that if no such price is provided by the time required by NSCC, the ''Contract Price'' shall be the Current Market Price of the SFT Securities.

The term ''Corresponding SFT Cash'' would mean (a) in respect of a Recalled SFT (as defined below and in the proposed rule change) for which a Transferor has effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, the portion of the SFT Cash for such SFT equal to the product of (i) the percentage of the SFT Securities in respect of which the Transferor effected a Buy-In and (ii) the SFT Cash of the SFT; and (b) in respect of a Settling SFT which has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the portion of the SFT Cash of the Settling SFT equal to the product of (i) the percentage of the SFT Securities of the Settling SFT that the Linked SFT has as its subject and (ii) the SFT Cash of the Settling SFT.

The term ''Deemed Buy-In Costs'' would mean the product of the number of SFT Securities subject to the relevant Buy-In and the per-share price therefor on the date of the Buy-In obtained from a generally recognized source or the last bid quotation from such a source at the most recent close of trading for the SFT Security.

The term ''Defaulting SFT Member'' would mean an SFT Member for which NSCC has ceased to act in accordance with Section 14 of proposed Rule 56, as described below.

The term ''Distribution'' would mean, with respect to any SFT Security at any time, any cash payment of amounts equivalent to dividends and other distributions on the SFT Security.

The term ''Distribution Amount'' would mean, in respect of an SFT, an amount of cash equal to the product of: (a) The amount per security in respect of (x) a cash dividend on the SFT Securities that are the subject of the SFT or (y) an exchange of the SFT Securities that are the subject of the SFT for cash; and (b) the number of the relevant SFT Securities subject to the SFT.

The term ''Distribution Payment'' would mean an amount payable by one party to an SFT to the other party to the SFT during the term of the SFT in respect of a Distribution on the SFT Securities subject to the SFT.

The term ''Existing Master Agreement'' would mean, in respect of an SFT, a written agreement that (i) exists at the time transaction data for the SFT is submitted to NSCC by an Approved SFT Submitter, (ii) provides for, among other things, terms governing the payment and delivery obligations of the parties and (iii) the parties have established (by written agreement, oral agreement, course of conduct or otherwise) would govern such SFT.

The term ''Final Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (b) of the proposed definition of Securities Financing Transaction.

The term ''Final Settlement Date'' would mean the Business Day on which the final settlement of a transaction is scheduled to occur. If the transaction is an SFT, the Final Settlement Date means the Business Day on which the Final Settlement of the SFT is scheduled to occur in accordance with proposed Rule 56 or, if the SFT is accelerated in accordance with proposed Rule 56, the date to which the Final Settlement obligations have been accelerated.

The term ''Incremental Additional Independent Amount SFT Cash'' would mean, (a) in respect of a Linked SFT, the excess, if any, of the Independent Amount SFT Cash of the Linked SFT over the Independent Amount SFT Cash of the Settling SFT; (b) in respect of a Non-Returned SFT, the portion of the Price Differential payable by the Transferee, if any, that is attributable to the Independent Amount SFT Cash of the SFT (which shall be calculated by multiplying such Priced Differential by the excess, if any, of the Independent Amount Percentage (as defined below and in the proposed rule change) over 100%); and (c) in respect of any other SFT, the Independent Amount SFT Cash of such SFT.

The term ''Independent Amount Percentage'' would mean, in respect of an SFT, a percentage obtained by dividing the SFT Cash of such SFT by the Market Value SFT Cash (as defined below and in the proposed rule change) of such SFT.

The term ''Independent Amount SFT Cash'' would mean the portion, if any, of the SFT Cash for an SFT equal to the amount by which the SFT Cash for such SFT at the time of the Initial Settlement exceeds the Contract Price of the SFT Securities that are the subject of such SFT.

The term ''Ineligibility Date'' would mean, with respect to an SFT, the date on which the SFT Security that is the subject of the SFT becomes an Ineligible SFT Security (as defined below and in the proposed rule change).

The term ''Ineligible SFT'' would mean an SFT that has, as its subject, SFT Securities that have become Ineligible SFT Securities.

The term ''Ineligible SFT Security'' would mean an SFT Security that is not eligible to be the subject of a novated SFT.

The term ''Initial Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (a) of the proposed definition of Securities Financing Transaction.

The term ''Linked SFT'' would mean an SFT entered into by the pre-novation SFT Member parties to a Settling SFT that has the same Transferor, Transferee and subject SFT Securities (including CUSIP) as the Settling SFT. As proposed, a Linked SFT would include an SFT that has as its subject fewer SFT Securities than the corresponding Settling SFT but would not include an SFT that has as its subject more SFT Securities than the corresponding Settling SFT.

The term ''Market Value SFT Cash'' would mean the portion of the SFT Cash for an SFT equal to the amount of the SFT Cash for such SFT minus the Independent Amount SFT Cash of such SFT.

The term ''Price Differential'' would mean (a) for purposes of the discharge of offsetting Final Settlement and Initial Settlement obligations, (i) the SFT Cash for the Settling SFT (or if the Settling SFT has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the Corresponding SFT Cash) minus (ii) the SFT Cash for the Linked SFT; and (b) for all other purposes, (i) the SFT Cash for the SFT minus (ii) the product of the Independent Amount Percentage, if any, and the Current Market Price of the SFT Securities.

The term ''Rate Payment'' would mean an amount payable from one party to an SFT to the other party to the SFT at the Final Settlement expressed as a percentage of the amount of SFT Cash for the SFT. As an example, if the Rate Payment is specified as 0.02%, the amount payable would be the product 0.02% and the SFT Cash for the SFT.

The term ''Recall Date'' would mean, in respect of a Recall Notice, the second Business Day following NSCC's receipt of such Recall Notice.

The term ''Recall Notice'' would mean a notice that triggers the provisions of Section 9(b) of proposed Rule 56, relating to a Buy-In in respect of an SFT and that is submitted by an Approved SFT Submitter on behalf of a Transferor in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

The term ''Recalled SFT'' would mean an SFT that has been novated to NSCC in respect of which a Recall Notice has been submitted.

The term ''Securities Financing Transaction'' or ''SFT'' would mean a transaction between two SFT Members pursuant to which (a) one SFT Member agrees to transfer specified SFT Securities to another SFT Member versus the SFT Cash; and (b) the Transferee agrees to retransfer such specified SFT Securities or equivalent SFT Securities (including quantity and CUSIP) to the Transferor versus the SFT Cash on the following Business Day.

The term ''Settling SFT'' would mean, as of any Business Day, an SFT that has been novated to NSCC, the Final Settlement of which is scheduled to occur on that Business Day.

The term ''SFT Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding SFTs that an SFT Member enters into and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement). As proposed, the term ''SFT Account'' would include any Agent Clearing Member Customer Omnibus Account and any Sponsored Member Sub-Account.

The term ''SFT Cash'' would mean the specified amount of U.S. dollars that the Transferee agrees to transfer to the Transferor at the Initial Settlement of an SFT, (i) plus any Price Differential paid by NSCC to the SFT Member as Transferor or by the SFT Member as Transferee to NSCC during the term of the SFT and (ii) less any Price Differential paid by NSCC to the SFT Member as Transferee or by the SFT Member as Transferor to NSCC during the term of the SFT.

The term ''SFT Close-out Value'' would mean, with respect to an SFT Position of an SFT Member, an amount equal to: (i) If the SFT Member is the Transferor of the SFT Securities that are the subject of such SFT, (a) the CNS Market Value of the SFT Securities that are the subject of such SFT minus (b) the SFT Cash for such SFT; and (ii) if the SFT Member is a Transferee of the SFT Securities that are the subject of such SFT, (a) the SFT Cash for such SFT minus (b) the CNS Market Value of the SFT Securities that are the subject of such SFT.

The term ''SFT Long Position'' would mean the number of units of an SFT Security which an SFT Member is entitled to receive from NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''SFT Member'' would mean any Member, Sponsored Member acting in its principal capacity, Sponsoring Member acting in its principal capacity or Agent Clearing Member acting on behalf of a Customer, in each case that is a party to an SFT, permitted to participate in NSCC's SFT Clearing Service.

The term ''SFT Position'' would mean an SFT Member's SFT Long Position or SFT Short Position (as defined below and in the proposed rule change) in an SFT Security that is the subject of an SFT that has been novated to NSCC.

The term ''SFT Security'' would mean a security that is eligible to be the subject of an SFT novated to NSCC and is included in the list for which provision is made in proposed Section 1(g) of Rule 3 (Lists to be Maintained), as described below. As proposed, if any new or different security is exchanged for any SFT Security in connection with a recapitalization, merger, consolidation or other corporate action, such new or different security shall, effective upon such exchange, become an SFT Security in substitution for the former SFT Security for which such exchange is made.

The term ''SFT Short Position'' would mean the number of units of an SFT Security that an SFT Member is obligated to deliver to NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''Transferee'' would mean the SFT Member party to an SFT that agrees to receive SFT Securities from the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

The term ''Transferor'' would mean the SFT Member party to an SFT that agrees to transfer SFT Securities to the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

Proposed Rule 56, Section 1 (General)

Section 1 of proposed Rule 56 would be a general provision regarding the SFT Clearing Service applicable to Members, Sponsoring Members and Agent Clearing Members that participate in the proposed SFT Clearing Service.

Section 1(a) of proposed Rule 56 would establish that NSCC may accept for novation SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member, or (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer.

Section 1(b) of proposed Rule 56 would provide that any SFT that is submitted to NSCC for novation, and any Member and Sponsored Member that enters into an SFT (and any Customer on behalf of whom an Agent Clearing Member enters into an SFT) shall be subject to the provisions of proposed Rule 56; provided that Sections 15 and 16 of proposed Rule 56 shall only apply to Sponsoring Members, Agent Clearing Members, Sponsored Members and Customers, as applicable.

Section 1(c) of proposed Rule 56 would further provide that any amount of cash described in proposed Rule 56 may be rounded up to the nearest one cent, five cents, 10 cents, 25 cents or dollar according to the rounding convention requested by the SFT Member parties to the relevant SFT as conveyed to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

Proposed Rule 56, Section 2 (Eligibility for SFT Clearing Service: SFT Member)

Section 2 of proposed Rule 56 would establish the eligibility requirements for using the proposed SFT Clearing Service.

Under Section 2 of proposed Rule 56, NSCC may permit any Member acting in its principal capacity, Sponsored Member acting in its principal capacity, or Agent Clearing Member acting on behalf of a Customer to be an SFT Member and participate in the proposed SFT Clearing Service.

Section 2 of proposed Rule 56 would provide that the rights, liabilities and obligations of SFT Members in their capacity as such shall be governed by the proposed Rule 56. References to a Member would not apply to an SFT Member in its capacity as such, unless specifically noted in the proposed Rule 56 or in such other Rules as applicable to an SFT Member.

Section 2 of proposed Rule 56 would also provide that an SFT Member that participates in NSCC in another capacity pursuant to another Rule, or which has entered into an agreement with NSCC independent from proposed Rule 56, shall continue to have all the rights, liabilities and obligations set forth in such other Rule or pursuant to such agreement, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an SFT Member, except as contemplated under Sections 15 and 16 of proposed Rule 56, as described below.

Proposed Rule 56, Section 3 (Membership Documents)

Section 3 of proposed Rule 56 would govern the documents that SFT Member applicants would be required to complete and deliver to NSCC. Specifically, Section 3 of proposed Rule 56 would provide that to become an SFT Member, each applicant shall complete and deliver to NSCC documents in such forms as may be prescribed by NSCC from time to time and any other information requested by NSCC.

Proposed Rule 56, Section 4 (Securities Financing Transaction Data Submission)

Section 4 of proposed Rule 56 would govern the submission of transaction data for SFTs into NSCC for novation by Approved SFT Submitters on behalf of Transferors (*e.g.,* lenders) and Transferees (*e.g.,* borrowers).

Section 4(a) of proposed Rule 56 would provide that in order for an SFT to be submitted to NSCC, the transaction data for the SFT must be submitted to NSCC by an Approved SFT Submitter in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Any such transaction data shall be submitted to NSCC on a locked-in basis. In determining whether to accept transaction data from an Approved SFT Submitter, NSCC may require the Approved SFT Submitter to provide a Cybersecurity Confirmation. This is consistent with the existing requirement in Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) for organizations reporting trade data to NSCC.[73]

Section 4(b) of proposed Rule 56 would provide that NSCC would not act upon any instruction received from an Approved SFT Submitter in respect of an SFT unless each SFT Member (other than an SFT Member that is a Sponsored Member) designated by the Approved SFT Submitter as a party to such SFT has consented, in a writing delivered to NSCC, to the Approved SFT Submitter acting on behalf of the SFT Member in respect of SFTs.

Section 4(c) of proposed Rule 56 would provide that the obligations reflected in the transaction data on an SFT shall be deemed to have been confirmed and acknowledged by each SFT Member designated by the Approved SFT Submitter as a party thereto and to have been adopted by such SFT Member and, for the purposes of determining the rights and obligations between NSCC and such SFT Member under the proposed Rule 56 and such other Rules applicable to SFTs, shall be valid and binding upon such SFT Member. In addition, Section 4(c) would provide that an SFT Member which has been so designated by an Approved SFT Submitter shall resolve any differences or claims regarding the rights and obligations reflected in the transaction data submitted by the

[73] Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) provides that NSCC may require organizations that deliver trade data to NSCC as described in that Rule to provide a Cybersecurity Confirmation before agreeing to accept such trade data. *Supra* note 4.

Approved SFT Submitter with the Approved SFT Submitter, and NSCC shall have no responsibility in respect thereof or to adjust its records or the accounts of the SFT Member in any way, other than pursuant to the instructions of the Approved SFT Submitter. Section 4(c) would also provide that any such adjustment shall be in the sole discretion of NSCC.

Section 4(d) of proposed Rule 56 would provide that NSCC makes no representation, whether expressed or implied, as to the complete and timely performance of an Approved SFT Submitter's duties and obligations. Section 4(d) would also provide that NSCC assumes no liability to any SFT Member for any act or failure to act by an Approved SFT Submitter in connection with any information received by NSCC or given to the SFT Member by NSCC via the Approved SFT Submitter, as the case may be.

Section 4(e) of proposed Rule 56 would provide that the submission of each SFT to NSCC and the performance of any obligation under such SFT shall constitute a representation to NSCC and covenant by the Transferor and the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee and any Agent Clearing Member that is acting on behalf of a Customer in connection with such SFT that its participation in such SFT is in compliance, and would continue to comply, with all applicable laws and regulations, including without limitation Rule 15c3–3 and all other applicable rules and regulations of the Commission, any applicable provisions of Regulation T, Regulation U and Regulation X of the Board of Governors of the Federal Reserve System, and the rules of FINRA and any other regulatory or self-regulatory organization to which the Transferor, the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee or any Agent Clearing Member that is acting on behalf of a Customer is subject.

Section 4(f) of proposed Rule 56 would provide that the submission of each SFT to NSCC shall constitute an authorization to NSCC by the Transferor, the Transferee and any Agent Clearing Member that is acting on behalf of a Customer for NSCC to give instructions regarding the SFT to DTC in respect of the relevant accounts of the Transferor, Transferee and Agent Clearing Member at DTC.

Proposed Rule 56, Section 5 (Novation of Securities Financing Transactions)

Section 5 of proposed Rule 56 would govern the nature and timing of the novation to NSCC of obligations related to an SFT.

Section 5(a) of proposed Rule 56 would provide that NSCC to only novate an SFT if, at the time of novation, the Final Settlement of such transaction is scheduled to occur one Business Day following the Initial Settlement and the SFT Cash is no less than 100% of the Contract Price of the SFT.

Section 5(b) of proposed Rule 56 would provide that each SFT that is a Bilaterally Initiated SFT, including any Sponsored Member Transaction, and validated pursuant to the Rules shall be novated to NSCC as of the time NSCC provides the Approved SFT Submitter for such SFT a report confirming such novation in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 5(b) would also provide that each SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction and that is validated pursuant to the Rules shall be novated to NSCC as of the time (x) the Initial Settlement of such SFT has completed by (i) the Transferor instructing DTC to deliver from the relevant DTC account of the Transferor to NSCC's account at DTC the subject SFT Securities versus payment of the amount of the SFT Cash, (ii) NSCC instructing DTC to deliver from NSCC's account at DTC to the relevant DTC account of the Transferee the subject SFT Securities versus payment of the amount of SFT Cash and (iii) DTC processes the deliveries in accordance with the rules and procedures of DTC, or (y) the Initial Settlement obligations of such SFT have been discharged in accordance with Section 8 of proposed Rule 56, as described below. In addition, Section 5(b) would provide that if the Initial Settlement obligations of an SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction are not discharged in accordance with clause (x) or (y), then such SFT shall be deemed void *ab initio.*

Section 5(c) of proposed Rule 56 would provide that, subject to Sections 5(d) and 5(e) of proposed Rule 56 as described below, the novation of SFTs shall consist of the termination of the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements between the parties to the SFT with respect to such SFT and their replacement with obligations and entitlements to and from NSCC to perform, in accordance with the Rules, the Final Settlement, Rate Payment, and Distribution Payment obligations and entitlements under the SFT.

Section 5(d) of proposed Rule 56 would govern the novation of SFTs having Incremental Additional Independent Amount SFT Cash and provides when the obligation to return Independent Amount SFT Cash for which an associated Clearing Fund deposit has not been made will be novated away from a Transferor to NSCC. Specifically, Section 5(d)(i) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, then, unless the SFT is a Sponsored Member Transaction and the Sponsoring Member is the Transferee,[74] the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee shall not be terminated and novated to NSCC (nor shall NSCC otherwise be required to return such Incremental Additional Independent Amount SFT Cash), except to the extent that the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied the associated Independent Amount SFT Cash Deposit Requirement. As proposed, to the extent the associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash at the time of the Initial Settlement, the obligation to return the Independent Amount SFT Cash would not be novated to NSCC.

Section 5(d)(ii) of proposed Rule 56 would provide that to the extent the Transferor, Sponsoring Member or Agent Clearing Member has not satisfied the associated Independent Amount SFT Cash Deposit Requirement, the Transferor's (or in the case of a Non-Returned SFT, NSCC's) obligation to return the Incremental Additional Independent Amount SFT Cash shall: (1) If the SFT is an Agent Clearing Member Transaction for which the Agent Clearing Member, acting on behalf of the Customer, is the Transferor, be terminated and replaced with an obligation of the Agent Clearing Member, in its capacity as principal, to return the Incremental Additional Independent Amount SFT Cash to the Transferee; or (2) otherwise, remain (or in the context of a Non-Returned SFT, be terminated and replaced with) a bilateral obligation of the Transferor to the Transferee. As proposed, if the

[74] Where the Transferor is a Sponsored Member receiving Independent Amount SFT Cash, NSCC would not be requiring Independent Amount SFT Cash Deposit Requirement. This is because in the case of the Sponsored Member's default, the party giving the Independent Amount SFT Cash, *i.e.,* Sponsoring Member, is the guarantor of the settlement obligation of the Sponsored Member Independent Amount SFT Cash back to NSCC.

associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash, the Independent Amount SFT Cash would be owed by the Transferor to the Transferee as a bilateral principal-to-principal obligation, unless the Transferor is a Customer of an Agent Clearing Member, in which case the obligation to return the Independent Amount SFT Cash in respect of which the Clearing Fund has not been made would be novated from the Customer to the Agent Clearing Member, and the Agent Clearing Member would owe the Independent Amount SFT Cash back to the Transferee as principal.[75]

Section 5(d)(iii) of proposed Rule 56 would provide that each SFT Member agrees that any obligation to return Incremental Additional Independent Amount SFT Cash that is novated to an Agent Clearing Member or that remains (or becomes) a bilateral obligation of the Transferor to the Transferee in accordance with Section 5(d)(ii) of proposed Rule 56, is a binding and enforceable obligation of the Agent Clearing Member or Transferor, as applicable, regardless of whether the Transferee has entered into an Existing Master Agreement with the Agent Clearing Member or Transferor. In addition, Section 5(d)(iii) would provide that each SFT Member further agrees that any such obligation shall only be due and payable to the Transferee upon the final discharge of NSCC's Final Settlement obligations to the Transferor under the portion of the SFT that has been novated to NSCC in accordance with Section 5(b) of proposed Rule 56, as described above.

Section 5(d)(iv) of proposed Rule 56 would provide that, until the Transferor, Sponsoring Member or Agent Clearing Member has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under such SFT, equal the SFT Cash of the SFT less the Incremental Additional Independent Amount SFT Cash.

Section 5(d)(v) of proposed Rule 56 would provide that once the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee (or, in the case of an SFT that is an Agent Clearing Member Transaction, any obligation of the Agent Clearing Member to return the Incremental Additional Independent Amount SFT Cash to the Transferee) shall be novated to NSCC, and the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under the SFT, include the full amount of the SFT Cash of such SFT.

Section 5(e) of proposed Rule 56 would govern novation in respect of certain corporate actions and provide that NSCC would (i) have an obligation to pay the cash distribution to the Transferor and the Transferee would have an obligation to pay the cash distribution to NSCC, and (ii) not novate any obligations related to unsupported corporate actions and distributions. Specifically, Section 5(e)(i) of proposed Rule 56 would provide that regardless of anything to the contrary in any Existing Master Agreement (including a provision addressing when an issuer pays different amounts to different security holders due to withholding tax or other reasons), the Distribution Payment obligations and entitlements between NSCC and each party to an SFT that has been novated to NSCC shall be the obligation of NSCC to pay to the Transferor and the obligation of the Transferee to pay to NSCC the Distribution Amount in respect of each Distribution and the corresponding entitlements of the Transferor and NSCC, in each case, in accordance with the Rules.

Section 5(e)(ii) of proposed Rule 56 would provide that NSCC shall maintain a list of corporate actions and distributions that NSCC does not support with respect to SFTs. Section 5(e)(ii) would further provide that no Final Settlement, Rate Payment, Distribution Payment or other obligation resulting from a corporate action or distribution that is not supported by NSCC shall be novated to NSCC. In addition, Section 5(e)(ii) would provide that none of such unsupported corporate action shall modify the Final Settlement, Rate Payment, Distribution Payment or other obligations of NSCC, Transferor and Transferee under an SFT that has been novated to NSCC. Section 5(e)(ii) would also provide that each SFT Member agrees that any obligation under an SFT resulting from a corporate action or distribution not supported by NSCC shall remain a binding and enforceable bilateral obligation between the Transferor and the Transferee, regardless of whether the Transferor and Transferee have entered into an Existing Master Agreement.

Section 5(f) of proposed Rule 56 would provide that the novation of SFTs shall not affect the fundamental substance of the SFT as a transfer of securities by one party in exchange for a transfer of cash by the other party and an agreement by each party to return the property it received and shall not affect the economic obligations or entitlements of the parties under the SFT except that following novation, the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements shall be owed to and by NSCC rather than the original counterparty under the SFT.

Section 5(g) of proposed Rule 56 would provide that the representations and warranties made by each of the parties to an SFT that has been novated to NSCC under the parties' Existing Master Agreement, if any, shall (x) to the extent that they are inconsistent with the Rules, be eliminated and replaced with the Rules and (y) to the extent that they are not inconsistent with the Rules, remain in effect as between the parties to the original SFT, but shall not impose any additional obligations on NSCC.

Proposed Rule 56, Section 6 (Rate and Distributions)

Section 6 of proposed Rule 56 would govern the settlement of Rate Payments and supported Distributions by NSCC for novated SFTs. Section 6(a) of proposed Rule 56 would provide that NSCC shall debit and credit the Rate Payment from and to the SFT Accounts of the SFT Member parties to an SFT that has been novated to NSCC as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service) on the scheduled Final Settlement Date for the SFT, irrespective of whether Final Settlement of such SFT occurs on such date.

Section 6(b) of proposed Rule 56 would provide that if (x) a cash dividend is made on or in respect of an SFT Security that is the subject of an SFT that has been novated to NSCC or (y) cash is exchanged, in whole or in part, for such an SFT Security in a merger, consolidation or similar transaction, and the Transferor under the SFT would have been entitled to a cash payment related to the event described in clause (x) or (y) had it not transferred the SFT Securities that are the subject of the SFT to the Transferee in the Initial Settlement, then NSCC shall, within the time period determined by NSCC from time to time, credit the Distribution Amount to the Transferor's SFT Account and debit the Distribution Amount from the Transferee's SFT Account as part of its end of day final money settlement

[75] This interim novation is designed to avoid any credit concerns that would manifest if the Customer and the Transferee had to have a principal bilateral obligation to each other for the Independent Amount SFT Cash.

process in accordance with Rule 12 and Procedure VIII. Section 6(b) would further provide that if cash is exchanged in whole for such an SFT Security, then the completion of the actions described in the preceding sentence shall discharge NSCC's Final Settlement obligations to the relevant Transferor and the Transferee's Final Settlement obligations to NSCC.

Proposed Rule 56, Section 7 (Final Settlement of Securities Financing Transactions)

Section 7 of proposed Rule 56 would govern the mechanics of Final Settlement of SFTs by providing that, subject to Section 11 of proposed Rule 56, as described below, the Final Settlement of an SFT that has been novated to NSCC shall be scheduled to occur on the Business Day immediately following the date the SFT was novated to NSCC. Section 7 would further provide that unless the Final Settlement obligations under such an SFT are discharged in accordance with Section 8 of proposed Rule 56, as described below, Final Settlement of the SFT shall occur by (x) NSCC instructing DTC to (i) deliver from the relevant DTC account of the Transferee to NSCC's account at DTC the subject SFT Securities versus payment of the amount of SFT Cash and (ii) deliver from NSCC's account at DTC to the relevant DTC account of the Transferor the subject SFT Securities versus payment of the amount of SFT Cash, and (y) the processing of such deliveries by DTC in accordance to the rules and procedures of DTC; provided that if such transfers do not occur and a Buy-In does not occur in respect of the SFT, then the Final Settlement Date shall be rescheduled for the following Business Day as described in Section 9 of proposed Rule 56, as described below. The obligation of a Transferor (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferor or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Cash to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to pay the SFT Cash and, if applicable, the Rate Payment to NSCC against the transfer of the relevant SFT Securities by NSCC. The obligation of a Transferee (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferee or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Securities to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to transfer the SFT Securities and, if applicable, the Rate Payment to NSCC against the transfer of SFT Cash by NSCC.

Section 7 of proposed Rule 56 would also provide that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion, whether pursuant to Sections 7, 8, 9(d) or 13(c) of proposed Rule 56. Section 7 would also provide that from and after the Final Settlement of an SFT, or a portion thereof, pursuant to any Sections 7, 8, 9(d) or 13(c) of proposed Rule 56, NSCC shall be discharged from its obligations to the Transferor and the Transferee, and NSCC shall have no further obligation in respect of the SFT or such portion. This is to make it clear to SFT Members the point at which settlement of an SFT is deemed to be complete and final.[76]

Proposed Rule 56, Section 8 (Discharge of Offsetting Final Settlement and Initial Settlement Obligations)

Section 8 of proposed Rule 56 would govern the ''roll'' (*i.e.,* pair off or offset) process whereby the Final Settlement obligations on one SFT (*i.e.,* the Settling SFT) between two parties can be offset with the Initial Settlement obligations on another SFT between the same parties (*i.e.,* the Linked SFT) through the debiting and crediting of the difference in cash collateral between the two offsetting SFTs (*i.e.,* the Price Differential).

Section 8(a) of proposed Rule 56 would provide that, subject to the provisions of Section 13(c) of proposed Rule 56, as described below, if, on any Business Day, the pre-novation SFT Member parties to a Settling SFT enter into a Linked SFT and the Approved SFT Submitter provides an appropriate instruction to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose, the Final Settlement obligations of the parties to the Settling SFT and the Initial Settlement obligations of the parties to the Linked SFT shall be discharged once NSCC has instructed DTC to debit and credit the relevant DTC accounts, of the SFT Member parties, as described below in Section 8(b) of proposed Rule 56, and DTC processes such debits and credits in accordance with the rules and procedures of DTC. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). If the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. If the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. However, if the Linked SFT has as its subject fewer SFT Securities than the Settling SFT, then only the following Final Settlement obligations under the Settling SFT shall be discharged in accordance with Section 8 of proposed Rule 56: (i) The Transferee's and NSCC's Final Settlement obligations in respect of a quantity of SFT Securities equal to the quantity of SFT Securities that are the subject of the Linked SFT and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 8(b) of proposed Rule 56 would provide that if the Price Differential is positive, NSCC shall (x) instruct DTC to debit an amount equal to the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferee and (y) instruct DTC to debit an amount equal to the Price Differential from the relevant DTC account of the Transferor and credit such amount to NSCC's account at DTC. If the Price Differential is negative, NSCC shall (x) instruct DTC to debit an amount equal to the absolute value of the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferor and (y) instruct DTC to debit an amount equal to the absolute value of the Price Differential from the relevant DTC account of the Transferee and credit such amount to NSCC's account at DTC.

Proposed Rule 56, Section 9 (Non-Returned Securities Financing Transactions and Recalls)

Section 9 of proposed Rule 56 would govern the processing of a novated SFT for which the Final Settlement obligations have not been discharged

[76] With respect to an SFT between a Sponsoring Member and its Sponsored Member, the SFT would settle on the books of the Sponsoring Member because the Sponsored Member are not participants at DTC and thus would not have accounts at DTC. Accordingly, the finality of the settlement of such SFT would occur when the Sponsoring Member credits the securities and cash on its or the relevant custodian's books and records.

either through Final Settlement in accordance with Section 7 of proposed Rule 56 (as described above) or a pair off in accordance with Section 8 of proposed Rule 56 (as described above), and the recall and buy-in process for such an SFT.

Specifically, Section 9(a) of proposed Rule 56 would provide that if (x) the Transferee does not satisfy its Final Settlement obligations in respect of an SFT that has been novated to NSCC on the Final Settlement Date, (y) such Final Settlement obligations have not been discharged in accordance with the provisions of Section 8 of proposed Rule 56, as described above, and (z) a Buy-In has not occurred in respect of such SFT or a portion thereof (such SFT, a ''Non-Returned SFT''), the Final Settlement Date of the Non-Returned SFT shall be rescheduled for the following Business Day, and NSCC shall instruct DTC to debit and credit the relevant DTC accounts of the SFT Member parties, as described in subsection (b) of Section 8 above. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the Non-Returned SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(a) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account; if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. This process would continue until Final Settlement, a pair off in accordance with Section 8 of proposed Rule 56 (as discussed above), or a Buy-In.

Section 9(b) of proposed Rule 56 would provide that if NSCC receives a Recall Notice in respect of an SFT that has been novated to NSCC and the Transferee does not satisfy its Final Settlement obligations by the Recall Date for the Recall Notice, the Transferor may, in a commercially reasonable manner,[77] purchase some or all of the SFT Securities that are the subject of the SFT [78] or elect to be deemed to have purchased the SFT Securities, in each case in accordance with such timeframes and deadlines as established by NSCC for such purpose (a ''Buy-In''); provided that in the case of a Default-Related SFT (as defined below and in the proposed rule change), the commercial reasonableness of a Buy-In shall be determined by NSCC based on whether, in the opinion of NSCC, such Buy-In would create a disorderly market in the relevant SFT Security. Following such purchase or deemed purchase, the Transferor shall (x) give written notice to NSCC of the Transferor's costs to purchase the relevant SFT Securities (including the price paid by the Transferor and any broker's fees and commissions and reasonable out-of-pocket transaction costs, fees or interest expenses incurred in connection with such purchase) (such costs, the ''Buy-In Costs'') or, if the Transferor elects to be deemed to have purchased the SFT Securities, the Deemed Buy-In Costs, and (y) indemnify NSCC, and its employees, officers, directors, shareholders, agents and Members (collectively the ''Buy-In Indemnified Parties''), for any and all losses, liability or expenses of a Buy-In Indemnified Party arising from any claim disputing the calculation of the Buy-In Costs, the Deemed Buy-In Costs or the method or manner of effecting the Buy-In. Section 9(b) would further provide that each SFT Member acknowledges and agrees that each SFT Security is of a type traded in a recognized market and that, in the absence of a generally recognized source for prices or bid or offer quotations for any SFT Security, the Transferor may, for purposes of a Buy-In, establish the source therefor in its commercially reasonable discretion. In addition, Section 9(b) would provide that each SFT Member further acknowledges and agrees that NSCC would not calculate any Buy-In Costs or Deemed Buy-In Costs and shall have no liability for any such calculation. Section 9(b) would also provide that NSCC would assign to any Transferee whose SFT is subject to a Buy-In any rights it may have against the Transferor to dispute the Transferor's calculation of the Buy-In Costs or Deemed Buy-In Costs.

Section 9(c) of proposed Rule 56 would provide that on the Business Day following NSCC's receipt of written notice of the Transferor's Buy-In Costs, NSCC shall debit and credit the Buy-In Amount from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(c) would provide that if the Buy-In Amount is positive, NSCC would (x) credit the value of the Buy-In Amount to the Transferor's SFT Account and (y) debit the value of the Buy-In Amount from the Transferee's SFT Account. Section 9(c) would further provide that if the Buy-In Amount is negative, NSCC would (x) credit the value of the Buy-In Amount to the Transferee's SFT Account and (y) debit the value of the Buy-In Amount from the Transferor's SFT Account.

Section 9(d) of proposed Rule 56 would provide that following the application of such Buy-In Amount, the Final Settlement obligations under the SFT shall be discharged; provided that if the Transferor effected a Buy-In in respect of some but not all of the SFT Securities that are the subject of an SFT, then only the following obligations shall be discharged: (i) The Transferee's and NSCC's Final Settlement obligations in respect of the SFT Securities for which the Transferor effected the Buy-In and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 9(e) of proposed Rule 56 would provide that a Recalled SFT shall be treated as a Non-Returned SFT by NSCC until the earlier of the time that the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described below, shall not apply. Section 9(e) would further provide that if the Transferor effects the Buy-In in respect of some, but not all, of the SFT Securities that are the subject of a Recalled SFT, the Final Settlement obligations of the Recalled SFT that are not discharged in accordance with Section 9(d) of proposed Rule 56 shall be treated as a Non-Returned SFT until the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, and the additional SFT Deposit required under Section 12(c) of proposed Rule 56, as described below, for Non-Returned SFTs shall apply.

[77] The requirement that a party exercising buy-in rights do so in a ''commercially reasonable manner'' is market standard. *See, e.g.,* Section 13.1 of the Master Securities Loan Agreement published by Securities Industry and Financial Markets Association (''SIFMA''). NSCC has proposed to include this language in order to align the standards applicable to an exercise of remedies in relation to SFTs with those applicable in the bilateral uncleared space. NSCC believes that such alignment will increase certainty for SFT Members and allow them to follow standards with which they are familiar.

[78] The Transferor would purchase these securities from one or more third parties.

Proposed Rule 56, Section 10 (Cancellation, Modification and Termination of Securities Financing Transactions)

Section 10 of proposed Rule 56 would govern the process for cancellations, modifications and terminations of SFTs in NSCC's systems.

Section 10(a) of proposed Rule 56 would provide that transaction data on an SFT that has not been novated to NSCC may be cancelled upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(a) would further provide that an SFT that is so cancelled by NSCC would be deemed to be void *ab initio.*

Section 10(b) of proposed Rule 56 would provide the Rate Payment on an SFT that has been novated to NSCC may be modified upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(b) would further provide that any instructions submitted by an Approved SFT Submitter to modify the Rate Payment of an SFT must be submitted on behalf of both SFT Member parties to the SFT.

Section 10(c) of proposed Rule 56 would provide an SFT that has been novated to NSCC in accordance with Section 5 of proposed Rule 56, as described above, may be terminated upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purposes. Section 10(c) would further provide that following any such termination, no amounts or further obligations shall be owing in respect of the SFT between NSCC and Transferor or NSCC and the Transferee.

Proposed Rule 56, Section 11 (Accelerated Final Settlement)

Section 11 of proposed Rule 56 would allow a Transferee (*i.e.,* the borrower) to do a same day return of borrowed securities, if necessary, to satisfy its regulatory purpose requirements by accelerating the Final Settlement of an SFT that has been novated to NSCC. Specifically, Section 11 would provide that the Transferee may accelerate the scheduled Final Settlement of an SFT that has been novated to NSCC upon receipt by NSCC of appropriate instruction from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 11 would further provide that such accelerated Final Settlement shall be effected by NSCC in accordance with the provisions of Section 7 of proposed Rule 56, as described above.

Proposed Rule 56, Section 12 (Clearing Fund Obligations)

Section 12 of proposed Rule 56 would set out the Clearing Fund obligations for SFT Members with respect to their SFT activity.

Section 12(a) of proposed Rule 56 would provide each SFT Member, other than an SFT Member that is a Sponsored Member, shall make and maintain on an ongoing basis a deposit to the Clearing Fund with respect to its SFT Positions (the ''SFT Deposit''). Section 12(a) would provide that, for the avoidance of doubt, the SFT Positions for an SFT Member that is a Sponsoring Member shall include all SFT Positions held in its Sponsored Member Sub-Account(s) in addition to its proprietary account(s).

Section 12(b) of proposed Rule 56 would provide that the SFT Deposit shall be held by NSCC or its designated agents as part of the Clearing Fund, to be applied as provided in Sections 1 through 12 of Rule 4 (Clearing Fund).

Section 12(c) of proposed Rule 56 would provide that NSCC shall calculate the amount of each such SFT Member's required deposit for SFT Positions, subject to a $250,000[79] minimum (excluding the minimum contribution to the Clearing Fund as required by Procedure XV (Clearing Fund Formula and Other Matters), Section II.(A)), by applying the Clearing Fund formula for CNS Transactions in Sections I.(A)(1)(a), (b), (c), (e) (f), (g) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV, except as noted otherwise, in the same manner as such sections apply to CNS Transactions submitted to NSCC for regular way settlement, plus, with respect to any Non-Returned SFT, an additional charge that is calculated by (x) multiplying the Current Market Price of the SFT Securities that are the subject of the SFT and (y) multiplying such product by (i) 5% for SFT Members rated 1 through 4 on the Credit Risk Rating Matrix, (ii) 10% for SFT Members rated 5 or 6 on the Credit Risk Rating Matrix, or (iii) 20% for SFT Members rated 7 on the Credit Risk Rating Matrix shall be applied to each SFT Member that is a party thereto[80] (collectively and includes any and all Independent Amount SFT Cash Deposit Requirements, the ''Required SFT Deposit''); provided, however, notwithstanding anything to the contrary, (A) a minimum of 40% of an SFT Member's Required SFT Deposit shall be made in the form of cash and/or Eligible Clearing Fund Treasury Securities and (y) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit, with a minimum of $250,000, must be made and maintained in cash;[81] provided, further, the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits for Members on the Watch List); (2) (Excess Capital Premium); (3) (Backtesting Charge); (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)–(b), II.(B), II.(C), and II.(D); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV shall apply to SFT Members in the same manner as such sections apply to Members. As

[79] *Supra* note 32.

[80] The Required SFT Deposit multipliers proposed for Non-Returned SFTs are identical to the Required Fund Deposit multipliers applied to CNS Fails Positions. *See* Procedure XV (Clearing Fund Formula and Other Matters), Section I.(A)(1)(d)), *supra* note 4. While the concept of a ''fail'' does not exist in the securities lending market in the same manner as it does in the cash market, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, whether directly or through a pair off as described in Section 8 of proposed Rule 56 (as discussed above), that could potentially be a result of a ''squeeze'' or other market dislocation whereby NSCC may face increased market risk in the event of the default of either the Transferor or the Transferee. As a result, NSCC believes it is prudent to apply the same Required Fund Deposit multiplier to a Non-Returned SFT as it does to CNS Fails Positions.

The Credit Risk Rating Matrix is a financial model utilized by NSCC in its ongoing monitoring of Members based on various risk criteria. Each Member is rated by the Credit Risk Rating Matrix on a 7-point rating system, with ''1'' being the strongest credit rating and ''7'' being the weakest credit rating. As described above, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, NSCC, as a central counterparty, is exposed to market risks. Such exposures generally increase when the SFT Member's risk of default increases, as reflected by the SFT Member's Credit Risk Rating Matrix credit rating. As such, the Required SFT Deposit multipliers proposed for Non-Returned SFTs vary based on the SFT Member's credit rating to reflect the potential increase in market risk from SFT Members with higher risk of default.

[81] *Supra* note 34.

noted in the proposed rule text, for the purpose of applying Section I.(A)(1)(a)(i) of Procedure XV (Value-at-Risk (VaR) charge), the volatility of an SFT Member's SFT Positions shall be the sum of (a) the highest resultant value between Section I.(A)(1)(a)(i)I. (Core Parametric Estimation) and Section I.(A)(1)(a)(i)III. (Margin Floor) and (b) the resultant value of Section I.(A)(1)(a)(i)II. (Gap Risk Measure). Also, as noted in the proposed rule text, for the purpose of applying Section I.(A)(1)(g) of Procedure XV (Margin Liquidity Adjustment (MLA) charge), SFT Positions shall be aggregated with Net Unsettled Positions, as defined in Rule 1,[82] in the same asset group or subgroup; provided, however, in the event such aggregation results in a reduction of the aggregate positions in the relevant asset group or subgroup, NSCC shall apply the greater of (a) the sum of MLA charges separately calculated for SFT Positions and Net Unsettled Positions in the asset group or subgroup and (b) the MLA charge calculated from aggregating the SFT Positions and the Net Unsettled Positions in the asset group or subgroup.

Section 12(d) of proposed Rule 56 would provide that NSCC shall have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than as required under subsection (c) of proposed Section 12, as determined by NSCC from time to time in view of market conditions and other financial and operational capabilities of the SFT Member. Section 12(d) would further provide that NSCC shall make any such determination based on such factors as NSCC determines to be appropriate from time to time.

Section 12(e) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, the Transferor shall make an additional deposit to the Clearing Fund that equals the amount of the Incremental Additional Independent Amount SFT Cash for such SFT (''Independent Amount SFT Cash Deposit, and such requirement the ''Independent Amount SFT Cash Deposit Requirement''). Section 12(e) would also provide that the Independent Amount SFT Cash Deposit Requirement must be satisfied in cash and may, at the discretion of NSCC, be satisfied using Independent Amount SFT Cash Deposits that have previously been made by the Transferor in respect of SFTs with the same Transferee that have since settled.[83] Section 12(e) would further provide that the Transferor shall satisfy any Independent Amount SFT Cash Deposit Requirement in respect of an SFT on the date that the SFT is novated to NSCC pursuant to the timeframes and deadlines established by NSCC for such purpose. In addition, Section 12(e) would provide that if, on a given day, the Transferor satisfies its Independent Amount SFT Cash Deposit Requirement for some, but not all, SFTs novated to NSCC on that day, NSCC will consider the Transferor to have satisfied its Independent Amount SFT Cash Deposit Requirement for none of the SFTs that were novated to NSCC on that day.

Section 12(f) of proposed Rule 56 would provide that each SFT Member, other than an SFT Member that is a Sponsored Member, so long as such Member is an SFT Member, shall also provide Supplemental Liquidity Deposits to the Clearing Fund, as may be required pursuant to Rule 4A. In addition, Section 12(f) would also provide that references to Clearing Fund in the other Rules shall include and apply to SFT Deposit, and references to Required Fund Deposit shall include and apply to Required SFT Deposit, unless specifically noted otherwise in proposed Rule 56 or in such other Rules.

Proposed Rule 56, Section 13 (Ineligible SFT Securities and Supported Corporate Actions)

Section 13 of proposed Rule 56 would govern the processing of SFTs where the underlying securities become ineligible SFT Securities and the processing of SFTs in the context of supported corporate actions.

Specifically, Section 13(a) of proposed Rule 56 would provide that NSCC would remove an Ineligible SFT Security from the list maintained by NSCC as set forth in Rule 3 (Lists to be Maintained); provided that NSCC may not be able to identify that an SFT Security is an Ineligible SFT Security and remove such SFT Security from the list maintained by NSCC if the reason for the ineligibility is that the SFT Security is undergoing a corporate action or distribution not supported by NSCC and NSCC is not in receipt of reasonably advanced notice of such corporate action or distribution.

Section 13(b) of proposed Rule 56 would provide that notwithstanding Section 12 of proposed Rule 56, as described above, if an SFT Security becomes an Ineligible SFT Security because the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, the Required SFT Deposit of each SFT Member party to an SFT which has such Ineligible SFT Security as its subject shall include an additional amount equal to the product of 100% of the Current Market Price of such Ineligible SFT Security and the number of such Ineligible SFT Securities that the SFT has as its subject.[84] The threshold that would be established by NSCC is currently $5.00, which could be modified by NSCC[85] at a later date after NSCC gains more experience with the nature of the SFT portfolios submitted for clearing, as discussed above.

Section 13(c) of proposed Rule 56 would provide that if NSCC declares that an SFT Security has or would become an Ineligible SFT Security because the security is or would become ineligible for processing or is or would be undergoing a corporate action or distribution that is not supported by NSCC, the Final Settlement of all SFTs that have been novated to NSCC and have such SFT Security as their subject must occur before the Ineligibility Date.[86] In addition, Section 13(c) would provide that if following such declaration the Transferee does not satisfy its Final Settlement obligations in respect of any such SFT as provided in Section 7 of proposed Rule 56, as described above, by the Ineligibility Date, NSCC shall, unless NSCC has previously debited and credited the

[82] *Supra* note 33.

[83] This could occur in a situation in which an existing SFT settles and then the Transferor enters into a new SFT with the same Transferee (*e.g.,* in a pair off as described in Section 8 of proposed Rule 56, discussed above). In that situation, if the Transferee (or Sponsoring Member or Agent Clearing Member) has not yet called back the Independent Amount SFT Cash Deposit it posted in respect of the Settling SFT, then NSCC may apply the deposit to the Independent Amount SFT Cash Deposit obligation associated with the new SFT.

[84] If the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, NSCC would assess the additional amount as part of the Required SFT Deposit.

[85] *Supra* note 23.

[86] The duration between the declaration and Ineligibility Date would vary. If the ineligibility is because the SFT Security will become ineligible for processing (*i.e.,* no longer CNS eligible), the duration would depend on the timing of the CNS ineligibility triggering event (*e.g.,* compliance with regulatory orders, risk concerns, trading suspension, etc.).

If the ineligibility is because the SFT Security will be undergoing an unsupported corporate action or distribution, then it would depend on when the issuer of the relevant SFT Security announces the particular corporate action or distribution event and the record date for such corporate action or distribution. Specifically, when announcements from the issuers are received by DTC, DTC would announce the corporate action or distribution event. NSCC would notify Members of such event when it is announced by DTC and would generally tie the Ineligibility Date to shortly before or on the record date for the corporate action or distribution.

Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT in accordance with Section 8 of proposed Rule 56, as described above, on Ineligibility Date, debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service).[87] Section 13(c) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. Section 13(c) would also provide that if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. Furthermore, Section 13(c) would provide that following the application of Price Differential to an Ineligible SFT on or after the relevant Ineligibility Date, all rights and obligations as between NSCC and the SFT Member parties thereto with respect to such SFT shall be discharged.

Section 13(d) of proposed Rule 56 would provide that if a corporate action supported by NSCC in respect of the SFT Securities that are the subject of an SFT is scheduled to occur, NSCC may cease to permit the discharge of the SFT's Final Settlement obligations, whether pursuant to Section 8 of proposed Rule 56, as described above, or otherwise, and treat the SFT as a Non-Returned SFT for such period of time determined by NSCC as necessary to process the corporate action, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall not apply. Section 13(d) would further provide that notwithstanding the foregoing, NSCC shall not limit the ability of a Member to accelerate the Final Settlement of an SFT in accordance with Section 11 of proposed Rule 56, as described above, provided that any Price Differential for the SFT has settled in accordance with Section 9(a) of proposed Rule 56, as described above, and that such accelerated Final Settlement is permitted in accordance with the rules and procedures of DTC.

Proposed Rule 56, Section 14 (Cease To Act Procedures for SFT Members With Open Securities Financing Transactions)

Section 14 of proposed Rule 56 would establish NSCC's procedures for when it ceases to act for an SFT Member with open SFTs, including recalling a non-defaulting SFT Member that is a Transferee and liquidating the Defaulting SFT Member's SFT Positions by deeming NSCC to have bought in or sold out some or all the SFT Securities that are the subject of such SFTs at prevailing market price or by crossing.

Section 14(a) of proposed Rule 56 would provide that the provisions of Rule 18 (Procedures for When the Corporation Ceases to Act) shall not apply to the SFTs except for Sections 1 and 8 of Rule 18.

Section 14(b) of proposed Rule 56 would provide that if NSCC has ceased to act for an SFT Member and subject to Section 14 of proposed Rule 2C, as described above:

(i) Except as otherwise may be determined by the Board of Directors, any SFT entered into by the SFT Member that, at the time NSCC ceased to act for such SFT Member, has not been novated to NSCC pursuant to proposed Rule 56, shall be excluded from all operations of NSCC applicable to such SFT.

(ii) NSCC may decline to act upon any instructions, transaction data or notices submitted by such SFT Member or an Approved SFT Submitter on behalf of such SFT Member.

(iii) NSCC shall close-out such SFT Member's proprietary SFT Positions as well as any SFT Positions established in the SFT Member's Agent Clearing Member Customer Omnibus Account by (x) buying in or selling out, as applicable, some or all of the SFT Securities that are the subject of each SFT of the SFT Member that has been novated to NSCC but for which the Final Settlement has not occurred, (y) deeming NSCC to have bought in or sold out some or all such SFT Securities at the bid or ask price therefor, respectively, from a generally recognized source or at such price or prices as NSCC is able to purchase or sell, respectively, some such SFT Securities, or (z) otherwise liquidating such SFT Member's SFT Positions.

(iv) Any Sponsored Member Transactions for which a Defaulting SFT Member is the Sponsoring Member and which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, would determine whether to close-out the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts (if any), which close out shall be effected in accordance with the provisions of Section 14(b)(iii), as described above, or instead permit the relevant Sponsored Members to complete settlement of the relevant Sponsored Member Transactions.

(v) If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a profit to NSCC, such profit shall be applied to any loss to NSCC arising from the closing out of such Defaulting SFT Member (including losses arising from closing out the SFT Positions established in any of the Defaulting SFT Member's Agent Clearing Member Customer Omnibus Accounts or Sponsored Member Sub-Accounts or losses arising from closing out any Net Close Out Positions of the Defaulting SFT Member). If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vi) If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a profit to NSCC, such profit shall be credited to the Agent Clearing Member Customer Omnibus Accounts. If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by the NSCC to such SFT Member in its proprietary capacity, and thereafter debited from the Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vii) If, in the aggregate, the close-out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a profit to NSCC, such profit shall be credited to the Sponsored Member Sub-Accounts. If, in the aggregate, the closing out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting

[87] NSCC is proposing this simplified process for applying Price Differentials to Ineligible SFTs because NSCC anticipates such instances would occur on a much less frequent basis than those in connection with Linked SFTs pursuant to Section 8(a) of proposed Rule 56 and Non-Returned SFTs pursuant to Section 9(a) of proposed Rule 56.

SFT Member's Clearing Fund deposit at NSCC.

(viii) The Final Settlement Date of each SFT that has been novated to NSCC and that, prior to novation, was with a Defaulting SFT Member (each, a ''Default-Related SFT'') shall be the Business Day following the day on which NSCC ceased to act for the Defaulting SFT Member.

(ix) Until Final Settlement, each Default-Related SFT shall be treated as a Non-Returned SFT, and NSCC would pay and collect the Price Differential amounts described in Section 9(a) of proposed Rule 56, as described above. NSCC shall have all of the rights of a Transferor in relation to any Default-Related SFT in respect of which the Defaulting SFT Member was the Transferor, including the ability to deliver a Recall Notice in relation to such Default-Related SFT and to effect a Buy-In, and all of the rights of a Transferee in relation to any Default-Related SFT in respect of which the Defaulting SFT Member was the Transferee, including the ability to accelerate the scheduled Final Settlement Date of the Default-Related SFT. However, no additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall apply to any Default-Related SFT, and no Rate Payments shall accrue on Default-Related SFTs after the date on which NSCC ceases to act for the Defaulting SFT Member.

Proposed Rule 56, Section 15 (Sponsored Member SFT Clearing)

Section 15 of proposed Rule 56 would govern the requirements for Sponsored Member participation in the proposed SFT Clearing Service.

Section 15(a) of proposed Rule 56 would provide that a Sponsoring Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC Sponsored Member Transactions between itself and its Sponsored Member in accordance with the provisions of proposed Rule 56 and proposed Rule 2C.

Section 15(b) of proposed Rule 56 would provide that NSCC shall maintain for the Sponsoring Member one or more Sponsored Member Sub-Accounts. Section 15(b) would further provide that the SFT Deposits for each Sponsored Member Sub-Account shall be calculated separately based on the SFT Positions in such Sponsored Member Sub-Account, and the Sponsoring Member, as principal, shall be required to satisfy the SFT Deposits for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 15(c) of proposed Rule 56 would provide that settlement of the Final Settlement, Rate Payment, Price Differential, Distribution Payment and other obligations of a Sponsored Member Transaction that have been novated to NSCC shall be effected by the Sponsoring Member, as settlement agent for the relevant Sponsored Member, crediting and debiting the account the Sponsoring Member maintains for the Sponsored Member on the Sponsoring Member's books and records.

Proposed Rule 56, Section 16 (Customer SFT Clearing)

Section 16 of proposed Rule 56 would govern the requirements for participation by Agent Clearing Members and their Customers in the proposed SFT Clearing Service.

Section 16(a) of proposed Rule 56 would provide that an Agent Clearing Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC for novation SFTs that are Agent Clearing Member Transactions. Section 16(a) would further provide that any such submission shall be in accordance with proposed Rule 56 and proposed Rule 2D.

Section 16(b) of proposed Rule 56 would provide that with respect to an Agent Clearing Member that submits SFTs to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the Agent Clearing Member for the benefit of its Customers in which all SFT Positions and SFT Cash carried by the Agent Clearing Member on behalf of its Customers are reflected; provided, that each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both.

Section 16(c) of proposed Rule 56 would provide that with respect to SFTs entered into on behalf of its Customers and maintained in the Agent Clearing Member Customer Omnibus Account, the Agent Clearing Member shall act solely as agent of its Customers in connection with the clearing of such SFTs; provided, that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with such SFTs; and provided further, that the liabilities and obligations of NSCC with respect to such SFTs entered into by the Agent Clearing Member on behalf of its Customers shall extend only to the Agent Clearing Member. Without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any SFT to any Customer of an Agent Clearing Member.

Section 16(d) of proposed Rule 56 would provide the SFT Deposits for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the SFT Positions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the SFT Deposit for each of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 56, Section 17 (Corporation Default)

Section 17 of proposed Rule 56 would govern the close-out netting process that would apply with respect to SFTs that have been novated to NSCC in the event of a default of NSCC.

Section 17(a) of proposed Rule 56 would provide that if a ''Corporation Default'' occurs pursuant to Section 2 of Rule 41 (Corporation Default), all SFTs that have been novated to NSCC but not yet settled, and all obligations and rights arising thereunder which have been assumed by NSCC pursuant to proposed Rule 56, shall be immediately terminated, and the Board of Directors shall determine the Aggregate Net SFT Close-out Value owed by or to each SFT Member with respect to each of its SFT Positions.

Section 17(b) of proposed Rule 56 would provide that for purposes of Section 17 of proposed Rule 56, a Member shall be considered a different SFT Member in respect of each of (i) its proprietary SFT Positions; (ii) the SFT Positions established in its Agent Clearing Member Customer Omnibus Accounts (if any); and (iii) the SFT Positions established in its Sponsored Member Sub-Accounts (if any).

Section 17(c) of proposed Rule 56 would provide that each SFT Member's Aggregate Net SFT Close-out Value shall be netted and offset as described in Section 14(b)(v) through Section 14(b)(vii) of proposed Rule 56, as though NSCC had ceased to act for each SFT Member.

Section 17(d) of proposed Rule 56 would provide that the Board of Directors shall notify each SFT Member of the Aggregate SFT Close-out Value, taking into account the netting and offsetting provided for above. SFT Members that have been notified that they owe an amount to NSCC shall pay

that amount on or prior to the date specified by the Board of Directors, subject to any applicable setoff rights. SFT Members who have a net claim against NSCC shall be entitled to payment thereof along with other Members' and any other creditors' claims pursuant to the underlying contracts with respect thereto, the Rules and applicable law. Section 17(d) would further provide that nothing therein shall limit the rights of NSCC upon an SFT Member default (including following a Corporation Default), including any rights under any Clearing Agency Cross-Guaranty Agreement or otherwise.

Proposed Rule 56, Section 18 (Other Applicable Rules, Procedures, and Addendums)

Section 18 of proposed Rule 56 would establish certain other Rules as being applicable to SFTs and SFT Members, unless expressly stated otherwise.

Specifically, Section 18 of proposed Rule 56 would provide that Rule 1 (Definitions and Descriptions), Rule 2 (Members, Limited Members and Sponsored Members), Rule 5 (General Provisions), Rule 12 (Settlement), Rule 13 (Exception Processing), Rule 17 (Fine Payments), Rule 19 (Miscellaneous Rights of the Corporation), Rule 21 (Honest Broker), Rule 22 (Suspension of Rules), Rule 23 (Action by the Corporation), Rule 24 (Charges for Services Rendered), Rule 26 (Bills Rendered), Rule 27 (Admission to Premises of the Corporation—Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Qualified Securities Depositories), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39 (Reliance on Instructions), Rule 40 (Wind-Down of a Member, Fund Member or Insurance Carrier/Retirement Services Member), Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), Rule 45 (Notice), Rule 47 (Interpretation of Rules), Rule 48 (Disciplinary Proceedings), Rule 49 (Release of Clearing Data and Clearing Fund Data), Rule 55 (Settling Banks and AIP Settling Banks), Rule 58 (Limitations on Liability), Rule 60 (Market Disruption and Force Majeure), Rule 60A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems), Rule 63 (SRO Regulatory Reporting), Procedure I (Introduction), Procedure VIII (Money Settlement Service), Procedure XII (Time Schedule), Procedure XIII (Definitions), Procedure XIV (Forms, Media and Technical Specifications), Procedure XV (Clearing Fund Formula and Other Matters), Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History), Addendum H (Interpretation of the Board of Directors Release of Clearing Data), Addendum L (Statement of Policy Pertaining to Information Sharing), and Addendum P (Fine Schedule) shall apply to SFTs and SFT Members, unless the context otherwise requires.

(D) Other Rule Changes

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to make conforming and technical changes to the following Rules to accommodate the proposed introduction of the new membership categories and the proposed SFT Clearing Service.

Rule 1 (Definitions and Descriptions)

In connection with proposed Rules 2C, 2D and 56, NSCC is proposing to add the following defined terms to Rule 1, in alphabetical order: Agent Clearing Member, Agent Clearing Member Agreement, Agent Clearing Member Customer Omnibus Account, Agent Clearing Member Required Fund Deposit, Agent Clearing Member Termination Date, Agent Clearing Member Transaction, Agent Clearing Member Voluntary Termination Notice, Aggregate Net SFT Close-out Value, Approved SFT Submitter, Bilaterally Initiated SFT, Buy-In, Buy-In Amount, Buy-In Costs, Buy-In Indemnified Parties, Contract Price, Corresponding SFT Cash, Customer, Customer Clearing Service, Deemed Buy-In Costs, Defaulting SFT Member, Default-Related SFT, Distribution, Distribution Amount, Distribution Payment, Existing Master Agreement, Final Net Settlement Position, Final Settlement, Final Settlement Date, Former Sponsored Member, Incremental Additional Independent Amount SFT Cash, Independent Amount Percentage, Independent Amount SFT Cash, Independent Amount SFT Cash Deposit, Independent Amount SFT Cash Deposit Requirement, Ineligibility Date, Ineligible SFT, Ineligible SFT Security, Initial Settlement, Linked SFT, Market Value SFT Cash, Net Capital, Net Member Capital, Net Worth, Non-Returned SFT, Price Differential, Rate Payment, Recall Date, Recall Notice, Recalled SFT, Required SFT Deposit, Securities Financing Transaction or SFT, Securities Financing Transaction Clearing Service or SFT Clearing Service, Settling SFT, SFT Account, SFT Cash, SFT Close-out Value, SFT Deposit, SFT Long Position, SFT Member, SFT Position, SFT Security, SFT Short Position, Sponsored Member, Sponsored Member Agreement, Sponsored Member Liquidation Amount, Sponsored Member Sub-Account, Sponsored Member Termination Date, Sponsored Member Transaction, Sponsored Member Voluntary Termination Notice, Sponsoring Member, Sponsoring Member Agreement, Sponsoring Member Guaranty, Sponsoring Member Liquidation Amount, Sponsoring Member Required Fund Deposit, Sponsoring Member Settling Bank Omnibus Account, Sponsoring Member Termination Date, Sponsoring Member Voluntary Termination Notice, Sponsoring/Sponsored Membership Program Indemnified Parties or SMP Indemnified Parties, Transferee, Transferor and Volatility Charge.

In addition, NSCC is proposing to add three defined terms: ''CNS Market Value'', which is already defined in Rule 41 (Corporation Default), ''CNS Transaction'', which is already defined in Rule 11 (CNS System), and ''Corporation Default'', which is already defined in Rule 41 (Corporation Default).

NSCC is also proposing to add the defined term ''FICC'' to mean Fixed Income Clearing Corporation. The term ''FICC'' is already used in Addendum P (Fine Schedule) but has not been defined.

Furthermore, NSCC is proposing to reorder the defined term Index Receipt Agent so it would be in alphabetical order.

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to modify the definitions for the following defined terms in Rule 1, in alphabetical order: Clearing Fund, FFI Member, Qualified Securities Depository, and Required Fund Deposit. Specifically, NSCC is proposing to expand the definition of Clearing Fund to include SFT Deposit, unless noted otherwise in the Rules. NSCC is also proposing to revise the definition of FFI Member and the definition of Tax Certification [88] to add references to Sponsored Members. Furthermore, NSCC is proposing to revise the definition of Qualified Securities Depository to include a reference to transfer of securities in respect of the proposed SFT Clearing Service. Lastly, NSCC is proposing to expand the definition of Required Fund Deposit to include Sponsoring Member Required Fund Deposit, the Agent Clearing

[88] NSCC recently added Tax Certification as a defined term in Rule 1 (Definitions and Descriptions). *See* Securities Exchange Act Release No. 92682 (August 17, 2021), 86 FR 47172 (August 23, 2021) (SR–NSCC–2021–009).

Member Required Fund Deposit, and the Required SFT Deposit, unless noted otherwise in the Rules.

Rule 2 (Members and Limited Members)

NSCC is proposing to revise the title of Rule 2 to include a reference to Sponsored Members. As proposed, Rule 2 would be retitled as ''Members, Limited Members and Sponsored Members''.

NSCC is also proposing to revise Section 2 of Rule 2. Specifically, NSCC is proposing to clarify in Section 2(i) that a Member shall include a Member in its capacity as a Sponsoring Member to the extent specified in proposed Rule 2C and an Agent Clearing Member to the extent specified in proposed Rule 2D. In addition, NSCC is proposing to add a new subsection (iii) to Section 2 that would describe Sponsored Members as any Person that has been approved by NSCC to become a Sponsored Member and only participates in NSCC's SFT Clearing Service as provided for in proposed Rule 56. In addition, NSCC is proposing to add references to Sponsored Members in the last paragraph of Section 2, Sections 4(i) and 4(ii).

Rule 2B (Ongoing Membership Requirements and Monitoring)

NSCC is proposing to add references to Sponsored Member in Section 5 [89] of Rule 2B.

Rule 3 (Lists To Be Maintained)

NSCC is proposing to add subsection (g) to Section 1 of Rule 3 to provide that NSCC shall maintain a list of the securities that may be the subject of a novated SFT and may from time to time add securities to such list or remove securities therefrom.

NSCC is also proposing to modify Sections 3(b) and 4 of Rule 3 to include references to Sponsored Members.

Rule 4 (Clearing Fund)

NSCC is proposing to modify Section 1 of Rule 4 in order to make it clear that the minimum Required Fund Deposit amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Rule 5 (General Provisions)

NSCC is proposing to modify Section 1 of Rule 5 in order to provide that delivery of SFT Securities and SFT Cash to NSCC shall be made through the facilities of a Qualified Securities Depository. In addition, NSCC is also proposing changes in Section 1 of Rule 5 to provide that delivery and payment with respect to SFT Securities and SFT Cash shall be effected as prescribed in the Rules and regulations as NSCC may from time to time adopt.

Rule 24 (Charges for Services Rendered)

NSCC is proposing to modify Section 1 of Rule 24 to include a reference to Sponsored Members. In addition, NSCC is proposing to add an additional paragraph in Section 1 to clarify that Members shall be responsible for all fees pertaining to their respective Sponsoring Member activity or Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[90]

Rule 26 (Bills Rendered)

NSCC is proposing to modify the first paragraph of Rule 26 to include a reference to Sponsored Members. In addition, NSCC is proposing to add a sentence in that paragraph to clarify that Members shall receive bills for their respective aggregate Sponsoring Member activity and Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[91]

Rule 32 (Signatures)

NSCC is proposing to modify Rule 32 to include a reference to Sponsored Member. Specifically, NSCC is proposing to modify Rule 32 to provide that the use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand with respect to any and all agreements and other documents entered into between a Sponsored Member and NSCC.

Rule 38 (Governing Law and Captions)

NSCC is proposing to modify Section 1 of Rule 38 to include a reference to Sponsored Member. Specifically, NSCC is proposing to modify Section 1 of Rule 38 to provide that Rules and all agreements and other documents entered into between a Sponsored Member and NSCC or otherwise delivered to or by NSCC pursuant to the Rules, and the rights and obligations under the Rules thereunder, shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed and performed therein, unless otherwise provided.

Rule 39 (Reliance on Instructions)

NSCC is proposing to modify Rule 39 to include references to Sponsored Member and Approved SFT Submitter, where applicable. Specifically, NSCC is proposing to modify the first paragraph of Rule 39 to provide that NSCC may accept or rely upon instructions given to NSCC by a Sponsored Member or Approved SFT Submitter, in addition to the various participant types currently provided in Rule 39. Similarly, NSCC is proposing to add references to Approved SFT Submitter in the second and last paragraphs of Rule 39 so that those paragraphs would also apply to instructions submitted by an Approved SFT Submitter.

Rule 42 (Wind-Down of the Corporation)

NSCC is proposing to modify Rule 42 to include references to Sponsored Members. Specifically, for purposes of Rule 42, NSCC is proposing to revise the defined term ''Limited Member'' to include Sponsored Members.

Rule 49 (Release of Clearing Data and Clearing Fund Data)

NSCC is proposing to modify Rule 49 to clarify that NSCC would release Clearing Data of a Sponsored Member to its Sponsoring Member upon the Sponsoring Member's written request. Specifically, as proposed, Section (a) of Rule 49 would provide that if the participant is a Sponsored Member, NSCC would also release Clearing Data relating to transactions of such participant to such participant's Sponsoring Member upon the Sponsoring Member's written request.

Rule 58 (Limitations on Liability)

NSCC is proposing to modify Rule 58 to clarify that NSCC would not be responsible for the completeness or accuracy of the transaction data received from the Approved SFT Submitters, nor shall NSCC, absent gross negligence on NSCC's part, be responsible for any errors, omissions or delays that may occur in the transmission of transaction data from an Approved SFT Submitter.

Rule 64 (DTCC Shareholders Agreement)

The proposed changes to Section 4 of Rule 64 and footnote 4 thereto would provide that Rule 64 would not be applicable to a Sponsored Member. However, if the Sponsored Member is also a member or participant of another clearing agency subsidiary of DTCC, the Sponsored Member may be a Mandatory Purchaser Participant or a Voluntary Purchaser Participant pursuant to the

[89] NSCC recently added Section 5 to Rule 2B (Ongoing Membership Requirements and Monitoring). *See* Securities Exchange Act Release No. 93278 (October 8, 2021), 86 FR 57229 (October 14, 2021) (SR–NSCC–2021–007).

[90] *See* Addendum A (Fee Structure), *supra* note 4.

[91] *Id.*

terms of the Shareholders Agreement and the rules and procedures of such other subsidiary.

Procedure XV (Clearing Fund Formula and Other Matters)

NSCC is proposing to modify subsection A of Section II (Minimum Clearing Fund and Additional Deposit Requirements) in Procedure XV in order to make it clear that the minimum contribution amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above. In addition, NSCC is proposing to modify Section II.A of Procedure XV to make it clear that calculation of a Member's Required Fund Deposit amount that must be in cash shall exclude the Required SFT Deposit, which is subject to a separate $250,000 minimum cash requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History)

NSCC is proposing an additional section for the Sponsored Members. Specifically, NSCC is proposing to add Section 12 to Addendum B that would describe the qualification and operational capability that NSCC would require from Sponsored Members.

In addition, NSCC is proposing a conforming change to replace ''net worth'' in Section 3.B.4. with ''Net Worth'' to reflect the proposed defined term in Rule 1 (Definitions).

Addendum P (Fine Schedule)

NSCC is proposing to modify paragraph (2) of Addendum P to reflect the proposed notification obligations of Sponsoring Members, Sponsored Members and Agent Clearing Members as proposed under Sections 2(i) and 3(d) of proposed Rule 2C and Section 2(i) of proposed Rule 2D.

(vii) Impact of the Proposed SFT Clearing Service on Various Persons

The proposed SFT Clearing Service would be voluntary. Institutional firm clients that wish to become Sponsored Members, and Members that wish to participate in the proposed SFT Clearing Service would have an opportunity to review the proposed rule change and determine if they would like to participate. Choosing to participate would make these entities subject to all of the rule changes that would be applicable to the proposed SFT Clearing Service and membership type, as described below.

The proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members because it would impose various requirements on them. These requirements include, but are not limited to, proposed Rule 56 and the following sections of proposed Rule 2C: (1) Eligibility, approval process and on-going membership requirements as specified in Sections 3 and 4, (2) requirements related to restriction on access to NSCC services in Section 11, (3) requirements related to insolvency of a Sponsored Member in Section 13, and (4) requirements related to liquidation of positions resulting from Sponsored Member Transactions in Section 14. Specific details on the requirements and the manner in which the proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members can be found above in Item II(B)(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members.

The proposed SFT Clearing Service would affect Members that choose to participate in the service because it would impose various requirements on them, depending on whether they are participating in the service as a Sponsoring Member, an Agent Clearing Member and/or as a Member. These requirements include, but are not limited to, the requirements specified in proposed Rule 2C for Members participating in the service as a Sponsoring Member; the requirements specified in proposed Rule 2D for Members participating in the service as an Agent Clearing Member; and for all Members participating in the service, the requirements specified in proposed Rule 56. Specific details on these requirements and the manner in which the proposed SFT Clearing Service would affect Members that choose to participate in the proposed SFT Clearing Service are described above in Sections 10(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members, (vi)(B)—Proposed Rule Changes—Proposed Rule 2D—Agent Clearing Members, and (vi)(C)—Proposed Rule Changes—Proposed Rule 56—Securities Financing Transaction Clearing Service.

The proposed SFT Clearing Service would not materially affect existing Members that do not choose to participate in it. First, the proposed SFT Clearing Service would not materially affect the operation of CNS or any other services offered by NSCC. In addition, SFT Members would be subject to the same or higher credit standards and market risk management requirements as those applicable to Members that choose not to participate in the proposed SFT Clearing Service, as described above. Moreover, although Members who choose not to participate in the proposed SFT Clearing Service would be subject to potential loss allocation in the event of an SFT Member default (just as SFT Members would be subject to potential loss allocation in the event of the default of a Member that chooses not to participate in the proposed SFT Clearing Service), the underlying securities that would be subject of any such default-related liquidation of an SFT Member are a subset of the same CNS-eligible securities with respect to which NSCC today guarantees settlement in the cash equity market, thus not materially affecting the nature of the loss allocation risk applicable to Members.

Expected Effect on, and Management of, Risks to the Clearing Agency, Its Participants and the Market

NSCC expects certain market, liquidity, credit and operational risks may be presented by the establishment of the proposed SFT Clearing Service and the additional membership categories proposed in connection therewith. Accordingly, NSCC proposes to address and manage each of these risks as detailed below.

Market Risk

The proposal is structured in a manner that allows NSCC to protect itself from associated market risk. Specifically, as described above, except with respect to the VaR charge, SFT activity would be risk managed by NSCC in a manner consistent with Members' CNS positions. Moreover, except with respect to the MLA charge, all SFT Positions would be margined independently of the Member's other positions, *i.e.,* Required SFT Deposit. The Required SFT Deposit would generally be calculated using the same procedure applicable to CNS positions, but with a separate $250,000 minimum.[92]

As described above, consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of

[92] *Supra* note 32.

$5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) consist of cash.[93] [94] NSCC would also have the discretion to require a Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required.[95] NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member.

Furthermore, NSCC would require additional Clearing Fund deposits to address two situations that may present unique risk. First, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below the threshold established by NSCC from time to time, NSCC would require both pre-novation counterparties to the SFT to post Clearing Fund equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds such threshold.[96] Second, in the event an SFT is subject to a collateral haircut (*i.e.,* the SFT Cash exceeds the market value of the securities), NSCC would require the Transferor (or in the case of an Agent Clearing Member Transaction, the Agent Clearing Member) to post Clearing Fund equal to such excess.[97]

Additionally, the Sponsoring Member Required Fund Deposits and Agent Clearing Member Required Fund Deposits would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers, as applicable, would be permitted. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above).

NSCC is also proposing to limit the SFTs eligible for clearing to overnight transactions on securities that are CNS-eligible equity securities with a share price that equals or exceeds the threshold established by NSCC from time to time and that are fully collateralized by cash. NSCC believes these limitations, in addition to the Clearing Fund requirements, would limit the potential market risk associated with SFTs.

Liquidity Risk

The proposal is also structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would provide that the Final Settlement obligations and Price Differential of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle RVP/DVP at DTC.[98] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. Therefore each DTC participant's Final Settlement obligation t would complete at DTC on a fully collateralized basis, and the associated debits (if any) would be subject to DTC's risk controls.

To the extent the Price Differential is not processed by DTC, for example if a receiver does not satisfy DTC's risk controls, NSCC would debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement.

In the event NSCC ceases to act for a Defaulting SFT Member, on the Business Day that NSCC ceased to act, NSCC's daily liquidity need calculation would include all Price Differential debits owed by the Defaulting SFT Member not processed at DTC. On subsequent days of the liquidation of the Defaulting SFT Member's SFT Positions, NSCC's total liquidity need calculations would include all novated SFT activity that has not reached Final Settlement on the Business Day NSCC ceased to act, netted together with all other outstanding settlement activity of the Defaulting SFT Member at NSCC.

Until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[99] NSCC would take into account such Price Differential payment obligations, as well as any Final Settlement obligations to non-defaulting SFT Members, when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[100] [101] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in largely the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. This is because even though the non-payment of the Rate Payment in an SFT Member default context may have an impact on non-defaulting SFT Members, such impact are generally de minimis. To the extent NSCC is required to pay a Price Differential, as well as any Final Settlement obligations, to a non-defaulting SFT Member, NSCC would rely on NSCC's liquidity resources, including the Required SFT Deposit and any SLD that may be collected, when applicable, in order to cover the liquidity need associated with any such Price Differential and Final Settlement obligations, consistent with the Clearing Agency Liquidity Risk Management Framework.[102]

Credit Risk

The proposal is also structured in a manner that allows NSCC to protect itself from associated credit risk. In addition to the Clearing Fund requirements discussed above, any Member that elects to participate in the proposed SFT Clearing Service would be subject to the same initial membership requirements and ongoing membership requirements and monitoring as any other Member. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above) in addition to an approval process that is separate from its original Member applications, as well as ongoing credit surveillance in its capacity as a Sponsoring Member or Agent Clearing Member, as applicable.

Operational Risk

The proposal is also structured in a manner that allows NSCC to protect itself from associated operational risk. NSCC proposes to utilize to a significant extent the same processes and infrastructure as it has used for many years to clear and settle cash market transactions for purposes of clearing and settling SFTs. NSCC staff is well versed in such processes and infrastructure and has been actively involved in the development of the proposed SFT Clearing Service, thereby allowing for ready integration of support for the proposed SFT Clearing Service into NSCC staff's current workflows.

Accordingly, NSCC believes that, taken as a whole, the proposal would not have any risks to NSCC, its Members and the market overall that cannot be prudently managed or mitigated.

[93] *Supra* note 34.

[94] *Supra* note 35.

[95] *See* Section 12(d) of proposed Rule 56.

[96] *See* Section 13(b) of proposed Rule 56.

[97] *See* Section 12(e) of proposed Rule 56.

[98] *Supra* note 27.

[99] *See* proposed Rule 56, Section 14(b)(ix).

[100] *Id.*

[101] 17 CFR 240.17Ad–22(e)(7).

[102] *Supra* note 39.

Consistency With the Clearing Supervision Act

The proposed rule change would be consistent with Section 805(b) of the Clearing Supervision Act.[103] The objectives and principles of Section 805(b) of the Clearing Supervision Act are to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system.[104]

NSCC believes that the proposal would promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.

Promoting Robust Risk Management and Promoting Safety and Soundness

NSCC believes that the proposal is consistent with promoting robust risk management and promoting safety and soundness, particularly management of market risks, liquidity risks, credit risks and operational risks presented to NSCC.

The proposal is structured in a manner that allows NSCC to protect itself from associated market risk. SFT activity would, except as otherwise noted above, be risk managed by NSCC in a manner consistent with Members' CNS positions. Moreover, except with respect to the MLA charge, all SFT Positions would be margined independently of the Member's other positions, *i.e.,* Required SFT Deposit. The Required SFT Deposit would generally be calculated using the same procedure applicable to CNS positions, but with a separate $250,000 minimum.[105]

As described above, consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) consist of cash.[106] [107] NSCC would also have the discretion to require a Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required.[108] NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member.

Furthermore, NSCC would require additional Clearing Fund deposits to address two situations that may present unique risk. First, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below the threshold established by NSCC from time to time, NSCC would require both pre-novation counterparties to the SFT to post Clearing Fund equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds such threshold.[109] Second, in the event an SFT is subject to a collateral haircut (*i.e.,* the SFT Cash exceeds the market value of the securities), NSCC would require the Transferor (or in the case of an Agent Clearing Member Transaction, the Agent Clearing Member) to post Clearing Fund equal to such excess.[110]

Additionally, the Sponsoring Member Required Fund Deposits and Agent Clearing Member Required Fund Deposits would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers, as applicable, would be permitted. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above).

NSCC is also proposing to limit the SFTs eligible for clearing to overnight transactions on securities that are CNS-eligible equity securities with a share price that equals or exceeds the threshold established by NSCC from time to time and that are fully collateralized by cash. NSCC believes these limitations, in addition to the Clearing Fund requirements, would limit the potential market risk associated with SFTs.

The proposal is also structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposed rule change would provide that the Final Settlement obligations and Price Differential of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle RVP/DVP at DTC.[111] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. Therefore each DTC participant's Final Settlement obligation would complete at DTC on a fully collateralized basis, and the associated debits (if any) would be subject to DTC's risk controls.

To the extent the Price Differential is not processed by DTC, for example if a receiver does not satisfy DTC's risk controls, NSCC would debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement.

In the event NSCC ceases to act for a Defaulting SFT Member, on the Business Day that NSCC ceased to act, NSCC's daily liquidity need calculation would include all Price Differential debits owed by the Defaulting SFT Member not processed at DTC. On subsequent days of the liquidation of the Defaulting SFT Member's SFT Positions, NSCC's total liquidity need calculations would include all novated SFT activity that has not reached Final Settlement on the Business Day NSCC ceased to act, netted together with all other outstanding settlement activity of the Defaulting SFT Member at NSCC.

Until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[112] NSCC would take into account such Price Differential payment obligations, as well as any Final Settlement obligations to non-defaulting SFT Members, when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[113] [114] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in largely the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. This is because even though the non-payment of the Rate Payment in an SFT Member default context may have an impact on non-defaulting SFT Members, such impact are generally de minimis. To the extent NSCC is required to pay a Price Differential, as well as any Final Settlement obligations, to a non-

[103] 12 U.S.C. 5464(b).

[104] *Id.*

[105] *See* Section 12(c) of proposed Rule 56.

[106] *Supra* note 34.

[107] *Supra* note 35.

[108] *See* Section 12(d) of proposed Rule 56.

[109] *See* Section 13(b) of proposed Rule 56.

[110] *See* Section 12(e) of proposed Rule 56.

[111] *Supra* note 27.

[112] *See* proposed Rule 56, Section 14(b)(ix).

[113] *Id.*

[114] 17 CFR 240.17Ad–22(e)(7).

defaulting SFT Member, NSCC would rely on NSCC's liquidity resources, including the Required SFT Deposit and any SLD that may be collected, when applicable, in order to cover the liquidity need associated with any such Price Differential and Final Settlement obligations, consistent with the Clearing Agency Liquidity Risk Management Framework.[115]

The proposal is also structured in a manner that allows NSCC to protect itself from associated credit risk. In addition to the Clearing Fund requirements discussed above, any Member that elects to participate in the proposed SFT Clearing Service would be subject to the same initial membership requirements and ongoing membership requirements and monitoring as any other Member. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above) in addition to an approval process that is separate from its original Member applications, as well as ongoing credit surveillance in its capacity as a Sponsoring Member or Agent Clearing Member, as applicable.

The proposal is also structured in a manner that allows NSCC to protect itself from associated operational risk. NSCC proposes to utilize to a significant extent the same processes and infrastructure as it has used for many years to clear and settle cash market transactions for purposes of clearing and settling SFTs. NSCC staff is well versed in such processes and infrastructure and has been actively involved in the development of the proposed SFT Clearing Service, thereby allowing for ready integration of support for the proposed SFT Clearing Service into NSCC staff's current workflows.

For these reasons NSCC believes the proposal would help promote robust risk management at NSCC, consistent with the objective and principles of Section 805(b) of the Clearing Supervision Act.

Reducing Systemic Risks and Supporting the Stability of the Broader Financial System

NSCC also believes that the proposal is consistent with reducing systemic risks and supporting the stability of the broader financial system. As described above, the proposal would lower the risk of liquidity drain in the U.S. equity securities financing market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. NSCC would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario.

In addition, the proposal would protect against fire sale risk. As described above, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions. Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. In addition, NSCC would only need to liquidate the defaulter's net positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. NSCC would also use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. By lowering the risk of liquidity drain in the U.S. equity securities financing market and protecting against fire sale risk, NSCC believes the proposal would help reduce systemic risks, which in turn helps support the stability of the broader financial system, consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.

NSCC also believes that the proposed rule change is consistent with Rules 17Ad–22(e)(7), (8), and (18), promulgated under the Act,[116] for the reasons stated below.

Rule 17Ad–22(e)(7) under the Act requires NSCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency.[117] NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) because, as described above, the proposal is structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would provide that the Final Settlement obligations and Price Differential of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle RVP/DVP at DTC.[118] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. Therefore each DTC participant's Final Settlement obligation would complete at DTC on a fully collateralized basis, and the associated debits (if any) would be subject to DTC's risk controls.

To the extent the Price Differential is not processed by DTC, for example if a receiver does not satisfy DTC's risk controls, NSCC would debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement.

In the event NSCC ceases to act for a Defaulting SFT Member, on the Business Day that NSCC ceased to act, NSCC's daily liquidity need calculation would include all Price Differential debits owed by the Defaulting SFT Member not processed at DTC. On subsequent days of the liquidation of the Defaulting SFT Member's SFT Positions, NSCC's total liquidity need calculations would include all novated SFT activity that has not reached Final Settlement on the Business Day NSCC ceased to act, netted together with all other outstanding settlement activity of the Defaulting SFT Member at NSCC.

Until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[119] NSCC would take into account such Price Differential payment obligations, as well as any Final Settlement obligations to non-defaulting SFT Members, when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[120] [121] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in largely the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll

[115] *Supra* note 39.

[116] 17 CFR 240.17Ad–22(e)(7), (8), and (18).

[117] 17 CFR 240.17Ad–22(e)(7).

[118] *Supra* note 27.

[119] *See* proposed Rule 56, Section 14(b)(ix).

[120] *Id.*

[121] 17 CFR 240.17Ad–22(e)(7).

the SFTs. This is because even though the non-payment of the Rate Payment in an SFT Member default context may have an impact on non-defaulting SFT Members, such impact is generally de minimis. To the extent NSCC is required to pay a Price Differential, as well as any Final Settlement obligations, to a non-defaulting SFT Member, NSCC would rely on NSCC's liquidity resources, including the Required SFT Deposit and any SLD that may be collected, when applicable, in order to cover the liquidity need associated with any such Price Differential and Final Settlement obligations, consistent with the Clearing Agency Liquidity Risk Management Framework.[122] Therefore, NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) under the Act.[123]

Rule 17Ad–22(e)(8) under the Act[124] requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due. NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8)[125] because, as described above, the proposal would make it clear to SFT Members the point at which settlement is final with respect to SFTs cleared through NSCC. Specifically, Section 7 in the proposed Rule 56 (Securities Financing Transaction Clearing Service) provides that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion. Having clear provisions in this regard would enable SFT Members to better identify the point at which settlement is final with respect to their SFTs. As such, NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8) under the Act.[126]

Rule 17Ad–22(e)(18) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.[127] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Sponsoring Members and Sponsored Members. Specifically, as proposed, in order for an applicant to become a Sponsoring Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. Likewise, in order for an applicant to become a Sponsored Member, the applicant would be required to meet certain objective, risk-based eligibility criteria. Specifically, an applicant would be eligible to apply to become a Sponsored Member if it is either a ''qualified institutional buyer'' as defined by Rule 144A[128] under the Securities Act,[129] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. If approved, the requirements for proposed new Sponsoring Member and Sponsored Member membership categories would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Sponsoring Members and Sponsored Members. Therefore, NSCC believes that the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Rule 17Ad–22(e)(18) under the Act.[130]

Similarly, NSCC believes the proposed changes to establish new a membership category and requirements for Agent Clearing Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Agent Clearing Members. Specifically, as proposed, in order for an applicant to become an Agent Clearing Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. If approved, the requirements for proposed new Agent Clearing Member membership category would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Agent Clearing Members. Therefore, NSCC believes that the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with Rule 17Ad–22(e)(18) under the Act.[131]

## III. Date of Effectiveness of the Advance Notice, and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date that the proposed change was filed with the Commission or (ii) the date that any additional information requested by the Commission is received. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

The clearing agency shall post notice on its website of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

[122] *Supra* note 39.

[123] 17 CFR 240.17Ad–22(e)(7).

[124] 17 CFR 240.17Ad–22(e)(8).

[125] *Id.*

[126] *Id.*

[127] 17 CFR 240.17Ad–22(e)(18).

[128] 17 CFR 230.144A.

[129] 15 U.S.C. 77a *et seq.*

[130] 17 CFR 240.17Ad–22(e)(18).

[131] *Id.*

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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–NSCC–2022–801 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–NSCC–2022–801. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 NSCC and on DTCC's website (*https://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–NSCC–2022–801 and should be submitted on or before May 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[132]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08171 Filed 4–18–22; 8:45 am]

**BILLING CODE 8011–01–P**

[132] 17 CFR 200.30–3(a)(91).


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Part III

## Securities and Exchange Commission

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes; Notice

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–94694; File No. SR–NSCC–2022–003]**

## Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes

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, National Securities Clearing Corporation (''NSCC'') 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.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of proposed modifications to the NSCC Rules & Procedures (''Rules'')[4] that would (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the securities financing transaction clearing service (''Securities Financing Transaction Clearing Service'' or ''SFT Clearing Service'') to make central clearing available at NSCC 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 (collectively, ''Securities Financing Transactions'' or ''SFTs''), and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

### 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 purpose of this proposed rule change is to (i) establish new membership categories and requirements for sponsoring members and sponsored members whereby existing Members would be permitted to sponsor certain institutional firms into membership, (ii) establish a new membership category and requirements for agent clearing members whereby existing Members would be permitted to submit, on behalf of their customers, transactions to NSCC for novation, (iii) establish the SFT Clearing Service to make central clearing available at NSCC for SFTs, and (iv) make other amendments and clarifications to the Rules, as described in greater detail below.

(i) Background

NSCC is proposing to introduce central clearing for SFTs, which are, broadly speaking, securities lending transactions where 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. In particular, the proposed SFT Clearing Service would expand central clearing at NSCC to include SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by a Sponsoring Member (as defined below and in the proposed rule change), or Agent Clearing Members (as defined below and in the proposed rule change) on behalf of Customers (as defined below and in the proposed rule change), as applicable.

SFTs involve the owner of securities (typically a registered investment company, pension plan, sovereign wealth fund or other institutional firm) transferring those securities temporarily to a borrower (typically a hedge fund). SFTs are often facilitated and intermediated by broker-dealers and agent lenders (*i.e.,* custodial banks or other institutions that lend out securities as agent on behalf of institutional firms). In return for the lent securities, the borrower transfers collateral, and a net rate payment is typically transferred to either the lender or the borrower that reflects the liquidity of the lent securities, as well as interest on any cash collateral.[5] NSCC understands that SFTs provide liquidity to markets and facilitates the ability of market participants to make delivery on short-sales, and thereby avoid failures to deliver, ''naked'' shorts, and similar situations. On a typical Business Day, The Depository Trust Company (''DTC''), an NSCC affiliate, processes deliver orders related to securities lending transactions on securities having a value of approximately $150 billion.

Capital Efficiency Opportunities

The Basel III[6] capital and leverage requirements, as implemented by the U.S. banking regulators, constrain the ability of agent lenders and brokers to intermediate and facilitate SFTs.[7] NSCC believes central clearing of SFTs would be able to address these constraints, which may otherwise impair market participants' ability to engage in SFTs.

For example, NSCC believes it is uniquely positioned to create balance sheet netting opportunities for market participants (*i.e.,* the ability to offset

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NSCC filed this proposed rule change as an advance notice (SR–NSCC–2022–801) with the Commission pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010, 12 U.S.C. 5465(e)(1), and Rule 19b–4(n)(1)(i) under the Act, 17 CFR 240.19b–4(n)(1)(i). A copy of the advance notice is *available at https://www.dtcc.com/legal/sec-rule-filings.aspx.*

[4] Capitalized terms not defined herein are defined in the Rules, *available at https://www.dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[5] This rate payment is typically calculated in a manner similar to interest on the principal balance of a loan and accrues on a daily basis. As a result, the rate payment is typically calculated as the product of a specified balance (typically the amount of cash collateral unless the collateral consists of securities) and a specified rate (reflecting both the liquidity of the securities and the ability of the lender to re-use the cash collateral), divided by 360 or a similar day count fraction.

[6] Basel III is an internationally agreed set of measures developed by the Basel Committee on Banking Supervision in response to the financial crisis of 2007–2009.

[7] *See, e.g.,* 12 CFR part 3 (Office of the Comptroller of the Currency—Capital Adequacy Standards); 12 CFR part 217 (Federal Reserve—Capital Adequacy of Bank Holding Companies, Savings and Loan Holding Companies, and State Member Banks); 12 CFR part 252, subpart Q (Single Counterparty Credit Limits); 12 CFR part 324 (Federal Deposit Insurance Corporation—Capital Adequacy of FDIC-Supervised Institutions).

cash payables and receivables versus NSCC) by becoming the legal counterparty to both pre-novation counterparties to an SFT through novation. Specifically, market participants that borrow securities through NSCC and then onward lend those securities, or other securities, to another NSCC Member through the proposed SFT Clearing Service may have the ability to net down the cash collateral return obligations and entitlements related to such SFTs. By contrast, for bilateral SFTs, market participants may be required to record those payables and receivables on their balance sheets on a gross (rather than netted) basis. A netted balance sheet can create significant capital benefits for market participants because it can reduce the amount of regulatory capital they must hold against SFTs under the U.S. ''supplementary leverage ratio'' and other capital requirements that favor a netted balance sheet.[8]

In addition, under Basel III, bank holding companies that have broker-dealer subsidiary borrowers are required to reserve capital against their exposures to institutional firm lenders of securities in relation to the cash collateral posted by such borrowers. Those capital requirements can vary depending on the credit profile of the institutional firm lender, and generally are well in excess of those applied to exposures to qualifying central counterparties, such as NSCC.[9] The counterparty risk weight of a qualifying central counterparty, like NSCC, is 2%,[10] which may result in considerable capital savings to these bank holding companies, to the extent they participate in central clearing.

Moreover, agent lending banks and bank holding company parents of broker-dealer borrowers that participate in central clearing could receive beneficial treatment under the single counterparty credit limits, which exempt exposures to qualifying central counterparties.[11]

In light of the potential for central clearing to alleviate the aforementioned capital constraints otherwise applicable to bilateral SFTs, NSCC believes that central clearing of SFTs may increase the capacity of market participants to engage in SFTs.[12]

Fire Sale Risk Mitigation

In addition to creating capital efficiency opportunities for market participants, NSCC believes that broadening the scope of central clearing at NSCC to SFTs would also reduce the potential for market disruption from fire sales.

In the case of securities lending transactions, the primary risk of fire sales[13] relates to the reinvestment of cash collateral by institutional firms that are the lenders in securities lending transactions. Those institutional firms will typically reinvest the cash collateral they receive from the borrower into other securities. If the borrower of the securities thereafter defaults, the institutional firm lenders generally need to quickly liquidate the securities representing the reinvestment in order to raise cash to purchase the originally lent security. A substantial number of disconnected and competing liquidations by multiple lenders can create fire sale conditions for the securities being liquidated, which can harm not only the institutional firm lenders by potentially lowering the amount of cash they can raise in the sale of such securities, but also create market losses for all holders of such securities.[14]

Moreover, if an institutional firm lender should default and fail to return the cash collateral back to its borrowers, the borrowers would typically be looking to liquidate the borrowed securities in order to make themselves whole for the cash collateral they delivered to the institutional firm lender. Competing and disconnected sales of such securities could similarly create fire sale conditions and not only harm the borrowers to the extent the value of the securities decline, but also create market losses for all holders of the borrowed securities.

NSCC believes that broadening the scope of central clearing at NSCC to SFTs would reduce the potential for market disruption from fire sales for a number of reasons. First, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions (as defined below and in the proposed rule change). Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. Second, NSCC would only need to liquidate the defaulter's net positions. By contrast, in the context of a default by a broker-dealer intermediary that runs a matched book in the bilateral securities market, both the ultimate lender and the ultimate borrower need to liquidate the defaulter's gross positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. Lastly, NSCC would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario.

Liquidity Drain Risk Mitigation

Liquidity risk may also arise if, in the context of a stressed market scenario, borrowers or lenders concerned about their counterparties' creditworthiness seek to unwind their securities lending transactions and obtain the return of their cash collateral or securities. This occurred to a certain extent in 2008, when borrowers began demanding to return borrowed securities in exchange for the cash collateral the borrowers had posted to institutional firm lenders.[15] These ''runs'' may require institutional firm lenders to quickly sell off securities that are the subject of their cash reinvestments to raise cash to return to the borrowers, thereby also creating potential fire sale conditions with respect to the reinvestment securities, as described above. Similarly, borrowers may need to purchase or re-borrow securities in stressed market conditions, leading to potentially significant losses.

NSCC believes that having SFTs be centrally cleared by NSCC would lower the risk of a liquidity drain in a stress scenario. Specifically, NSCC believes that having it clear SFT activity would provide confidence to borrowers and lenders that they will receive back their cash or securities and thereby lessen parties' inclination to rush to unwind their transactions in a stressed market scenario.

[8] *See* 12 CFR 217.10(c)(4)(ii)(E)–(F).

[9] *See* 12 CFR 217.32 and 217.37 generally.

[10] *See* 12 CFR 217.35(c)(3).

[11] *See* 12 CFR 252.77(a)(3).

[12] Members should discuss this matter with their accounting and regulatory capital experts.

[13] Fire sale risk is the risk of rapid sales of assets in large amounts that temporarily depress market prices of such assets and create financial instability.

[14] *See* Financial Stability Board, Strengthening Oversight and Regulation of Shadow Banking: Policy Framework for Addressing Shadow Banking Risks in Securities Lending and Repos, at 5 (August 29, 2013) *available at https://www.fsb.org/wp-content/uploads/r_130829b.pdf?page_moved=1.* *See* also United States Securities and Exchange Commission: Securities Lending and Short Sale Roundtable Transcript (September 29, 2009), Former Chairman Schapiro's Remarks, at 2–3, *available at https://www.sec.gov/news/openmeetings/2009/roundtable-transcript-092909.pdf.*

[15] *See, e.g., id.*

Addition of New Membership Categories for Institutional Firm SFT Activity

When evaluating the opportunity to expand its cleared offerings to SFTs, NSCC engaged in extensive discussions with numerous market participants, including agent lenders, brokers, institutional firms, and critical third parties, such as matching service providers and books and records service providers. NSCC also organized several industry working groups to discuss the possibility of clearing SFTs. Each constituency has a unique perspective on the proposed SFT Clearing Service. By capturing their differing viewpoints in the design, NSCC has sought to ensure that the proposed SFT Clearing Service would reflect their needs and facilitate industry adoption of the proposed SFT Clearing Service.

There was a considerable amount of discussion between NSCC and market participants regarding the appropriate model(s) through which institutional firms should access central clearing. Some market participants expressed interest in allowing Members to sponsor institutional firms into NSCC membership in a manner similar to that provided for under the sponsoring member/sponsored member program at the Government Securities Division (''GSD'') of Fixed Income Clearing Corporation (''FICC''), an NSCC affiliate (''FICC's Sponsoring Member/Sponsored Member Program'').[16] Under FICC's Sponsoring Member/Sponsored Member Program, sponsoring members may submit to FICC transactions entered into on a principal-to-principal basis between the sponsoring member and the sponsored member.[17] On the other hand, certain other market participants, including in particular certain agent lending banks, requested that the central clearing service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transaction on behalf of the institutional firm, rather than as principal counterparty). As NSCC understands it, agent-style trading is the way such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients today.[18]

NSCC considered all of this input, as well as the recent experiences of FICC in expanding the suite of both transactions and participants eligible for FICC's Sponsoring Member/Sponsored Member Program,[19] and ultimately decided to incorporate both the sponsoring/sponsored membership type (to facilitate principal style trading for institutional firms and their sponsoring members) as well as the Agent Clearing Member membership type (to facilitate agent-style trading by agent lenders on behalf of institutional firm clients) into the proposed SFT Clearing Service.[20] NSCC expects these proposed new membership types would help expand access to central clearing for institutional firms and facilitate industry adoption of the proposed SFT Clearing Service.

The proposed SFT Clearing Service would also allow for the submission of broker-to-broker activity as well as client-to-client activity (credit intermediated by Sponsoring Members and/or Agent Clearing Members) into the NSCC system.

(ii) Key Parameters of the Proposed SFT Clearing Service

Overnight SFTs

NSCC is proposing central clearing for SFTs with a one Business Day term (*i.e.,* overnight SFTs) in eligible equity securities that are entered into by Members, institutional firms that are sponsored into NSCC by Sponsoring Members, or Agent Clearing Members on behalf of customers. NSCC has determined that overnight term SFTs with a daily pair off option are more appropriate for the proposed SFT Clearing Service than open transactions with mark-to-market collections. This is because, as NSCC understands it, open transactions are not eligible for balance sheet netting given they do not have a scheduled off-leg/settlement date. As described above, the proposed SFT Clearing Service is designed to offer both balance sheet netting and capital efficiency opportunities to market participants. NSCC therefore finds it appropriate to make overnight term SFTs with a scheduled date for Final Settlement (as defined below and in the proposed rule change) of the next Business Day, rather than open transactions, eligible for central clearing through the proposed SFT Clearing Service.

For example, assume that a Transferor (as defined below and in the proposed rule change) and Transferee (as defined below and in the proposed rule change) enter into an SFT pursuant to which: (i) In the Initial Settlement (as defined below and in the proposed rule change) on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. In the Final Settlement on Tuesday, the Transferee will return 100 shares of security X to the Transferor for $100 per share. The Rate Payment (as defined below and in the proposed rule change) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

SFT Counterparties

The proposed SFT Clearing Service would only be available for SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member (as defined below and in the proposed rule change), and (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer. As used in the Rules, ''Member'' includes full-service NSCC clearing members, but not Sponsored Members.[21] In addition, as

[16] *See* Rule 3A (Sponsoring Members and Sponsored Members) of the FICC GSD Rulebook (''GSD Rules''), *available at https://dtcc.com/~media/Files/Downloads/legal/rules/ficc_gov_rules.pdf.*

[17] FICC's Sponsoring Member/Sponsored Member Program also allows sponsoring members to submit to FICC transactions entered into between a sponsored member and a third-party netting member. However, based on feedback from market participants, NSCC has decided to address this type of trading via the proposed agent clearing model for SFT.

[18] In addition, certain other agent lenders who are not themselves banks or broker-dealers (and so are not eligible to become Members of NSCC) preferred a model where the institutional firm client becomes the direct member of NSCC with no obligations running between the agent lender and the clearing agency.

[19] *See* Securities Exchange Act Release Nos. 80563 (May 1, 2017), 82 FR 21284 (May 5, 2017) (SR–FICC–2017–003) (Expand the types of entities that are eligible to participate in FICC as Sponsored Members), 85470 (March 29, 2019), 84 FR 13328 (April 4, 2019) (SR–FICC–2018–013) (Expand Sponsoring Member Eligibility in the GSD Rulebook), and 88262 (February 21, 2020), 85 FR 11401 (February 27, 2020) (SR–FICC–2019–007) (Close-Out and Funds-Only Settlement Processes Associated with the Sponsoring Member/Sponsored Member Service).

[20] NSCC decided at this time not to incorporate a direct model for institutional firm clearing into the proposed SFT Clearing Service because in its experience with a similar model in FICC (the CCIT Service), the requirements that a clearing agency, such as NSCC, would be required to apply to an institutional firm that participated as a direct member (*e.g.,* Clearing Fund and loss allocation) would, as a general matter, not likely be compatible with the regulatory requirements and investment guidelines applicable to many of the regulated institutional firms that NSCC anticipates would be interested in participating in the proposed SFT Clearing Service.

[21] As defined in Rule 1 (Definitions and Descriptions), the term ''Member'' means any Person specified in Section 2.(i) of Rule 2 who has qualified pursuant to the provisions of Rule 2A. As

proposed, the only SFTs entered into by Sponsored Members that would be eligible for novation to NSCC would be SFTs between the Sponsored Member and its Sponsoring Member.[22]

Approved SFT Submitters

Consistent with the manner in which NSCC accepts cash market transactions, SFTs would be required to be submitted to NSCC on a locked-in/matched basis by an Approved SFT Submitter (as defined below and in the proposed rule change) in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Approved SFT Submitters would be selected by the SFT Members (as defined below and in the proposed rule change), subject to NSCC's approval. An Approved SFT Submitter could either be a Member or a third-party vendor. SFTs submitted to NSCC by an Approved SFT Submitter would be valid and binding obligations of each SFT Member designated by the Approved SFT Submitter as a party thereto.

Eligible Equity Securities and Per Share Price Minimum

NSCC will maintain eligibility criteria for the securities that may underlie an SFT that NSCC will accept for novation. Consistent with NSCC's general approach to eligibility for securities, the eligibility criteria would not be a rule, but a separate document maintained by NSCC and available to Members. It is currently contemplated that eligible securities for SFTs in the proposed SFT Clearing Service will be limited to CNS-eligible securities.

In light of the fact that central clearing of SFTs would be a new service for NSCC, and market participants would be able to elect which of their eligible SFTs to novate to NSCC (*i.e.,* central clearing of SFTs would not be mandatory for Members), NSCC is not able to anticipate at this time the size and composition of the SFT portfolios that would be novated to NSCC. Due to this lack of history, NSCC would, as an initial matter, provide proposed SFT Clearing Service for only those SFTs where the underlying securities are CNS-eligible equity securities that have a per share price of $5 or more. NSCC selected $5 as the per share price minimum for underlying equity securities that could be the subject of a novated SFT because $5 is a common share price minimum adopted in brokerage margin eligibility schedules.

This proposed share price limitation would be implemented systemically by NSCC as one of the eligibility criteria for determining whether an equity security is eligible to be the subject of a novated SFT (rather than as a rule), and such per share price limitation could be modified by NSCC[23] at a later date after NSCC gains more experience with the nature of the SFT portfolios submitted for clearing. In addition, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below $5, such SFT would continue to be novated to NSCC, but the Required SFT Deposit (as defined below and in the proposed rule change) for the affected Members would include an amount equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds $5.

Cash Collateral

Consistent with the cash market transactions NSCC clears today where cash is used to satisfy Members' purchase obligations in eligible securities, cash would likewise be the only eligible form of collateral for novated SFTs under the proposed SFT Clearing Service.[24] More specifically, NSCC would limit the SFTs that it is willing to novate to SFTs that have SFT Cash (as defined below and in the proposed rule change) equal to or greater than 100% market value of the lent securities, and would not novate any obligations to return collateral consisting of securities.[25]

NSCC would novate the Final Settlement obligations of an SFT as of the time the Initial Settlement of such SFT is completed, unless the SFT is a Bilaterally Initiated SFT (as defined below and in the proposed rule change) or a Sponsored Member Transaction (as defined below and in the proposed rule change), in which case novation of the Final Settlement obligations would occur upon NSCC reporting to the Approved SFT Submitter that the SFT has been validated and novated to NSCC.

As described above, each SFT would be collateralized by cash equal to no less than 100% of the market value of the lent securities. In addition, in order to address regulatory and investment guideline requirements applicable to certain institutional firms,[26] a Member would be permitted (but not required) to transfer an additional cash haircut above 100% (*e.g.,* 102%) to such institutional firms, *i.e.,* Independent Amount SFT Cash (as defined below and in the proposed rule change), as part of the Initial Settlement of the SFT. The Sponsoring Member or Agent Clearing Member, as applicable, that receives the Independent Amount SFT Cash in the Initial Settlement would also receive a commensurate Clearing Fund call, *i.e.,* an Independent Amount SFT Cash Deposit Requirement (as defined below and in the proposed rule change), from NSCC to reflect the value received by such Member above the market price of the equity security lent. NSCC's novation of Final Settlement obligations related to Independent Amount SFT Cash would be tied to the time the Sponsoring Member or Agent Clearing Member, as applicable, satisfies the related Independent Amount SFT Cash Deposit Requirement in cash.

RVP/DVP Settlement at DTC

The Final Settlement obligations of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle receive-versus-payment/delivery-versus-payment (''RVP/DVP'') at DTC.[27] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. DTC would accept delivery instructions for an SFT from NSCC, as agent for DTC participants that are SFT Members.[28]

Pre-novation counterparties to an SFT that is due to settle may elect to pair off (*i.e.,* offset) the Final Settlement

such, the term ''Member'' does not include a Sponsored Member. *Supra* note 4.

[22] *See* Section 5 of proposed Rule 56, which provides that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members.

[23] The per share price limitation could be modified by NSCC without any regulatory filings; however, any change in the per share price limitation would be announced by NSCC via an Important Notice posted to its website.

[24] This is referred to as ''SFT Cash'' in the proposed rule text.

[25] *See* Section 5(a) of proposed Rule 56 and the definition of ''Securities Financing Transaction''.

[26] As an example, a registered investment company that lends securities through an agent may be required under Section 17(f) of the Investment Company Act of 1940 and Rule 17f–2 thereunder to collect cash collateral equal to no less than 102% of the market value of the lent securities. *See, e.g.,* The Adams Express Company, SEC No-Action Letter (Oct. 8, 1984). Other institutional firms may be subject to similar requirements under their established investment guidelines or applicable rules, regulations or guidance.

[27] As described below, the Final Settlement and other obligations of each Sponsored Member Transaction would, at the direction of NSCC, settle on the books and records of the relevant Sponsoring Member.

[28] On March 28, 2022, DTC submitted a proposed rule change to provide DTC participants that are also NSCC Members with settlement services in connection with NSCC's proposed SFT Clearing Service. *See* SR–DTC–2022–002, which was filed with the Commission but has not yet been published in the **Federal Register**. A copy of this proposed rule change is *available at https://www.dtcc.com/legal/sec-rule-filings.aspx.*

obligations of such SFT against the Initial Settlement obligations of a new SFT between the same parties on the same securities. NSCC believes that such offsets would minimize the operational burden of settling overnight obligations. NSCC would calculate and process the difference in cash collateral between the paired off SFTs, *i.e.,* Price Differential (as defined below and in the proposed rule change). Price Differential would also be processed in accordance with DTC rules and procedures, including provisions relating to risk controls. DTC would accept Price Differential payment orders for an SFT from NSCC, as agent for DTC participants that are SFT Members.

Settlement of the Rate Payment obligations and payment obligations arising from certain mandatory corporate actions and cash dividends would be processed as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a full pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off the parties' Final Settlement obligations on the Settling SFT (as defined below and in the proposed rule change) with a Linked SFT (as defined below and in the proposed rule change) pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday, the Transferee will return 100 shares of security X to the Transferor for $99 per share. The Rate Payment for the Linked SFT would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

As an example of an SFT with a partial pair off (*i.e.,* offset), assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to partially pair off the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 25 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 25 shares of security X to the Transferor against $99 per share. In the Final Settlement on Tuesday for the remaining Settling SFT, the Transferee will return 75 shares of security X to the Transferor for $100 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in relation to the shares subject to pair off (*i.e.,* 25 shares of security X). In addition, the Rate Payment for the Settling SFT (*i.e.,* 100 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process. In the Final Settlement on Wednesday for the Linked SFT, the Transferee will return 25 shares of security X to the Transferor for $99 per share. The Rate Payment on the Linked SFT (*i.e.,* 25 shares of security X) would be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Buy-In, Recall and Accelerated Settlement

It is occasionally the case in the securities lending market that a borrower is solvent and able to satisfy its general obligations as they become due but unable to deliver the lent securities to the lender within the timeline requested by the lender. The contractual remedy that has developed in the bilateral securities lending market for these situations is a ''buy-in.'' Under this remedy, the lender may purchase securities equivalent to the borrowed securities in the market and charge the borrower for the cost of this purchase. This serves to benefit the lender because it allows the lender to recover the securities within its required timeline, and it benefits the borrower by avoiding a situation in which the borrower's failure to perform under a single transaction results in an event of default and close-out of all of its securities lending transactions (and potentially other positions through a cross-default). Similarly, in the bilateral space, securities borrowers may have the need to accelerate settlement of securities lending transactions if they lose a ''permitted purpose'' for such loans under Regulation T. The proposed SFT Clearing Service would seek to retain the buy-in and acceleration mechanisms, as they ensure the smooth functioning of securities markets without causing unnecessary and disorderly defaults or regulatory violations.[29]

Consistent with their rights under industry-standard documentation for bilateral SFTs, as proposed, Transferors would have the right to submit a Recall Notice (as defined below and in the proposed rule change) to NSCC in respect of a novated SFT for which Final Settlement obligations have not yet been satisfied. If the Transferee does not return the lent securities by the Recall Date (as defined below and in the proposed rule change) specified in such notice, and the Transferor would be eligible to Buy-In (as defined below and in the proposed rule change), in accordance with such timeframes and deadlines as established by NSCC for such purpose, such securities.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on

[29] NSCC does not believe retaining the buy-in and acceleration mechanisms would undermine novation because NSCC would remain the obligor and obligee in respect of the Final Settlement, Rate Payment, and Distribution Payment (as defined below and in the proposed rule change) entitlements and obligations. These mechanisms simply affect the timing and manner in which those obligations are discharged.

Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to pair off (*i.e.,* offset) the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. In addition, the Rate Payment for the Settling SFT would be passed by NSCC as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

Later in the day on Tuesday, the Transferor determines it now needs 100 shares of security X back in its inventory, and so the Approved SFT Submitter submits a Recall Notice to NSCC, prior to the deadline established by NSCC, on behalf of the Transferor for 100 shares of security X with a Recall Date of Thursday. At the end of day on Tuesday, the share price of security X is $98 per share. Upon receipt of the Recall Notice, the SFT would be treated as a Non-Returned SFT (as defined below and in the proposed rule change) by NSCC pursuant to Section 9(e) of proposed Rule 56 (Securities Financing Transaction Clearing Service). Accordingly, pursuant to Section 9(a) of proposed Rule 56, the Final Settlement Date (as defined below and in the proposed rule change) of the SFT would be rescheduled to Thursday, and NSCC would, on Wednesday collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Wednesday as part of NSCC's end-of-day final money settlement process.

Assume further that the Transferee does not transfer the 100 shares of security X on Wednesday and that the end of day price of security X on Wednesday is $97 per share. On Thursday, NSCC would again collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee on the Non-Returned SFT. The Rate Payment for the Non-Returned SFT would also be passed by NSCC as between the Transferor and Transferee on Thursday as part of NSCC's end-of-day final money settlement process. In addition, since the Recall Notice specified Thursday as the Recall Date, the Transferor would be entitled to purchase (or deem itself to have purchased) 100 shares of security X in accordance with the provisions of Section 9(b) of proposed Rule 56. Assuming that the Transferor paid a price of $95 per share for security X and submitted a written notice to NSCC of its Buy-In Costs (as defined below and in the proposed rule change) on Thursday, the Transferor would owe NSCC a Buy-In Amount (as defined below and in the proposed rule change) of $2 per share ($100 per share of SFT Cash received by the Transferor at the Initial Settlement of the SFT, less the $95 per share Buy-In Costs of the Transferor, minus $3 per share Price Differential paid by the Transferor to NSCC), and such Buy-In Amount would be debited by NSCC from the Transferor and credited to the Transferee as part of NSCC's end-of-day final money settlement process on Friday.

Similarly, consistent with their rights under industry-standard documentation for bilateral SFTs, Transferees would have the right to accelerate the scheduled Final Settlement of a novated SFT through notice from the Approved SFT Submitter to NSCC of such accelerated settlement.

For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. After the Initial Settlement occurs on Monday, the Final Settlement of the SFT is novated to NSCC. At the end of day on Monday, the share price of security X is $99 per share. On Tuesday, the Approved SFT Submitter, on behalf of the Transferor and the Transferee, instructs NSCC to net the parties' Final Settlement obligations on the Settling SFT with a Linked SFT pursuant to which (i) in the Initial Settlement on Tuesday, the Transferor will transfer 100 shares of security X to the Transferee against $99 per share; and (ii) in the Final Settlement on Wednesday, the Transferee will transfer 100 shares of security X to the Transferor against $99 per share. NSCC would, on Tuesday, collect $1 per share in Price Differential from the Transferor and pay $1 per share in Price Differential to the Transferee in connection with the pair off. Later in the day on Tuesday, the Transferee loses permitted purpose under Regulation T for the borrowing of 100 shares of security X. Therefore, pursuant to Section 11 of proposed Rule 56 (Securities Financing Transaction Clearing Service), the Approved SFT Submitter submits a notice to NSCC on behalf of the Transferee to accelerate the Final Settlement of the Linked SFT to Tuesday. The Transferee then on Tuesday returns 100 shares of security X to NSCC for $99 per share, and NSCC returns 100 shares of security X to the Transferor for $99 per share. The Rate Payment would be passed by NSCC for the Settling SFT as between the Transferor and Transferee on Tuesday as part of NSCC's end-of-day final money settlement process.

Risk Management of SFT Positions

Under the proposal, NSCC is requiring a deposit to the Clearing Fund [30] for SFT Positions, *i.e.,* Required SFT Deposit. From a market risk standpoint, SFT activity would, except as otherwise noted below, be risk managed by NSCC in a manner consistent with Members' CNS positions but would be margined independently of the Member's other positions,[31] and a Required SFT Deposit would be collected by NSCC for all SFT activity of an SFT Member, subject to a $250,000 minimum deposit.[32] Specifically, NSCC is proposing to calculate an SFT Member's Required SFT Deposit by applying the sections of Procedure XV (Clearing Fund Formula and Other Matters) specified in Section 12 of proposed Rule 56 (*i.e.,* Sections I.(A)(1)(a), (b), (c), (e), (f), (g) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV as such sections apply to CNS Transactions, and the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits for Members on the Watch List); (2) (Excess Capital Premium), (3)

[30] As currently defined in Rule 1 (Definitions and Descriptions), the term ''Clearing Fund'' means the fund created pursuant to Rule 4. *Supra* note 4.

[31] NSCC is not proposing at this time to portfolio margin a Member's SFT Positions with any CNS positions of the Member, except with respect to the MLA charge. NSCC may reconsider this position after it obtains a reasonable amount of experience observing the nature and volume of SFT activity submitted by Members to NSCC for novation through the proposed SFT Clearing Service.

[32] This $250,000 minimum deposit is a requirement that is separate from a Member's minimum (non-SFT) Clearing Fund deposit requirement, although it is designed to be consistent with such requirement.

(Backtesting Charge), (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)–(b), II.(B), II.(C), and II.(D); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV, as such sections apply to Members). Furthermore, NSCC would require an additional Required SFT Deposit for Non-Returned SFTs that is intended to mirror the premium charged for CNS Fails Positions. NSCC would also apply the Independent Amount SFT Cash Deposit Requirement for SFTs that have Incremental Additional Independent Amount SFT Cash.

For the purpose of applying Section I.(A)(1)(a)(i) of Procedure XV (Value-at-Risk (VaR) charge), unlike the current calculation of the volatility of a Member's Net Unsettled Positions [33] in CNS Transactions, NSCC is proposing that the volatility of an SFT Member's SFT Positions shall be the sum of (a) the highest resultant value between Section I.(A)(1)(a)(i)I. (Core Parametric Estimation) and Section I.(A)(1)(a)(i)III. (Margin Floor) and (b) the resultant value of Section I.(A)(1)(a)(i)II. (Gap Risk Measure). This proposed change is designed to capture idiosyncratic risk associated with an SFT Member's portfolio by enabling NSCC to apply the Gap Risk Measure more frequently.

NSCC is also proposing that, for the purpose of applying Section I.(A)(1)(g) of Procedure XV (Margin Liquidity Adjustment (MLA) charge), SFT Positions shall be aggregated with Net Unsettled Positions in the same asset group or subgroup; provided, however, in the event such aggregation results in a reduction of the aggregate positions in the relevant asset group or subgroup, NSCC shall apply the greater of (a) the sum of MLA charges separately calculated for SFT Positions and Net Unsettled Positions in the asset group or subgroup and (b) the MLA charge calculated from aggregating the SFT Positions and the Net Unsettled Positions in the asset group or subgroup. This proposed change is designed to enable NSCC to better risk manage the SFT activity by assessing the MLA charge in a circumstance where the combined SFT Positions and Net Unsettled Positions in total trigger the applicable MLA charge thresholds, whereas, if calculated separately, the MLA charge would not be triggered.

In addition, NSCC is proposing that each SFT Member, other than an SFT Member that is a Sponsored Member, so long as such Member is an SFT Member, would provide Supplemental Liquidity Deposits to the Clearing Fund, as may be required pursuant to Rule 4A (Supplemental Liquidity Deposits).

Consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) consist of cash.[34] [35] NSCC would also have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required as described above. NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member. For example, as proposed in Section 12 of Rule 56, if NSCC had specific concerns about a particular SFT Member's financial or operational capabilities, but NSCC had not yet come to the determination that ceasing to act for the SFT Member would be appropriate (but could potentially become appropriate within the near term), NSCC may request that a greater portion of the SFT Member's Required SFT Deposit to the Clearing Fund be in the form of cash in order to simplify any potential close-out liquidation required in the event of that SFT Member's default. Separately, pursuant to Section II.(A)1(a) of Procedure XV, if an SFT Member's deposit of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities is in excess of 25% of the SFT Member's Required Fund Deposit, NSCC would subject the deposit to an additional haircut.

The Sponsoring Member Required Fund Deposits (as defined below and in the proposed rule change) and Agent Clearing Member Required Fund Deposits (as defined below and in the proposed rule change) would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers,[36] as applicable, would be permitted. This is to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual institutional firm's activity.

As proposed and as described above, the Final Settlement obligations and Price Differential of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle RVP/DVP at DTC.[37] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. Therefore each DTC participant's Final Settlement obligation would complete at DTC on a fully collateralized basis, and the associated debits (if any) would be subject to DTC's risk controls.

To the extent the Price Differential is not processed by DTC, for example if a receiver does not satisfy DTC's risk controls, NSCC would debit and credit the Price Differential from and to the SFT Accounts (as defined below and in the proposed rule change) of the SFT Member parties to the SFT as part of its end of day final money settlement.

In the event NSCC ceases to act for a Defaulting SFT Member (as defined below and in the proposed rule change), on the Business Day that NSCC ceased to act, NSCC's daily liquidity need calculation would include all Price Differential debits owed by the Defaulting SFT Member not processed at DTC. On subsequent days of the liquidation of the Defaulting SFT Member's SFT Positions, NSCC's total liquidity need calculations would include all novated SFT activity that has not reached Final Settlement on the Business Day NSCC ceased to act, netted together with all other outstanding

[33] ''Net Unsettled Positions'' means a Member's net of unsettled Regular Way, When-Issued and When-Distributed positions in CNS Securities that have not yet passed Settlement Date and net positions in CNS Securities that did not settle on Settlement Date. *See* Rule 1, *supra* note 4.

[34] This $250,000 minimum cash deposit requirement is designed to be consistent with the minimum amount of cash that must be used to satisfy a Member's (non-SFT) Clearing Fund deposit requirement. NSCC believes a $250,000 minimum cash deposit would serve to strengthen NSCC's liquidity resources. Cash may also be easier to access upon a Member's default, further reducing the risk of losses and using non-defaulting Member's securities or funds, or NSCC funds.

[35] These requirements are designed to be consistent with FICC GSD's clearing fund requirements of its members given that NSCC anticipates that there would be considerable overlap between the membership of FICC GSD that participate in FICC for purposes of clearing their securities financing transaction activity (including in particular sponsored repo activity) and the Members that would elect to participate in the proposed SFT Clearing Service. Specifically, FICC GSD Rule 4, Section 3 requires (i) a minimum of 40 percent of a member's required fund deposit to be in the form of cash and/or eligible clearing fund treasury securities and (ii) the lesser of $5,000,000 or 10 percent of the required fund deposit, with a minimum of $100,000, be made and maintained in cash. *See* Rule 4 (Clearing Fund and Loss Allocation) of the FICC GSD Rulebook, *supra* note 16.

[36] *See* Section 7(c) of proposed Rule 2C and Section 6(c) of proposed 2D.

[37] *Supra* note 27.

settlement activity of the Defaulting SFT Member at NSCC.

Until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[38] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in largely the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. This is because even though the non-payment of the Rate Payment in an SFT Member default context may have an impact on non-defaulting SFT Members, such impact is generally de minimis. To the extent NSCC is required to pay a Price Differential, as well as any Final Settlement obligations, to a non-defaulting SFT Member, NSCC would rely on NSCC's liquidity resources, including the Required SFT Deposit and any Supplemental Liquidity Deposits (''SLD'') that may be collected, when applicable, in order to cover the liquidity need associated with any such Price Differential and Final Settlement obligations, consistent with the Clearing Agency Liquidity Risk Management Framework.[39] [40] In addition, NSCC would anticipate being in regular communication with the non-defaulting SFT Members as to the timing of the satisfaction of any Final Settlement obligations related to a defaulting SFT Member.

(iii) Sponsoring Members and Sponsored Members

NSCC is proposing a sponsored membership program to allow Members to play the role of pre-novation counterparty and credit intermediary for their institutional firm clients in clearing.

NSCC has modeled a number of the aspects of the proposed sponsored member program, including the eligibility criteria and many of the risk management requirements, on FICC's Sponsoring Member/Sponsored Member Program. FICC's Sponsoring Member/Sponsored Member Program allows an FICC Netting Member to sponsor an entity that satisfies certain requirements and submit to FICC for novation certain securities transactions between the Netting Member and the sponsored entity. These securities transactions generally include the off-leg of repurchase transactions on U.S. Government or agency securities or straight purchase and sales of such securities. Such transactions present similar risk management, legal, accounting, and operation considerations to SFTs, as both involve an obligation of a sponsored member and a sponsoring member to exchange cash against securities. Since 2005, FICC has worked with its members to improve its Sponsoring Member/Sponsored Member Program to address these considerations. Based on feedback from Members and its own internal assessments, NSCC believes that leveraging the provisions of FICC's Sponsoring Member/Sponsored Member program and the learning over the past decade and a half would allow NSCC to provide a sponsored member program that has a solid risk management, accounting, legal and operational foundation.

Sponsoring Members

Under the proposal, all Members would be eligible to apply to become Sponsoring Members in NSCC, subject to credit criteria that are designed to be substantially similar to those applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members.'' [41] A Member whose application to become a Sponsoring Member has been approved by the Board of Directors or NSCC, as applicable, pursuant to proposed Rule 2C (''Sponsoring Member'') would be permitted to sponsor their institutional firm clients into membership as Sponsored Members. Such Sponsoring Members would then be able to facilitate their institutional firm clients' cleared activity via two back-to-back principal SFTs, *i.e.,* client-to-

[38] *See* proposed Rule 56, Section 14(b)(ix).

[39] *See* Securities Exchange Act Release Nos. 82377 (December 21, 2017), 82 FR 61617 (December 28, 2017) (File No. SR–NSCC–2017–005); 90649 (December 11, 2020), 85 FR 81961 (December 17, 2020) (File No. SR–NSCC–2020–021). This framework sets forth the manner in which NSCC measures, monitors and manages the liquidity risks that arise in or are borne by it, and the qualifying liquidity resources that NSCC maintains in order to cover those risks. Such resources include, for example, cash deposits to the Clearing Fund and SLD that may be collected, when applicable.

[40] For example, assume that a Transferor and Transferee enter into an SFT pursuant to which: (i) In the Initial Settlement on Monday, the Transferor will transfer 100 shares of security X to the Transferee against $100 per share; and (ii) in the Final Settlement on Tuesday, the Transferee will transfer 100 shares of security X to the Transferor against $100 per share. Assume further that at midnight on Monday, NSCC ceases to act for the Transferor.

On Tuesday, NSCC executes a sale of 100 shares of security X for $99 per share. In accordance with the normal settlement cycle for purchases and sales of equity securities, this sale will settle on Thursday.

Pursuant to Section 14(b)(viii) of proposed Rule 56 (Securities Financing Transaction Clearing Service), NSCC would likewise settle the Final Settlement obligations of the defaulting Transferor's SFT with the non-defaulting Transferee on Thursday.

Assume further that the end-of-day price of security X on Tuesday is $99 per share. On Wednesday, NSCC would pay $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. Assume further that the end-of-day price of security X on Wednesday is $98 per share.

On Thursday, NSCC would pay an additional $1 per share in Price Differential to the non-defaulting Transferee pursuant to Section 14(b)(ix) of proposed Rule 56. The Transferee would then return 100 shares of security X to NSCC and receive $98 per share (*i.e.,* the current market price for security X) from NSCC. As such, the non-defaulting Transferee would be made whole by NSCC for the $100 per share it transferred in the Initial Settlement of the Defaulted-Related SFT (as defined below and in the proposed rule change) since NSCC would have transferred to it $98 per share in Final Settlement plus an additional $2 per share in Price Differential. NSCC would incur a net loss of $1 per share in this example since it would have sold security X for $99 per share and paid the non-defaulting Transferee a total of $100 per share (*i.e.,* $98 per share in Final Settlement proceeds plus $2 per share in Price Differential). NSCC would be entitled to deduct this amount from the defaulted Transferor's Clearing Fund deposits (including its SFT Deposit).

[41] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become a Sponsoring Member if it satisfies the credit criteria in proposed Rule 2C (Sponsoring Members and Sponsored Members) (*i.e.,* if it has (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to category 2 sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. A Sponsoring Member applicant would be viewed and surveilled as the credit counterparty to NSCC in respect to its Sponsored Member Sub-Account(s) (as defined below and in the proposed rule change) in light of its responsibility to NSCC as the processing agent and unconditional guarantor of its Sponsored Members' performance to NSCC.

In addition, NSCC may require that a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become a Sponsoring Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be a Sponsoring Member at NSCC that is an Agent Clearing Member or an existing FICC sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be a Sponsoring Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

Sponsoring Member and Sponsoring Member-to-broker (or to another institutional firm client that the Sponsoring Member has sponsored into membership), and each of such transactions would be eligible for novation to NSCC.

Consistent with the requirements applicable to sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member would be responsible for (i) submitting data on its Sponsored Members' SFTs to NSCC or appointing a third-party Approved SFT Submitter to do so, (ii) posting to NSCC all of the Clearing Fund associated with the SFT activity of its Sponsored Members, which would be calculated on a gross basis (*i.e.,* SFT activity would not be netted across Sponsored Members for Clearing Fund purposes), (iii) providing an unconditional guaranty to NSCC for its Sponsored Members' Final Settlement and other obligations to NSCC, and (iv) covering any default loss allocable to its Sponsored Members (in addition to its own default loss allocation as a Member).

Specifically, as proposed, a Sponsoring Member would be permitted to submit to NSCC for novation Sponsored Member Transactions, subject to an activity limit designed to be substantially similar to that applicable to category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members.'' Under the proposal, if the sum of the Volatility Charges (as defined below and in the proposed rule change) applicable to a Sponsoring Member's Sponsored Member Sub-Accounts (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member would not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 5 of proposed Rule 2C, Sponsored Member Transactions are SFTs between a Sponsoring Member and its Sponsored Members.

The Sponsoring Member would establish one or more accounts at NSCC for its Sponsored Members' positions arising from such Sponsored Member Transactions, *i.e.,* Sponsored Member Sub-Accounts, which would be separate from the Sponsoring Member's proprietary accounts. For operational and administrative purposes, NSCC would interact solely with the Sponsoring Member as agent of its Sponsored Members.

Sponsoring Members would be responsible for providing NSCC with a Sponsoring Member Guaranty (as defined below and in the proposed rule change) whereby the Sponsoring Member guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Sponsored Member Transactions submitted by the Sponsoring Member for novation. Although Sponsored Members are principally liable to NSCC for their own settlement obligations under such transactions in accordance with the Rules, the Sponsoring Member Guaranty requires the Sponsoring Member to satisfy those settlement obligations on behalf of a Sponsored Member if the Sponsored Member defaults and fails perform its settlement obligations.

In addition, a Sponsoring Member would be responsible for posting to NSCC all of the Clearing Fund associated with the Sponsored Member Transactions (which would not be netted across Sponsored Members for Clearing Fund purposes) and covering any default loss allocable to its Sponsored Members, as well as its own default loss allocation as a Member.[42]

As proposed, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would also provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and such Sponsored Member that have been novated to NSCC.[43]

Sponsored Members

Consistent with the requirements applicable to sponsored members in FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' any Person that has been approved by NSCC to be sponsored into membership by a Sponsoring Member pursuant to proposed Rule 2C (''Sponsored Member'') would be required to be either a ''qualified institutional buyer'' as defined by Rule 144A[44] under the Securities Act of 1933, as amended (''Securities Act''),[45] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph.

(iv) Agent Clearing Members and Customers

NSCC is proposing an agent clearing membership designed to allow Members to play the role of agent and credit intermediary for their institutional firm clients in clearing. This membership type is being proposed in response to the request of certain market participants, including in particular certain agent lending banks, that the proposed SFT Clearing Service accommodate agent-style trading (*i.e.,* where the agent lender enters into the transactions on behalf of its institutional firm clients with a third-party market participant, rather than acting as its institutional firm clients' principal pre-novation counterparty). Agent-style trading is the manner in which such agent lenders are typically approved to transact in securities lending transactions on behalf of their institutional firm clients. Under the proposal, a Member that enters into transactions on behalf of its institutional firm clients in accordance with the provisions of proposed Rule 2D (''Agent Clearing Member'') would be permitted to submit SFTs executed by it (as agent on behalf of its institutional firm clients, with each such client referred to as a ''Customer'') with a Member participating in the proposed SFT Clearing Service (which could include a Member acting in a proprietary capacity within the proposed SFT Clearing

[42] The following example illustrates how loss allocation would occur with respect to Sponsoring Members and Sponsored Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Sponsored Member Sub-Accounts as if each were a Member. If the allocated losses to a Sponsoring Member's Sponsored Member Sub-Accounts is $1 million and the allocated losses to its Sponsoring Member in its capacity as a Member is $2 million, the Sponsoring Member would be responsible for a total of $3 million loss allocation ($1 million for its Sponsored Member Sub-Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[43] *See* Section 14 of proposed Rule 2C (Sponsoring Members and Sponsored Members).

[44] 17 CFR 230.144A.

[45] 15 U.S.C. 77a *et seq.*

Service as well as an Agent Clearing Member).

All Members would be eligible to apply to become Agent Clearing Members in NSCC, subject to credit criteria that are substantially similar to those applicable to Sponsoring Members as well as category 2 sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.[46]

Under the proposal, the requirements to be imposed on Agent Clearing Members would largely mirror those imposed on Sponsoring Members. However, NSCC is not proposing to impose the same types of requirements on an Agent Clearing Member's Customers as it does on Sponsored Members because a Customer would not be a direct member of NSCC.

Specifically, as proposed, an Agent Clearing Member would be permitted to submit to NSCC for novation Agent Clearing Member Transactions (as defined below and in the proposed rule change), on behalf of one or more of its Customers, subject to an activity limit. Specifically, under the proposal, if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) (as defined below and in the proposed rule change) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member would not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement. As defined in Section 4 of proposed Rule 2D, Agent Clearing Member Transactions are SFTs that an Agent Clearing Member submits to NSCC on behalf of one or more Customers.

The Agent Clearing Member would establish one or more accounts at NSCC for its Customers' positions, *i.e.,* an Agent Clearing Member Customer Omnibus Account, that would be in the name of the Agent Clearing Member for the benefit of its Customers; however, each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both (*i.e.,* activity would not be netted across Customers for Clearing Fund purposes). Under the proposal, the Agent Clearing Member would act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; however, the Agent Clearing Member would remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions.

In addition, as proposed under the sponsoring/sponsored membership model, the Agent Clearing Member would be responsible for posting to NSCC all of the Clearing Fund and any applicable SLD associated with the activity of its Customers and covering any default loss allocable to its Customers, as well as its own default loss allocation as a Member;[47] however, unlike a Sponsoring Member, an Agent Clearing Member would not be required to provide an unconditional guaranty to NSCC for its Customer's obligations. This is because, as described above, the Agent Clearing Member would be fully liable for all obligations of its Customers under the Agent Clearing Member Transactions that it submitted to NSCC as the Member.

As proposed, NSCC would also provide a mechanism by which an Agent Clearing Member may, upon a default of a Customer and consent of NSCC, transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member.[48]

(v) Sponsoring Member/Sponsored Member vs. Agent Clearing Member/Customers

The direct costs of central clearing (*i.e.,* Clearing Fund, loss allocation, fees and performance on behalf of an institutional firm clients) would be largely equivalent as between what NSCC proposes to apply to a Sponsoring Member and what NSCC proposes to apply to an Agent Clearing Member. Likewise, the capital costs to Sponsoring Members and Agent Clearing Members of intermediating institutional firm activity as between the two buy-side clearing models would be largely equivalent. That being said, because Sponsoring Members would be required to ensure that (i) each of their clients separately onboards with NSCC as a Sponsored Member (which NSCC understands is generally required from an accounting perspective in order for the Sponsoring Member to net on its balance sheet its SFTs with Sponsored Members against the Sponsoring Member's other NSCC-cleared SFTs),[49] (ii) each of their client's SFTs is individually submitted to NSCC for clearing, and (iii) each Sponsored Member continues to remain in compliance with the financial standards applicable to Sponsored Members throughout the course of its membership, Sponsoring Members may incur more legal, onboarding, operational and ongoing administrative costs than Agent Clearing Members with respect to their institutional firm clearing activity.

However, the sponsoring/sponsored membership model allows for principal-

[46] If a Member is a Registered Broker-Dealer, then such Member would only be eligible to apply to become an Agent Clearing Member if it satisfies the credit criteria in proposed Rule 2D (*i.e.,* if it has (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million). Such credit criteria are comparable to the credit criteria applicable to sponsoring members that are registered broker-dealers in FICC's Sponsoring Member/Sponsored Member Program. Similar to the review of a Sponsoring Member applicant, an Agent Clearing Member applicant would also be viewed and surveilled as the credit counterparty to NSCC in light of its role as the Member with respect to its Agent Clearing Member Customer Omnibus Account(s).

In addition, NSCC may require a Person be a Member for a time period deemed necessary by NSCC before that Person may be considered to become an Agent Clearing Member. This requirement may be imposed by NSCC on a new Member that has yet to demonstrate a track record of financial responsibility and operational capability.

Furthermore, as proposed, the application of a Member to be an Agent Clearing Member at NSCC that is a Sponsoring Member or an existing FICC sponsoring member would not be required to be approved by the NSCC Board of Directors. NSCC believes this approach to the Board of Director's approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar. Nonetheless, NSCC would apply the same rigorous counterparty credit review process to any Member applying to be an Agent Clearing Member at NSCC, whether or not the Member is an existing FICC sponsoring member.

[47] The following example illustrates how loss allocation would occur with respect to Agent Clearing Members: Assume NSCC incurs a $100 million aggregate loss from a Defaulting Member Event. In addition, assume that the Corporate Contribution amount that NSCC would first apply to any loss from a Defaulting Member Event is $25 million. This means NSCC would allocate the remaining $75 million losses (*i.e.,* $100 million minus $25 million) to Members pursuant to Section 4 of Rule 4 (Clearing Fund), including Agent Clearing Member Customer Omnibus Accounts as if each were a Member. If the allocated losses to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account is $1 million and the allocated losses to the Agent Clearing Member in its capacity as a Member is $2 million, the Agent Clearing Member would be responsible for a total of $3 million loss allocation ($1 million for its Agent Clearing Member Customer Omnibus Account loss allocation amount and $2 million for its own default loss allocation as a Member).

[48] *See* Section 11 of proposed Rule 2D (Agent Clearing Members).

[49] *Supra* note 12.

style trading between a Sponsoring Member and its Sponsored Member where the Sponsoring Member and Sponsored Member are pre-novation counterparties, which would generally create the opportunity for a Sponsoring Member to make an economic spread between its trade with its Sponsored Member and its offsetting trades with other NSCC Members or Sponsored Members. The opportunity for such economic spread and the ability of a Sponsoring Member to achieve balance sheet netting and capital efficiency on such trading activity through the novation of SFTs to NSCC could, for some market participants, offset the indirect additional costs associated with acting as a Sponsoring Member, rather than acting as an Agent Clearing Member.

On the other hand, as NSCC understands it, for some market participants, particularly agent lenders, their business models are not typically predicated on principal-style trading. Rather, these agency businesses typically charge fees for their services (rather than taking economic spreads) and their business models and their agreed upon investment guidelines with their institutional firm customers may only permit agented (rather than principal-style) trading for securities lending transactions. So, for such market participants, participating in clearing at NSCC as an Agent Clearing Member may be a better fit for their overall business model.

From the perspective of an institutional firm client, the costs of clearing that may be passed through to it by its intermediary (depending on their commercial arrangements) would be largely equivalent. That said, some institutional firms that engage in securities lending may be prohibited from acting as Sponsored Members and engaging in principal-style trading with their intermediary in clearing for regulatory and/or investment guideline reasons. For those institutional firms, being able to transact SFTs as a Customer within an Agent Clearing Member Customer Omnibus Account would offer them a means to access central clearing that would otherwise not be available to them if the sponsoring/sponsored membership model were the only model available for buy-side clearing.

(vi) Proposed Rule Changes

(A) Proposed Rule 2C—Sponsoring Members and Sponsored Members

NSCC is proposing to add Rule 2C, entitled ''Sponsoring Members and Sponsored Members.'' This new rule would govern the proposed sponsored membership and would be comprised of 14 sections, each of which is described below.

Proposed Rule 2C, Section 1 (General)

Section 1 of proposed Rule 2C would be a general provision regarding the Rules applicable to Sponsoring Members and Sponsored Members.

Section 1 of proposed Rule 2C would provide that NSCC will permit the establishment of a sponsored membership relationship between a Member that is approved as a Sponsoring Member and one or more Persons that are accepted by NSCC as Sponsored Members of that particular Sponsoring Member. Section 1 of proposed Rule 2C would further provide that the rights, liabilities and obligations of Sponsoring Members and Sponsored Members shall be governed by proposed Rule 2C, and that references to the term ''Member'' in other Rules would not apply to Sponsoring Members and to Sponsored Members, in their respective capacities as such, unless specifically noted as such in proposed Rule 2C or in such other Rules.

Section 1 of proposed Rule 2C would also provide that a Sponsoring Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as a Sponsoring Member except as contemplated under Sections 7, 8 and 9 of proposed Rule 2C and under the Sponsoring Member Guaranty.

Proposed Rule 2C, Section 2 (Qualifications of Sponsoring Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2C would establish the eligibility requirements for Members that wish to become Sponsoring Members, the membership application process that would be required of each Member to become a Sponsoring Member, the on-going membership requirements that would apply to Sponsoring Members, as well as the requirements regarding a Sponsoring Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2C, any Member would be eligible to apply to become a Sponsoring Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become a Sponsoring Member if it has (1) Net Worth (as defined below and in the proposed rule change) of at least $25 million and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[50] In connection therewith, NSCC is proposing ''Net Worth'' to mean, as of a particular date, the amount equal to the excess of the assets of a Person over the liabilities of such Person, computed in accordance with generally accepted accounting principles, and for Registered Broker-Dealers, Net Worth shall include liabilities that are subordinated to the claims of creditors pursuant to a satisfactory subordination agreement, as defined in Appendix D to Rule 15c3–1 of the Act.[51] As proposed, NSCC may require that a Person be a Member for a certain time period before that Person may be considered to become a Sponsoring Member.

Section 2(b) of proposed Rule 2C would provide that each Member applicant to become a Sponsoring Member would be required to provide an application and other information requested by NSCC. Sponsoring Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already an Agent Clearing Member under proposed Rule 2D or a sponsoring member of FICC.[52] NSCC believes this approach to the Board of Director's approval for Sponsoring Members is appropriate in light of the fact that the critical components of the FICC sponsoring member application as well as the NSCC Sponsoring Member and Agent Clearing Member

[50] NSCC is proposing these financial minimums for Registered Broker-Dealer Sponsoring Member applicants to reflect the additional responsibility that the applicant would undertake as a Sponsoring Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In its assessment, NSCC considered various factors, such as the amount of a Registered Broker-Dealer Member's capital and its impact on such Member's financial responsibility and operational capability, comparability with the financial requirements of other clearing agencies, and the desire to strike a balance between credit risk mitigation and member accessibility. For the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' these financial minimums are also designed to be consistent with the requirements applicable to registered broker/dealers that are sponsoring members in FICC's Sponsoring Member/Sponsored Member Program.

[51] 17 CFR 240.15c3–1d.

[52] It is NSCC's understanding that FICC is evaluating a change to the GSD Rules to provide that the application of an FICC sponsoring member applicant that is already an NSCC Sponsoring Member or Agent Clearing Member would not require approval of FICC's board of directors.

applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2C, if the Sponsoring Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2C, NSCC may impose additional financial requirements on a Sponsoring Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as a Sponsoring Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become a Sponsoring Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Sponsoring Member regarding its compliance with the increased financial requirements.[53]

In addition, under Section 2(e) of proposed Rule 2C, NSCC may require each Sponsoring Member or any Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[54]

Section 2(f) of proposed Rule 2C would provide that each Member whose Sponsoring Member application is approved would sign and deliver to NSCC (i) an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Sponsoring Member Agreement''), (ii) a guaranty, in the form and substance acceptable to NSCC, whereby the Member, in its capacity as a Sponsoring Member, guarantees to NSCC the payment and performance by its Sponsored Members of their obligations under the Rules in respect of the Sponsoring Member's Sponsored Member Sub-Accounts, including, without limitation all of the settlement obligations of its Sponsored Members in respect of such Sponsored Member Sub-Accounts (''Sponsoring Member Guaranty''), and a related legal opinion in a form satisfactory to NSCC. In addition, Section 2(f) of proposed Rule 2C would provide that nothing in the Rules shall prohibit a Sponsoring Member from seeking reimbursement from a Sponsored Member for payments made by the Sponsoring Member (whether pursuant to the Sponsoring Member Guaranty, out of Clearing Fund deposits or otherwise) with respect to obligations as to which the Sponsored Member is a principal obligor under the Rules, or as otherwise may be agreed by the Sponsored Member and Sponsoring Member.

Section 2(g) of proposed Rule 2C would provide that each Sponsoring Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2C would provide that a Sponsoring Member's books and records, insofar as they relate to the Sponsored Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2C would provide that a Sponsoring Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become a Sponsoring Member set forth in the proposed Rule 2C. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Sponsoring Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that fails to so notify NSCC.[55] If the Sponsoring Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Sponsoring Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Sponsoring Member, and otherwise require from the Sponsoring Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that a Sponsoring Member may fail to comply with any of the Rules applicable to Sponsoring Members, it may require the Sponsoring Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Sponsoring Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2C would provide that in the event that a Sponsoring Member fails to remain in compliance with the relevant requirements of the Rules, the Sponsoring Member Agreement or the Sponsoring Member Guaranty, NSCC shall have the right to cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of proposed Rule 2C, unless the Sponsoring Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Sponsoring Member, it is appropriate instead to establish for such Sponsoring Member a time period, which shall be determined by NSCC and

[53] If the increased financial requirements are imposed in connection with a Sponsoring Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once a Sponsoring Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Sponsoring Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Sponsoring Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 10 of proposed Rule 2C, suspend, prohibit or limit the Sponsoring Member's access to NSCC's services.

[54] As an example, NSCC may require a Sponsoring Member or a Sponsoring Member applicant to furnish adequate assurances of such Sponsoring Member or Sponsoring Member applicant's financial responsibility and operational capability if NSCC has concerns about such Sponsoring Member or Sponsoring Member applicant's overall financial health or credit rating.

[55] *See* Addendum P (Fine Schedule), *supra* note 4.

which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Sponsoring Member must resume compliance with such requirements. As proposed, in the event that the Sponsoring Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Sponsoring Member in its capacity as a Sponsoring Member pursuant to Section 10 of the proposed Rule 2C.

Section 2(k) of proposed Rule 2C would provide that if the sum of the Volatility Charges applicable to a Sponsoring Member's Sponsored Member Sub-Accounts and its other accounts at NSCC exceeds its Net Member Capital (as defined below and in the proposed rule change), the Sponsoring Member shall not be permitted to submit activity into its Sponsored Member Sub-Accounts, unless otherwise determined by NSCC in order to promote orderly settlement.[56] As proposed, ''Volatility Charge'' would mean, in respect to a Member, the amount of its Required Fund Deposit calculated by NSCC by applying Sections I.(A)(1)(a)(i)–(iii) of Procedure XV (Clearing Fund Formula and Other Matters); ''Net Member Capital'' would mean Net Capital (as defined below and in the proposed rule change), net assets or equity capital, as applicable to a Member, based on the type of regulation, and in particular the capital requirements, to which the Member is subject; and ''Net Capital'' would mean, as of a particular date, the amount equal to the net capital of a Registered Broker-Dealer as defined in Rule 15c3–1(c)(2) of the Act,[57] or any successor rule or regulation thereto.

Section 2(l) of proposed Rule 2C would provide that a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member, with respect to all Sponsored Members or with respect to one or more Sponsored Members from time to time, by providing NSCC with a written notice from a Sponsoring Member to NSCC that the Sponsoring Member is voluntarily electing to terminate its status as a Sponsoring Member with respect to all of its Sponsored Members or with respect to one or more of its Sponsored Members (''Sponsoring Member Voluntary Termination Notice''). The Sponsoring Member shall specify in the Sponsoring Member Voluntary Termination Notice the Sponsored Member(s) in respect of which the Sponsoring Member is terminating its status (the ''Former Sponsored Members'') and a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsoring Member to NSCC with respect to the Former Sponsored Members as of the time such Sponsoring Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2C would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsoring Member Voluntary Termination Notice from such Sponsoring Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsoring Member's status as such with respect to the Former Sponsored Members and the date on which the termination of the Sponsoring Member's status as a Sponsoring Member becomes effective (''Sponsoring Member Termination Date''). As proposed, after the close of business on the Sponsoring Member Termination Date, the Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Former Sponsored Members, and each Former Sponsored Member shall cease to be a Sponsored Member unless it is the Sponsored Member of another Sponsoring Member. If any Sponsored Member Transactions is submitted to NSCC by the Sponsoring Member on behalf of a Former Sponsored Member that is scheduled to settle after the Sponsoring Member Termination Date, such Sponsoring Member's Sponsoring Member Voluntary Termination Notice would be deemed void, and the Sponsoring Member would remain subject to the proposed Rule 2C as if it had not given such Sponsoring Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2C would provide that a Sponsoring Member's voluntary termination of its status as such, in whole or in part, shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the applicable Sponsoring Member Termination Date. Any such Sponsored Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Sponsoring Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after a Sponsoring Member has submitted the Sponsoring Member Voluntary Termination Notice but on or prior to the Sponsoring Member Termination Date, in order for the Sponsoring Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Sponsoring Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, shall supersede and void any pending Sponsoring Member Voluntary Termination Notice previously submitted by the Sponsoring Member.

Section 2(n) of proposed Rule 2C would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2C shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Sponsoring Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Sponsoring Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Sponsoring Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Sponsoring Member, NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[58]

[56] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Sponsoring Members. This is because a Sponsoring Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Sponsoring Member's financial resources, as measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

[57] 17 CFR 240.15c3–1(c)(2).

[58] Section 2(n) of proposed Rule 2C is designed to be consistent with provisions in the Rules relating to the confidentiality of information furnished by participants. *See* Rule 2A (Initial Membership Requirements), *supra* note 4.

Proposed Rule 2C, Section 3 (Qualifications of Sponsored Members, Approval Process and Continuance Standards)

Section 3 of proposed Rule 2C would establish the eligibility requirements for Sponsored Members, the membership application process that would be required of each Sponsored Member, the on-going membership requirements that would apply to Sponsored Members, as well as the requirements regarding a Sponsored Member's election to voluntarily terminate its membership.

Section 3(a) of proposed Rule 2C would provide that a Person shall be eligible to apply to become a Sponsored Member if: (x) It is sponsored into membership by a Sponsoring Member, and (y) it (1) is a ''qualified institutional buyer'' as defined by Rule 144A [59] under the Securities Act,[60] or (2) is a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. NSCC would have the right to rely on the representation provided by the Sponsoring Member regarding satisfaction of (y).

Section 3(b) of proposed Rule 2C would provide that each time that a Sponsoring Member wishes to sponsor a Person into membership, it shall provide NSCC with the representation referred to in Section 3(a) of proposed Rule 2C, as well as any additional information in such form as may be prescribed by NSCC. NSCC shall approve or disapprove Persons as Sponsored Members. If NSCC denies the request of a Sponsoring Member to add a Person as a Sponsored Member, such denial shall be handled in the same manner as set forth in Section 1 of Rule 2A (Initial Membership Requirements) with respect to membership applications except that the written statement referred to therein shall be provided to both the Sponsoring Member and the Person seeking to become a Sponsored Member.

Section 3(c) of proposed Rule 2C would provide that each Person to become a Sponsored Member shall sign and deliver to NSCC an agreement whereby the Person shall agree to any terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (the ''Sponsored Member Agreement''). Each Person to become a Sponsored Member that shall be an FFI Member must be FATCA Compliant.

Section 3(d) of proposed Rule 2C would provide that a Sponsored Member shall immediately inform its Sponsoring Member, both orally and in writing, if the Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. A Sponsoring Member shall promptly inform NSCC, both orally and in writing, if a Sponsored Member is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C. Notification to NSCC by the Sponsoring Member must take place within one (1) Business Day from the date on which the Sponsoring Member first learns of the Sponsored Member's non-compliance. NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Sponsoring Member that fails to so notify NSCC.[61]

Section 3(e) of proposed Rule 2C would provide that a Sponsored Member may voluntarily elect to terminate its membership by providing NSCC with a written notice from the Sponsored Member to NSCC that the Sponsored Member is voluntarily electing to terminate its membership (''Sponsored Member Voluntary Termination Notice''). The Sponsored Member shall specify in the Sponsored Member Voluntary Termination Notice a desired date for the termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Sponsored Member to NSCC as of the time such Sponsored Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

In addition, Section 3(e) of proposed Rule 2C would provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Sponsored Member Voluntary Termination Notice from such Sponsored Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Sponsored Member and the date on which the termination of the Sponsored Member becomes effective (''Sponsored Member Termination Date''). After the close of business on the Sponsored Member Termination Date, the relevant Sponsoring Member shall no longer be eligible to submit Sponsored Member Transactions on behalf of the Sponsored Member. If any Sponsored Member Transaction is submitted to NSCC by the relevant Sponsoring Member on behalf of the Sponsored Member that is scheduled to settle after the Sponsored Member Termination Date, such Sponsored Member's Sponsored Member Voluntary Termination Notice would be deemed void, and the Sponsored Member would remain subject to the proposed Rule 2C as if it had not given such Sponsored Member Voluntary Termination Notice.

Section 3(f) of proposed Rule 2C would provide that a Sponsored Member's voluntary termination shall not affect its obligations to NSCC, or the rights of NSCC, including under the Sponsoring Member Guaranty, with respect to Sponsored Member Transactions submitted to NSCC before the Sponsored Member Termination Date, and the Sponsoring Member Guaranty shall remain in effect to cover all outstanding obligations of the Sponsored Member to NSCC that are within the scope of such Sponsoring Member Guaranty.

Proposed Rule 2C, Section 4 (Compliance With Laws)

Section 4 of proposed Rule 2C would provide that each Sponsoring Member and Sponsored Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2C, Section 5 (Sponsored Member Transactions)

Section 5 of proposed Rule 2C would provide that a Sponsoring Member shall be permitted to submit to NSCC SFTs between itself and its Sponsored Members (''Sponsored Member Transactions'') in accordance with proposed Rule 56, as described below. Section 5 of proposed Rule 2C would further provide that NSCC directs each Sponsored Member and Sponsoring Member to settle all Final Settlement, Rate Payment, Price Differential, and other securities delivery and payment obligations arising under a Sponsored Member Transaction that has been novated to NSCC by causing the relevant cash and securities to be transferred to the Transferor or Transferee, as applicable, on the books and records of the Sponsoring Member, and each Sponsored Member and Sponsoring Member agrees that any such transfer shall satisfy NSCC's corresponding obligation with respect to such Sponsored Member Transaction.

[59] 17 CFR 230.144A.

[60] 15 U.S.C. 77a *et seq.*

[61] *See* Addendum P (Fine Schedule), *supra* note 4.

Proposed Rule 2C, Section 6 (Sponsoring Member Agent Obligations)

Section 6 of proposed Rule 2C would provide that a Sponsored Member shall appoint its Sponsoring Member to act as agent with respect to the Sponsored Member's satisfaction of its settlement obligations arising under Sponsored Member Transactions between the Sponsored Member and the Sponsoring Member and for performing all functions and receiving reports and information set forth in the Rules. NSCC's provision of such reports and information to the Sponsoring Member shall constitute satisfaction of any obligation of NSCC to provide such reports and information to the affected Sponsored Members. As proposed, notwithstanding the foregoing and any other activities the Sponsoring Member may perform in its capacity as agent for Sponsored Members, each Sponsored Member shall be obligated as principal to NSCC with respect to all settlement obligations under the Rules, and the Sponsoring Member shall not be a principal under the Rules with respect to settlement obligations of its Sponsored Members.

Proposed Rule 2C, Section 7 (Clearing Fund Obligations)

Section 7 of proposed Rule 2C would set forth the Clearing Fund obligations.

Section 7(a) of proposed Rule 2C would provide that NSCC shall maintain a ledger maintained on the books and records of NSCC for a Sponsoring Member that reflects the outstanding SFTs that a Sponsoring Member enters into in respect of a Sponsored Member and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement) (each a ''Sponsored Member Sub-Account''). Each Sponsoring Member shall make and maintain so long as such Member is a Sponsoring Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Sponsored Member Sub-Accounts (the ''Sponsoring Member Required Fund Deposit'').

Under Section 7(a), each Sponsoring Member, so long as such Member is a Sponsoring Member, shall also provide SLD to the Clearing Fund, as may be required pursuant to Rule 4A (Supplemental Liquidity Deposits); however, the Supplemental Liquidity Deposits shall be calculated without regard to Sponsored Member Transactions. This is because Sponsored Member Transactions do not independently create liquidity risk for NSCC as NSCC would not be required to complete settlement of any Sponsored Member Transactions in the event that either the Sponsoring Member or Sponsored Member defaults. In the event that the Sponsoring Member defaults, Section 12(b) of proposed Rule 2C (as described below) would permit NSCC to closeout (rather than settle) the Sponsored Member Transactions of the defaulter's Sponsored Members. Likewise, if the Sponsored Member defaults, NSCC would also not be required to complete settlement. Rather, under Section 8 of proposed Rule 2C (as described below), NSCC may offset its settlement obligations to the Sponsoring Member against the Sponsoring Member's obligations under the Sponsoring Member Guaranty to perform on behalf of its defaulted Sponsored Member.

Section 7(a) would also propose that deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 7(b) of proposed Rule 2C would provide that, in the ordinary course, for purposes of satisfying the Sponsoring Member's Clearing Fund requirements under the Rules for its Member activity, its Sponsoring Member activity, and, to the extent applicable, its Agent Clearing Member activity, the Sponsoring Member's proprietary accounts, its Sponsored Member Sub-Accounts, and its Agent Clearing Member Customer Omnibus Account(s), if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Sponsoring Member (but being obligated to give notice to the Sponsoring Member as soon as possible thereafter) and whether or not the Sponsoring Member or any of its Sponsored Members is in default of its obligations to NSCC, treat the Sponsoring Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Sponsoring Member with respect to any account as necessary to ensure that the Sponsoring Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[62]

Section 7(c) of proposed Rule 2C would provide that the Sponsoring Member Required Fund Deposit for each Sponsored Member Sub-Account shall be calculated separately based on the Sponsored Member Transactions in such Sponsored Member Sub-Account, and the Sponsoring Member shall, as principal, be required to satisfy the Sponsoring Member Required Fund Deposit for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 7(d) of proposed Rule 2C would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Sponsoring Member Required Fund Deposit with respect to obligations of a Sponsoring Member under the Rules, including its obligations arising under the Sponsored Member Sub-Accounts, and the obligations of a Sponsoring Member under its Sponsoring Member

[62] NSCC believes it unlikely that it would exercise this authority, as the Clearing Fund deposits associated with each Sponsored Member Sub-Account, Agent Clearing Member Customer Omnibus Account and proprietary account of a Sponsoring Member are designed to be sufficient to cover the obligations of such account or sub-account. However, if a Sponsoring Member defaults or fails to perform and the Clearing Fund deposits associated with a given account or sub-account of such Sponsoring Member are not sufficient to discharge the Sponsoring Member's obligations in relation to such account or sub-account, NSCC would look to the Clearing Fund deposits related to the Sponsoring Member's other accounts or sub-accounts. For example, if NSCC ceased to act for a Sponsoring Member and the close-out of the SFT Positions established in the Sponsoring Member's Sponsored Member Sub-Accounts resulted in a loss to NSCC in excess of the Clearing Fund previously posted by the Sponsoring Member in relation to such SFT Positions, NSCC may apply to the excess any other Clearing Fund deposits posted by the Sponsoring Member to NSCC, such as Clearing Fund posted in connection with the proprietary positions of the Sponsoring Member. Similarly, if a Sponsoring Member failed to perform under the Sponsoring Member Guaranty outside the context of a cease-to-act situation and the Clearing Fund previously posted by the Sponsoring Member in relation to the SFT Positions established in the Sponsoring Member's Sponsored Member Sub-Accounts was not sufficient to satisfy the obligations under the Sponsoring Member Guaranty, NSCC may apply to the remainder any other Clearing Fund deposits posted by the Sponsoring Member to NSCC.

NSCC believes this is appropriate because the Clearing Fund deposits of a Sponsoring Member are the proprietary assets of the Sponsoring Member, and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC, regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' a Sponsoring Member's Clearing Fund deposits should be available to satisfy any of the Sponsoring Member's guaranty or other obligations to NSCC.

Guaranty to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as a Sponsoring Member under the Rules, including, without limitation, any obligation of any such Sponsoring Member to provide the Sponsoring Member Required Fund Deposit, such Sponsoring Member's obligations arising under the Sponsored Member Sub-Accounts of such Sponsoring Member and such Sponsoring Member's obligations under its Sponsoring Member Guaranty.

Section 7(e) of proposed Rule 2C would provide that a Sponsoring Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

Proposed Rule 2C, Section 8 (Right of Offset)

Section 8 of proposed Rule 2C would provide that in the ordinary course, with respect to satisfaction of any Sponsored Member's obligations under the Rules, the Sponsoring Member's Sponsored Member Sub-Accounts, the Sponsoring Member's proprietary accounts, and the Sponsoring Member's Agent Clearing Member Customer Omnibus Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of the Sponsoring Member arises under the Sponsoring Member Guaranty to pay or perform thereunder with respect to any Sponsored Member, exercise a right of offset and net any such obligation of the Sponsoring Member under its Sponsoring Member Guaranty against any obligations of NSCC to the Sponsoring Member in respect of such Sponsoring Member's proprietary accounts at NSCC.[63] NSCC would generally anticipate exercising this right if, upon a Sponsoring Member default, the Sponsoring Member owed an amount under the Sponsoring Member Guaranty and was owed an amount by NSCC in relation to the Sponsoring Member's proprietary or other obligations.

Proposed Rule 2C, Section 9 (Loss Allocation Obligations)

Section 9 of proposed Rule 2C would establish loss allocation obligations under the sponsored membership model.

Section 9(a) of proposed Rule 2C would provide that Sponsored Members shall not be obligated for allocations, pursuant to Rule 4 (Clearing Fund), of loss or liability incurred by NSCC. To the extent that a loss or liability is determined by NSCC to arise in connection with Sponsored Member Transactions (*i.e.,* in connection with the insolvency or default of a Sponsoring Member), the Sponsored Members shall not be responsible for or considered in the loss allocation calculation, but rather such loss shall be allocated to other Members in accordance with the principles set forth in Section 4 of Rule 4.

Section 9(b) of proposed Rule 2C would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of a Sponsored Member Sub-Account as if the Sponsored Member Sub-Account were a Member, NSCC shall calculate such loss allocation obligation as if the affected Sponsored Member were subject to such allocations pursuant to Section 4 of Rule 4, but the Sponsoring Member shall be responsible for satisfying such obligations.

Section 9(c) of proposed Rule 2C would provide that the entire amount of the Required Fund Deposit associated with the Sponsoring Member's proprietary accounts at NSCC and the entire amount of the Sponsoring Member Required Fund Deposit may be used to satisfy any amount allocated against a Sponsoring Member, whether in its capacity as a Member, a Sponsoring Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on a Sponsoring Member pursuant to Section 9(b) of proposed Rule 2C, the Sponsoring Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Sponsoring Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account pursuant to proposed Rule 56), its Sponsoring Member Required Fund Deposit, and its Agent Clearing Member Required Fund Deposits, if any, for each of its Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 2C, Section 10 (Restrictions on Access to Services by a Sponsoring Member)

Section 10 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsoring Member's access to NSCC's services.

Section 10(a) of proposed Rule 2C would provide that the Board of Directors may at any time, upon NSCC providing notice to a Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsoring Member in its capacity as a Sponsoring Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally or prohibit or limit such Sponsoring Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsoring Member.

Section 10(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsoring Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Sponsoring Member and to cease to act for such Sponsoring Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsoring Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 10(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsoring Member in its capacity as a Sponsoring Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and NSCC shall cease to act for all of the Sponsored Members of the affected Sponsoring Member (unless such Sponsored Members are also Sponsored Members of other Sponsoring Members). Section 10(c) would also provide that if NSCC suspends, prohibits or limits a Sponsoring Member in its capacity as a Sponsoring Member with respect to such Sponsoring Member's access to services offered by NSCC, NSCC shall

[63] NSCC believes the most likely circumstance in which it would exercise this authority would be in the context of a Sponsoring Member default. If, in such circumstance, NSCC realizes a profit in closing out the positions associated with a proprietary account of the Sponsoring Member, but incurs a loss in closing out the positions associated with the Sponsored Member Sub-Accounts of the Sponsoring Member, it would offset its obligation to turn over to the Sponsoring Member the gains in relation to the Sponsoring Member's proprietary account against the obligations of the Sponsoring Member under the Sponsoring Member Guaranty.

decline to accept or process data from the Sponsoring Member on Sponsored Member Transactions and shall suspend the Sponsored Members of the affected Sponsoring Member (unless they are also Sponsored Members of other Sponsoring Members) for so long as NSCC is suspending, prohibiting or limiting the Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. In addition, Section 10(c) would provide that NSCC, in in sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions or permit the Sponsored Members to complete their settlement.

This is different from how NSCC would treat Agent Clearing Member Transactions of an Agent Clearing Member under Section 9 of proposed Rule 2D if NSCC ceased to act for the Agent Clearing Member. Specifically, for Agent Clearing Member Transactions, as proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC; however, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 11 (Restrictions on Access to Services by a Sponsored Member)

Section 11 of proposed Rule 2C would establish the rights of NSCC to restrict a Sponsored Member's access to NSCC's services.

Section 11(a) of proposed Rule 2C would provide that the Board of Directors may at any time upon NSCC providing notice to a Sponsored Member and its Sponsoring Member pursuant to Section 5 of Rule 45 (Notices), suspend a Sponsored Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Sponsored Member with respect to access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Sponsored Member.

Section 11(b) of proposed Rule 2C would provide that Rule 46 shall apply with respect to a Sponsored Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend a Sponsored Member and to cease to act for such Sponsored Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit a Sponsored Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 11(c) of proposed Rule 2C would provide that if NSCC ceases to act for a Sponsored Member, Section 14 of proposed Rule 56 shall apply.

Section 11(d) of proposed Rule 2C would provide that NSCC shall cease to act for a Sponsored Member that is no longer in compliance with the requirements of Section 3(a) of proposed Rule 2C.

Proposed Rule 2C, Section 12 (Insolvency of a Sponsoring Member)

Section 12(a) of proposed Rule 2C would provide that a Sponsoring Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent, as required by Section 1 of Rule 20 (Insolvency) for other Members. A Sponsoring Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats a Sponsoring Member as insolvent.

Section 12(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsoring Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsoring Member pursuant to Section 10 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsoring Member, NSCC shall decline to accept or process data from the Sponsoring Member, including Sponsored Member Transactions, and NSCC shall terminate the membership of all of the insolvent Sponsoring Member's Sponsored Members unless they are the Sponsored Members of another Sponsoring Member. Any Sponsored Member Transactions which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, shall determine whether to close-out the affected Sponsored Member Transactions and/or permit the Sponsored Members to complete their settlement. This is different from how NSCC would treat Agent Clearing Member Transactions. As described above, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC. However, with respect to Sponsored Member Transactions, consistent with FICC's Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. This is because NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2C, Section 13 (Insolvency of a Sponsored Member)

Section 13 of proposed Rule 2C would establish NSCC's rights in the event of an insolvency of a Sponsored Member.

Section 13(a) of proposed Rule 2C would provide that a Sponsored Member and its Sponsoring Member (to

the extent it has knowledge thereof) shall be obligated to immediately notify NSCC that the Sponsored Member is insolvent or that the Sponsored Member would be unable to perform any of its material contracts, obligations or agreements in the same manner as required by Section 1 of Rule 20 (Insolvency) for other Members. For purposes of Section 13 of proposed Rule 2C, a Sponsoring Member shall be deemed to have knowledge that a Sponsored Member is insolvent or would be unable to perform on any of its material contracts, obligations or agreements if one or more duly authorized representatives of the Sponsoring Member, in its capacity as such, has knowledge of such matters. A Sponsored Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats a Sponsored Member as insolvent.

Section 13(b) of proposed Rule 2C would provide that in the event that NSCC determines to treat a Sponsored Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Sponsored Member pursuant to Section 11 of the proposed Rule 2C. If NSCC ceases to act for the insolvent Sponsored Member, Section 14 of proposed Rule 56 shall apply with respect to the close-out of the insolvent Sponsored Member's Sponsored Member Transactions.

Proposed Rule 2C, Section 14 (Liquidation of Sponsored Member and Related Sponsoring Member Positions)

Section 14 of proposed Rule 2C would provide a mechanism by which a Sponsoring Member may cause the termination and liquidation of a Sponsored Member's positions arising from Sponsored Member Transactions between the Sponsoring Member and its Sponsored Member that have been novated to NSCC. Specifically, in the event (i) the Sponsoring Member triggers the termination of a Sponsored Member's positions or (ii) NSCC ceases to act for the Sponsored Member and the Sponsoring Member does not continue to perform the obligations of the Sponsored Member, both the Sponsored Member's positions and the Sponsoring Member's corresponding positions arising from the Sponsored Member Transactions between the Sponsoring Member and the Sponsored Member would be terminated. Thereupon, the Sponsoring Member would calculate a net liquidation value of such terminated positions, which liquidation value would be paid either to or by the Sponsored Member by or to the Sponsoring Member. NSCC would not, as a practical matter, be involved in such settlement and would not need to take any market action because the termination of the Sponsored Member's positions and the corresponding Sponsoring Member's positions would leave NSCC flat. Additionally, the Sponsoring Member would indemnify NSCC for any claim by a Sponsored Member arising out of the Sponsoring Member's calculation of the net liquidation value.

Section 14(a) of proposed Rule 2C would specify the scope of positions to which Section 14 of proposed Rule 2C applies. It would state that Section 14 only applies with respect to the liquidation of positions resulting from Sponsored Member Transactions that have been novated to NSCC.

Section 14(a) of proposed Rule 2C would further state that such section would only apply if (i) a Sponsoring Member is a Defaulting Member and NSCC has not ceased to act for the Sponsoring Member and (ii) a Corporation Default has not occurred. This is because, as described above in Section 12(b) of proposed Rule 2C, NSCC would have discretion in the event it ceases to act for a Sponsoring Member to close-out the positions of Sponsored Members for which the defaulting Sponsoring Member was responsible or to allow them to settle. If NSCC does close-out such positions, it would do so in accordance with Section 14 of proposed Rule 56. If a Corporation Default has occurred with respect to NSCC, each Sponsored Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 14(b) of proposed Rule 2C would set out the process by which a Sponsoring Member or NSCC may cause the termination of a Sponsored Member's positions. It would provide that on any Business Day, the Sponsoring Member or NSCC may cause such termination by delivering a notice to NSCC or the Sponsoring Member, respectively. NSCC anticipates that each Sponsored Member and Sponsoring Member would agree in the bilateral documentation between them as to what circumstances or events give rise to the ability of the Sponsoring Member to deliver a notice to NSCC terminating the Sponsored Member's positions.[64]

The notice submitted by a Sponsoring Member to NSCC (or vice versa) would cause the termination of all of the SFT Positions of the Sponsored Member established in the Sponsored Member Sub-Account. The notice would also cause the immediate termination of the corresponding SFT Positions of the Sponsoring Member established in the Sponsoring Member's proprietary SFT Account. The effect of such terminations would be to leave NSCC flat.

Section 14(b) of proposed Rule 2C would also provide that the termination of the Sponsored Member's positions (and the Sponsoring Member's corresponding positions) would be effected by the Sponsoring Member's establishment of a final net settlement position for each eligible security with a distinct CUSIP number (''Final Net Settlement Position'').

Section 14(c) of proposed Rule 2C would specify how the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C would be liquidated (*i.e.,* how such positions would be converted into an amount payable). It would also provide how the amount payable arising from the liquidation of the Final Net Settlement Positions would be discharged.

Specifically, Section 14(c) of proposed Rule 2C would first provide that the Sponsoring Member would liquidate the Final Net Settlement Positions established pursuant to Section 14(b) of proposed Rule 2C by establishing (i) a single liquidation amount in respect of the Sponsored Member's Final Net Settlement Positions (a ''Sponsored Member Liquidation Amount'') and (ii) a single liquidation amount in respect of the Sponsoring Member's Final Net Settlement Positions (a ''Sponsoring Member Liquidation Amount''). The Sponsored Member Liquidation Amount would be owed either by NSCC to the Sponsored Member or by the Sponsored Member to NSCC because it would relate to the Sponsored Member's Final

[64] It bears noting in this regard that termination of the Sponsored Member's positions would not be the exclusive mechanism by which a Sponsoring Member may limit its credit risk. As described above, under Section 2(m) of proposed Rule 2C, a Sponsoring Member may voluntarily elect to terminate its status as a Sponsoring Member in respect of one or more Sponsored Members. Such a termination would not affect the settlement of the Sponsored Member's existing positions but would restrict the ability of the Sponsored Member to have its future trades accepted for novation by NSCC through such Sponsoring Member. The proposed rule change in Section 14(b) of proposed Rule 2C would not affect the functioning of the proposed rule change in Section 2(m) of proposed Rule 2C or the general ability of a Sponsoring Member and the Sponsored Member to agree on the circumstances of when the Sponsoring Member may terminate its status as Sponsoring Member for the Sponsored Member.

Net Settlement Positions with NSCC, while the Sponsoring Member Liquidation Amount would be owed either by NSCC to the Sponsoring Member or by the Sponsoring Member to NSCC because it would relate to the Sponsoring Member's Final Net Settlement Positions with NSCC.

Because the Final Net Settlement Positions of the Sponsoring Member would be identical to, but in the opposite direction of, the Final Net Settlement Positions of the Sponsored Member, the Sponsored Member Liquidation Amount would equal the Sponsoring Member Liquidation Amount. Therefore, if NSCC were to owe the Sponsored Member Liquidation Amount to the Sponsored Member, the Sponsoring Member would owe the Sponsoring Member Liquidation Amount to NSCC. By the same token, if the Sponsored Member were to owe the Sponsored Member Liquidation Amount to NSCC, NSCC would owe the Sponsoring Member the Sponsoring Member Liquidation Amount. In all instances, NSCC would owe and be owed the same amount of money.

Section 14(c) of proposed Rule 2C would also provide how the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount. It would state that the Sponsoring Member may calculate the Sponsoring Member Liquidation Amount based on prevailing market prices of the relevant securities and/or the gains realized and losses incurred by the Sponsoring Member in hedging its risk associated with the liquidation of the Sponsoring Member's Final Net Settlement Positions. Section 14(c) of proposed Rule 2C would further clarify that such Sponsoring Member Liquidation Amount may also take into account any losses and expenses incurred by the Sponsoring Member in connection with the liquidation of the positions.

Section 14(c) of proposed Rule 2C would further provide that, if a Sponsored Member Liquidation Amount is due to NSCC, the Sponsoring Member would be obligated to pay such Sponsored Member Liquidation Amount to NSCC under the Sponsoring Member Guaranty and that this obligation would, automatically and without further action, be set off against the obligation of NSCC to pay the corresponding Sponsoring Member Liquidation Amount to the Sponsoring Member. By virtue of such setoff, the Sponsored Member's obligation to NSCC would be discharged, as would NSCC's obligation to the Sponsoring Member. The Sponsoring Member would, however, have a reimbursement claim against the Sponsored Member in an amount equal to the Sponsored Member Liquidation Amount. This reimbursement claim would arise as a matter of law by virtue of the Sponsoring Member's performance under Sponsoring Member Guaranty, though Sponsoring Members and Sponsored Members may specify terms related to the reimbursement claim in their bilateral submission. NSCC would have no rights or obligations in respect of any such reimbursement claim.

If a Sponsored Member Liquidation Amount were owed by NSCC to the Sponsored Member, Section 14(c) of proposed Rule 2C would provide for the Sponsoring Member to satisfy that obligation by transferring the Sponsored Member Liquidation Amount to the Sponsoring Member's account at its Settling Bank (''Sponsoring Member Settling Bank Omnibus Account''). Section 14(c) of proposed Rule 2C would state that, to the extent the Sponsoring Member makes such a transfer, it would discharge NSCC's obligation to transfer the Sponsored Member Liquidation Amount to the Sponsored Member and the Sponsoring Member's corresponding obligation to transfer the Sponsoring Member Liquidation Amount to NSCC.

Section 14(d) of proposed Rule 2C would provide for the Sponsoring Member to indemnify NSCC and its employees, officers, directors, shareholders, agents, and Members (collectively, the ''Sponsoring/Sponsored Membership Program Indemnified Parties'' or ''SMP Indemnified Parties'') for any and all losses, liability, or expenses arising from any claim by an affected Sponsored Member disputing the Sponsoring Member's calculation of any Sponsored Member Liquidation Amount or Sponsoring Member Liquidation Amount.

Section 14(e) of proposed Rule 2C would provide that NSCC acknowledges that a Sponsoring Member may take a security interest in NSCC's obligations to a Sponsored Member in respect of its transactions that have been novated to NSCC by such Sponsoring Member and established in the Sponsoring Member's Sponsored Member Sub-Account for the Sponsored Member. Such security interest would not impose new obligations on NSCC but could allow the Sponsoring Member to direct NSCC to submit payments due to the Sponsored Member to the Sponsoring Member, so that the Sponsoring Member can apply such amounts to the Sponsored Member's unsatisfied obligations to the Sponsoring Member.

(B) Proposed Rule 2D—Agent Clearing Members

NSCC is proposing to add Rule 2D, entitled ''Agent Clearing Members.'' This new rule would govern the proposed agent clearing membership and would be comprised of 12 sections, each of which is described below.

Proposed Rule 2D, Section 1 (General)

Section 1 of proposed Rule 2D would be a general provision regarding the Rules applicable to Agent Clearing Members.

Section 1 of proposed Rule 2D would provide that NSCC will permit a Member that is approved to be an Agent Clearing Member to submit transactions to NSCC for novation on behalf of one or more of the Agent Clearing Member's Customers. Section 1 of proposed Rule 2D would further provide that the rights, liabilities and obligations of Agent Clearing Members shall be governed by proposed Rule 2D, and that references to the term ''Member'' in other Rules would not apply to Agent Clearing Members, in their respective capacities as such, unless specifically noted as such in proposed Rule 2D or in such other Rules.

Section 1 of proposed Rule 2D would also provide that an Agent Clearing Member shall continue to have all of the rights, liabilities and obligations as set forth in the Rules and in any agreement between it and NSCC pertaining to its status as a Member, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an Agent Clearing Member except as contemplated under Sections 6, 7 and 8 of proposed Rule 2D.

Proposed Rule 2D, Section 2 (Qualifications of Agent Clearing Members, the Application Process and Continuance Standards)

Section 2 of proposed Rule 2D would establish the eligibility requirements for Members that wish to become Agent Clearing Members, the membership application process that would be required of each Member to become an Agent Clearing Member, the on-going membership requirements that would apply to Agent Clearing Members, as well as the requirements regarding an Agent Clearing Member's election to voluntarily terminate its membership.

Under Section 2(a) of proposed Rule 2D, any Member would be eligible to apply to become an Agent Clearing Member; however, if a Member is a Registered Broker-Dealer, such Member would only be permitted to apply to become an Agent Clearing Member if it has (1) Net Worth of at least $25 million

and (2) excess net capital over the minimum net capital requirement imposed by the Commission (or such higher minimum capital requirement imposed by the Member's designated examining authority) of at least $10 million.[65] As proposed, NSCC may require that a Person be a Member for a certain time period before that Person may be considered to become an Agent Clearing Member.

Section 2(b) of proposed Rule 2D would provide that each Member applicant to become an Agent Clearing Member would be required to provide an application and other information requested by NSCC. Agent Clearing Member applications shall first be reviewed by NSCC and would require the Board of Directors' approval, unless the Member applicant is already a Sponsoring Member under proposed Rule 2C or a sponsoring member of FICC. NSCC believes this approach to the Board of Directors' approval for Agent Clearing Members is appropriate in light of the fact that the critical components of the FICC sponsoring member applications as well as the NSCC Agent Clearing Member and Sponsoring Member applications and the criteria that the respective boards assess when determining whether to admit a Member in such respective capacities are substantially similar.

Under Section 2(c) of proposed Rule 2D, if the Agent Clearing Member application is denied, such denial would be handled in accordance with Section 1 of Rule 2A (Initial Membership Requirements).

As proposed in Section 2(d) of proposed Rule 2D, NSCC may impose additional financial requirements on an Agent Clearing Member applicant based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transaction such applicant proposes to process through NSCC as an Agent Clearing Member and the overall financial condition of such applicant. Under the proposal, with respect to an application of a Member to become an Agent Clearing Member that requires the Board of Directors' approval, the Board of Directors shall also approve any increased financial requirements imposed by NSCC in connection with the approval of the application, and NSCC would thereafter regularly review such Agent Clearing Member regarding its compliance with the increased financial requirements.[66]

In addition, under Section 2(e) of proposed Rule 2D, NSCC may require each Agent Clearing Member or any Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability within the meaning of Rule 15 (Assurances of Financial Responsibility and Operational Capability), as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.[67]

Section 2(f) of proposed Rule 2D would provide that each Member whose Agent Clearing Member application is approved would sign and deliver to NSCC an agreement between NSCC and the Member and specifies the terms and conditions deemed by NSCC to be necessary in order to protect itself and its participants (''Agent Clearing Member Agreement'') and a related legal opinion in a form satisfactory to NSCC.

Section 2(g) of proposed Rule 2D would provide that each Agent Clearing Member shall submit to NSCC, within the timeframes and in the formats required by NSCC, the reports and information that all Members are required to submit regardless of type of Member and the reports and information required to be submitted for its respective type of Member, all pursuant to Section 2 of Rule 2B (Ongoing Membership Requirements and Monitoring) and, if applicable, Addendum O (Admission of Non-US Entities as Direct NSCC Members).

Section 2(h) of proposed Rule 2D would provide that an Agent Clearing Member's books and records, insofar as they relate to the Agent Clearing Member Transactions submitted to NSCC, shall be open to the inspection of the duly authorized representatives of NSCC to the same extent provided in Rule 2A (Initial Membership Requirements) for other Members.

Section 2(i) of proposed Rule 2D would provide that an Agent Clearing Member shall promptly inform NSCC, both orally and in writing, if it is no longer in compliance with the relevant standards and qualifications for applying to become an Agent Clearing Member set forth in the proposed Rule 2D. Notification must take place immediately and in no event later than 2 Business Days from the date on which the Agent Clearing Member first learns of its non-compliance. As proposed, NSCC would assess a fine in accordance with the Fine Schedule in Addendum P against any Agent Clearing Member that fails to so notify NSCC.[68] If the Agent Clearing Member fails to remain in compliance with the relevant standards and qualifications, NSCC would, if necessary, undertake appropriate action to determine the status of the Agent Clearing Member and its continued eligibility as such. In addition, NSCC may review the financial responsibility and operational capability of the Agent Clearing Member, and otherwise require from the Agent Clearing Member additional reports of its financial or operational condition at such intervals and in such detail as NSCC shall determine. In addition, if NSCC has reason to believe that an Agent Clearing Member may fail to comply with any of the Rules applicable to Agent Clearing Members, it may require the Agent

[65] NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to reflect the additional responsibility that the applicant would undertake as an Agent Clearing Member. These financial minimums are determined based on NSCC's assessment of the minimum capital that would be necessary for a broker-dealer to conduct meaningful level of NSCC-cleared activity while serving as a credit counterparty in respect of others' trades. In addition, NSCC is proposing these financial minimums for Registered Broker-Dealer Agent Clearing Member applicants to be consistent with proposed requirements applicable to Registered Broker-Dealer Sponsoring Member applicants. NSCC believes this approach to financial minimums is appropriate because both Sponsoring Members and Agent Clearing Members would be viewed and surveilled as the credit counterparties to NSCC in respect of the transactions that they submit for clearing in respect of Sponsoring Member Sub-Accounts and Agent Clearing Member Customer Omnibus Accounts, respectively. Although the model of clearing would differ as between Sponsoring Members and Agent Clearing Members, both would be types of Members that would be standing behind the credit of their clients. Accordingly, NSCC believes it is appropriate to use consistent financial minimums.

[66] If the increased financial requirements are imposed in connection with an Agent Clearing Member application that does not require the Board of Directors' approval, the increased financial requirements would not be subject to the Board of Directors' approval. Nonetheless, once an Agent Clearing Member application is approved with increased financial requirements, NSCC would thereafter regularly review such Agent Clearing Member regarding its continued adherence to such increased financial requirements as well as determine whether such increased financial requirements are still appropriate. If the Agent Clearing Member is unable to adhere to the increased financial requirements, the Board of Directors may, pursuant to Section 9 of proposed Rule 2D, suspend, prohibit or limit the Agent Clearing Member's access to NSCC's services.

[67] As an example, NSCC may require an Agent Clearing Member or an Agent Clearing Member applicant to furnish adequate assurances of such Agent Clearing Member or Agent Clearing Member applicant's financial responsibility and operational capability if NSCC has concerns about such Agent Clearing Member or Agent Clearing Member applicant's overall financial health or credit rating.

[68] *See* Addendum P (Fine Schedule), *supra* note 4.

Clearing Member to provide it, within such timeframe, and in such detail, and pursuant to such manner as NSCC shall determine, with assurances in writing of a credible nature that the Agent Clearing Member shall not, in fact, violate any of the Rules.

Section 2(j) of proposed Rule 2D would provide that in the event that an Agent Clearing Member fails to remain in compliance with the relevant requirements of the Rules or the Agent Clearing Member Agreement, NSCC shall have the right to cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member in accordance with Section 9 of proposed Rule 2D or as a Member more generally, unless the Agent Clearing Member requests that such action not be taken and NSCC determines that, depending upon the specific circumstances and the record of the Agent Clearing Member, it is appropriate instead to establish for such Agent Clearing Member a time period, which shall be determined by NSCC and which shall be no longer than 30 calendar days unless otherwise determined by NSCC, during which the Agent Clearing Member must resume compliance with such requirements. As proposed, in the event that the Agent Clearing Member is unable to satisfy such requirements within the time period specified by NSCC, NSCC shall, pursuant to the Rules, cease to act for the Agent Clearing Member in its capacity as an Agent Clearing Member pursuant to Section 9 of the proposed Rule 2D or as a Member more generally.

Section 2(k) of proposed Rule 2D would provide that if the sum of the Volatility Charges applicable to an Agent Clearing Member's Agent Clearing Member Customer Omnibus Account(s) and its other accounts at NSCC exceeds its Net Member Capital, the Agent Clearing Member shall not be permitted to submit activity into its Agent Clearing Member Customer Omnibus Account(s), unless otherwise determined by NSCC in order to promote orderly settlement.[69] As proposed, an ''Agent Clearing Member Customer Omnibus Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding Agent Clearing Member Transactions that an Agent Clearing Member enters into on behalf of Customers and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions, and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement).

Section 2(l) of proposed Rule 2D would provide that an Agent Clearing Member may voluntarily elect to terminate its status as an Agent Clearing Member by providing NSCC with a written notice from an Agent Clearing Member to NSCC that the Agent Clearing Member is voluntarily electing to terminate its status as an Agent Clearing Member (''Agent Clearing Member Voluntary Termination Notice''). The Agent Clearing Member shall specify in the Agent Clearing Member Voluntary Termination Notice a desired date for such termination, which date shall not be prior to the scheduled Final Settlement Date of any remaining obligation owed by the Agent Clearing Member to NSCC as of the time such Agent Clearing Member Voluntary Termination Notice is submitted to NSCC, unless otherwise approved by NSCC.

Section 2(l) of proposed Rule 2D would also provide that such termination would not be effective until accepted by NSCC, which shall be no later than 10 Business Days after the receipt of the Agent Clearing Member Voluntary Termination Notice from such Agent Clearing Member. NSCC's acceptance shall be evidenced by a notice to NSCC's participants announcing the termination of the Agent Clearing Member's status as such and the date on which the termination of the Agent Clearing Member's status as an Agent Clearing Member becomes effective (''Agent Clearing Member Termination Date''). As proposed, after the close of business on the Agent Clearing Member Termination Date, the Agent Clearing Member shall no longer be eligible to submit Agent Clearing Member Transactions. If any Agent Clearing Member Transaction is submitted to NSCC by the Agent Clearing Member that is scheduled to settle after the Agent Clearing Member Termination Date, such Agent Clearing Member's Agent Clearing Member Voluntary Termination Notice would be deemed void, and the Agent Clearing Member would remain subject to the proposed Rule 2D as if it had not given such Agent Clearing Member Voluntary Termination Notice.

Section 2(m) of proposed Rule 2D would provide that an Agent Clearing Member's voluntary termination of its status as such shall not affect its obligations to NSCC, or the rights of NSCC, with respect to Agent Clearing Member Transactions submitted to NSCC before the applicable Agent Clearing Member Termination Date. Any such Agent Clearing Member Transactions that have been novated to NSCC shall continue to be processed by NSCC. The return of the Agent Clearing Member's Clearing Fund deposit shall be governed by Section 7 of Rule 4 (Clearing Fund). If an Event Period were to occur after an Agent Clearing Member has submitted the Agent Clearing Member Voluntary Termination Notice but on or prior to the Agent Clearing Member Termination Date, in order for the Agent Clearing Member to benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4, the Agent Clearing Member would need to comply with the provisions of Section 6 of Rule 4 and submit a Loss Allocation Withdrawal Notice, which notice, upon submission, shall supersede and void any pending Agent Clearing Member Voluntary Termination Notice previously submitted by the Agent Clearing Member.

Section 2(n) of proposed Rule 2D would provide that any non-public information furnished to NSCC pursuant to proposed Rule 2D shall be held in confidence as may be required under the laws, rules and regulations applicable to NSCC that relate to the confidentiality of records. Section 2(n) would also provide that each Agent Clearing Member shall maintain DTCC Confidential Information in confidence to the same extent and using the same means it uses to protect its own confidential information, but no less than a reasonable standard of care, and shall not use DTCC Confidential Information or disclose DTCC Confidential Information to any third party except as necessary to perform such Agent Clearing Member's obligations under the Rules or as otherwise required by applicable law. Section 2(n) would further provide that each Agent Clearing Member acknowledges that a breach of its confidentiality obligations under the Rules may result in serious and irreparable harm to NSCC and/or DTCC for which there is no adequate remedy at law. In addition, Section 2(n) would provide that in the event of such a breach by the Agent Clearing Member, NSCC and/or DTCC shall be entitled to seek any temporary or permanent injunctive or other equitable relief in addition to any monetary damages thereunder.[70]

[69] NSCC selected the Volatility Charges and Net Member Capital as the criteria for purposes of establishing the activity limit for Agent Clearing Members. This is because an Agent Clearing Member's total Volatility Charges being in excess of its Net Member Capital is an important indicator that the Agent Clearing Member's financial resources, as measured by its Net Capital, net assets or equity capital, may be insufficient to meet the largest component of its Required Fund Deposit (*i.e.,* Volatility Charges).

[70] Section 2(n) of proposed Rule 2D is designed to be consistent with provisions in the Rules

Proposed Rule 2D, Section 3 (Compliance With Laws)

Section 3 of proposed Rule 2D would provide that each Agent Clearing Member shall comply in all material respects with all applicable laws, including applicable laws relating to securities, taxation and money laundering, as well as global sanctions laws, in connection with the use of NSCC's services.

Proposed Rule 2D, Section 4 (Agent Clearing Member Transactions)

Section 4 of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC on behalf of one or more Customers' Securities Financing Transactions (''Agent Clearing Member Transactions'') in accordance with proposed Rule 56, as described below.

Proposed Rule 2D, Section 5 (Agent Clearing Member Agent Obligations)

Section 5 of proposed Rule 2D would establish rules-based obligations for Agent Clearing Members and the establishment of Agent Clearing Member Customer Omnibus Accounts.

Section 5(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be permitted to submit to NSCC for novation Agent Clearing Member Transactions entered into by the Agent Clearing Member as agent on behalf of one or more Customers. Any such submission shall be in accordance with proposed Rule 2D. As proposed, subject to the provisions of the Rules, an Agent Clearing Member's clearing of Agent Clearing Member Transactions for Customers (''Customer Clearing Service'') may be provided by an Agent Clearing Member to its Customers on any terms and conditions mutually agreed to by the Agent Clearing Member and its Customers; provided, that each Agent Clearing Member shall, before providing Customer Clearing Service to any Customer, enter into an agreement with that Customer that binds the Customer to the provisions of the Rules applicable to Agent Clearing Member Transactions and Customers.

Section 5(b) of proposed Rule 2D would provide that, with respect to an Agent Clearing Member that submits Agent Clearing Member Transactions to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the Agent Clearing Member for the benefit of its Customers. Each Agent Clearing Member Customer Omnibus Account would be permitted to contain only (i) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as Transferor or (ii) SFTs entered into by the Agent Clearing Member, on behalf of a Customer, as a Transferee. An Agent Clearing Member would not be permitted to combine SFTs entered into as Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account. This is designed to ensure that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual Customer's activity (*i.e.,* that the positions are margined on a gross basis).[71]

Section 5(c) of proposed Rule 2D would provide that an Agent Clearing Member shall act solely as agent of its Customers in connection with the clearing of Agent Clearing Member Transactions; provided that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with Agent Clearing Member Transactions; and provided further, that the liabilities and obligations of NSCC with respect to Agent Clearing Member Transactions entered into by the Agent Clearing Member shall extend only to the Agent Clearing Member. Section 5(c) of proposed Rule 2D would further provide that, without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any Agent Clearing Member Transaction to any Customer on behalf of whom an Agent Clearing Member entered into the Agent Clearing Member Transaction.

Section 5(d) of proposed Rule 2D would provide that nothing in the Rules shall prohibit an Agent Clearing Member from seeking reimbursement from a Customer for payments made by the Agent Clearing Member (whether out of Clearing Fund deposits or otherwise) under the Rules, or as otherwise may be agreed between the Agent Clearing Member and the Customer.

Proposed Rule 2D, Section 6 (Clearing Fund Obligations)

Section 6 of proposed Rule 2D would set forth the Clearing Fund obligations.

Section 6(a) of proposed Rule 2D would provide that NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts for an Agent Clearing Member. Each Agent Clearing Member shall make and maintain so long as such Member is an Agent Clearing Member a deposit to the Clearing Fund as a Required Fund Deposit to support the activity in its Agent Clearing Member Customer Omnibus Account(s) (the ''Agent Clearing Member Required Fund Deposit''). Each Agent Clearing Member, so long as such Member is an Agent Clearing Member, shall also provide SLD to the Clearing Fund, as may be required pursuant to Rule 4A (Supplemental Liquidity Deposits), to support the activity in its Agent Clearing Member Customer Omnibus Account(s). Deposits to the Clearing Fund would be held by NSCC or its designated agents, to be applied as provided in the Rules.

Section 6(b) of proposed Rule 2D would provide that, in the ordinary course, for purposes of satisfying the Agent Clearing Member's Clearing Fund requirements under the Rules for its Member activity, its Agent Clearing Member activity, and, to the extent applicable, its Sponsoring Member activity, the Agent Clearing Member's proprietary accounts, its Agent Clearing Member Customer Omnibus Account(s), and its Sponsored Member Sub-Accounts, if any, shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time and without prior notice to the Agent Clearing Member (but being obligated to give notice to the Agent Clearing Member as soon as possible thereafter) and whether or not the Agent Clearing Member is in default of its obligations to NSCC, treat the Agent Clearing Member's accounts as a single account for the purpose of applying Clearing Fund deposits; apply Clearing Fund deposits made by the Agent Clearing Member with respect to any account as necessary to ensure that the Agent Clearing Member meets all of its obligations to NSCC under any other account(s); and otherwise exercise all rights to offset and net against the Clearing Fund deposits any net obligations among any or all of the accounts, whether or not any other Person is deemed to have any interest in such account.[72]

relating to the confidentiality of information furnished by participants. *See* Rule 2A (Initial Membership Requirements), *supra* note 4.

[71] If an Agent Clearing Member were permitted to maintain SFTs entered into as both Transferee and Transferor in the same Agent Clearing Member Customer Omnibus Account, the Required Fund Deposit obligations of the Agent Clearing Member could potentially be reduced by offsetting SFT Positions of different Customers in the same SFT Security.

[72] NSCC believes this is appropriate because the Clearing Fund deposits of an Agent Clearing Member are the proprietary assets of the Agent Clearing Member and NSCC generally has the right to apply the Clearing Fund deposits of a Member to any of the Member's obligations to NSCC,

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Section 6(c) of proposed Rule 2D would provide that the Agent Clearing Member Required Fund Deposit for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the Agent Clearing Member Transactions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the Agent Clearing Member Required Fund Deposit for each of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Section 6(d) of proposed Rule 2D would provide that Sections 1, 2, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of Rule 4 (Clearing Fund) shall apply to the Agent Clearing Member Required Fund Deposit with respect to obligations of an Agent Clearing Member under the Rules, including its obligations arising under the Agent Clearing Member Customer Omnibus Account(s), to the same extent as such sections apply to any Required Fund Deposit and any other obligations of a Member. For purposes of Section 1 of Rule 4, obligations and liabilities of a Member to NSCC that shall be secured shall include, without limitation, a Member's obligations as an Agent Clearing Member under the Rules, including, without limitation, any obligation of any such Agent Clearing Member to provide the Agent Clearing Member Required Fund Deposit and such Agent Clearing Member's obligations arising under SFTs established in the Agent Clearing Member Customer Omnibus Accounts of such Agent Clearing Member.

Section 6(e) of proposed Rule 2D would provide that an Agent Clearing Member shall be subject to such fines as may be imposed in accordance with the Rules for any late satisfaction of a Clearing Fund deficiency call.

Proposed Rule 2D, Section 7 (Right of Offset)

Section 7 of proposed Rule 2D would provide that in the ordinary course, with respect to satisfaction of any Agent Clearing Member's obligations under the Rules, the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts, the Agent Clearing Member's proprietary accounts, and the Agent Clearing Member's Sponsored Member Sub-Accounts, if any, at NSCC shall be treated separately, as if they were accounts of separate entities. Notwithstanding the previous sentence, however, NSCC may, in its sole discretion, at any time any obligation of the Agent Clearing Member arises in respect of any Agent Clearing Member Customer Omnibus Account, exercise a right of offset and net any such obligation against any obligations of NSCC to the Agent Clearing Member in respect of such Agent Clearing Member's proprietary accounts at NSCC.

Proposed Rule 2D, Section 8 (Loss Allocation Obligations)

Section 8 of proposed Rule 2D would establish loss allocation obligations for Agent Clearing Members.

Section 8(a) of proposed Rule 2D would provide that, to the extent NSCC incurs a loss or liability from a Defaulting Member Event or a Declared Non-Default Loss Event and a loss allocation obligation arises, that would be the responsibility of the Agent Clearing Member Customer Omnibus Account as if the Agent Clearing Member Customer Omnibus Account were a Member, NSCC shall calculate such loss allocation obligation and the Agent Clearing Member shall be, as principal, responsible for satisfying such obligations.

Section 8(b) of proposed Rule 2D would provide that the entire amount of the Required Fund Deposit associated with the Agent Clearing Member's proprietary accounts at NSCC and the entire amount of the Agent Clearing Member Required Fund Deposit may be used to satisfy any amount allocated against an Agent Clearing Member, whether in its capacity as a Member, an Agent Clearing Member, or otherwise. With respect to an obligation to make payment due to any loss allocation amounts assessed on an Agent Clearing Member pursuant to Section 8(a) of proposed Rule 2D, the Agent Clearing Member may instead elect to terminate its membership in NSCC pursuant to Section 6 of Rule 4 and thereby benefit from its Loss Allocation Cap pursuant to Section 4 of Rule 4; however, for the purpose of determining the Loss Allocation Cap for such Agent Clearing Member, its Required Fund Deposit shall be the sum of its Required Fund Deposits associated with its proprietary accounts at NSCC (including its proprietary SFT Account pursuant to proposed Rule 56), its Agent Clearing Member Required Fund Deposit for each of its Agent Clearing Member Customer Omnibus Accounts, and its Sponsoring Member Required Fund Deposit, if any.

Proposed Rule 2D, Section 9 (Restrictions on Access to Services by an Agent Clearing Member)

Section 9 of proposed Rule 2D would establish the rights of NSCC to restrict an Agent Clearing Member's access to NSCC's services.

Section 9(a) of proposed Rule 2D would provide that the Board of Directors may at any time upon NSCC providing notice to an Agent Clearing Member pursuant to Section 5 of Rule 45 (Notices), suspend an Agent Clearing Member in its capacity as an Agent Clearing Member from any service provided by NSCC either with respect to a particular transaction or transactions or with respect to transactions generally, or prohibit or limit such Agent Clearing Member's access to services offered by NSCC in the event that one or more of the factors set forth in Section 1 of Rule 46 (Restrictions on Access to Services) is present with respect to the Agent Clearing Member.

Section 9(b) of proposed Rule 2D would provide that Rule 46 shall apply with respect to an Agent Clearing Member in the same way as it applies to Members, including the Board of Directors' right to summarily suspend the Agent Clearing Member and to cease to act for such Agent Clearing Member. As under Rule 46, the Board of Directors would need to make the determination of whether to suspend, prohibit or limit an Agent Clearing Member's access to services offered by NSCC on the basis of the factors set forth in that rule.

Section 9(c) of proposed Rule 2D would provide that if NSCC ceases to act for an Agent Clearing Member in its capacity as an Agent Clearing Member, Section 14 of proposed Rule 56 shall apply and NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions and close-out any Agent Clearing Member Transactions that have been novated to NSCC. Section 9(c) would also provide that if NSCC suspends, prohibits or limits an Agent Clearing Member in its capacity as an Agent Clearing Member with respect to such Agent Clearing Member's access to services offered by NSCC, NSCC shall decline to accept or process data from the Agent Clearing Member on Agent Clearing Member Transactions for so long as NSCC is suspending, prohibiting or limiting the Agent Clearing Member. Furthermore, Section 9(c) would state that, in addition, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member

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regardless of whether those were the obligations that generated the Clearing Fund deposit requirement. NSCC therefore believes that, consistent with the FICC Sponsoring Member/Sponsored Member Program for the reasons described above in Item II(A)1(iii) ''Sponsoring Members and Sponsored Members,'' an Agent Clearing Member's Clearing Fund deposits should be available to satisfy any of the Agent Clearing Member's obligations to NSCC.

Transactions of a Sponsoring Member under Section 10 of proposed Rule 2C if NSCC ceases to act for the Sponsoring Member. With respect to such transactions, NSCC would have the option to either terminate or settle a Sponsored Member's positions after ceasing to act for the Sponsoring Member. The reason for this difference is that NSCC would have the practical and legal capability to make such an election because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customer's novated positions.

Proposed Rule 2D, Section 10 (Insolvency of an Agent Clearing Member)

Section 10(a) of proposed Rule 2D would provide that an Agent Clearing Member shall be obligated to immediately notify NSCC that (a) it fails, or is unable, to perform its contracts or obligations or (b) it is insolvent as required by Section 1 of Rule 20 (Insolvency) for other Members. An Agent Clearing Member shall be treated by NSCC in all respects as insolvent under the same circumstances set forth in Section 2 of Rule 20 for other Members. Section 3 of Rule 20 shall apply, in the same manner in which such section applies to other Members, in the case where NSCC treats an Agent Clearing Member as insolvent.

Section 10(b) of proposed Rule 2D would provide that in the event that NSCC determines to treat an Agent Clearing Member as insolvent pursuant to Rule 20 (Insolvency), NSCC shall have the right to cease to act for the insolvent Agent Clearing Member pursuant to Section 9 of proposed Rule 2D. If NSCC ceases to act for the insolvent Agent Clearing Member, NSCC shall decline to accept or process data from the Agent Clearing Member, including Agent Clearing Member Transactions. As proposed, NSCC would close-out any Agent Clearing Member Transactions which have been novated to NSCC.

This is different from how NSCC would treat Sponsored Member Transactions. As described above, NSCC would have the option to either terminate or settle a Sponsored Member's novated positions after ceasing to act for the Sponsoring Member. However, with respect to Agent Clearing Member Transactions, NSCC would close-out any such transactions which have been novated to NSCC. This is because NSCC would have the practical and legal capability to make such an election with respect to Sponsored Member Transactions because each Sponsored Member would be a limited-purpose member of NSCC. Accordingly, NSCC would have the requisite information about each of the Sponsored Member's novated positions (by virtue of each Sponsored Member's novated portfolio represented as a different sub-account of the Sponsoring Member (*i.e.,* Sponsored Member Sub-Account) on the books and records of NSCC) to make such an election. By contrast, an Agent Clearing Member's Customers would not be limited-purpose members of NSCC nor would NSCC know which transactions within an Agent Clearing Member Customer Omnibus Account belong to which Customers. As such, NSCC would not be able to separately terminate or complete settlement with respect to Customers' novated positions.

Proposed Rule 2D, Section 11 (Transfer of Agent Clearing Member Transactions in Agent Clearing Member Customer Omnibus Accounts)

Section 11 of proposed Rule 2D would (i) permit an Agent Clearing Member, upon a default of a Customer and consent of NSCC, to transfer Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member and (ii) govern how the transfer would be effectuated.

Section 11(a) of proposed Rule 2D would clarify the scope to which Section 11 of proposed Rule 2D applies. It would state that Section 11 would not apply if either (i) the relevant Agent Clearing Member is a Defaulting Member or (ii) a Corporation Default has occurred. This is because, as described above with respect to Section 10(b) of proposed Rule 2D, NSCC would close-out all Agent Clearing Member Transactions for which the defaulting Agent Clearing Member was responsible. If a Corporation Default has occurred with respect to NSCC, each Agent Clearing Member's positions would be closed out in accordance with Section 17 of proposed Rule 56.

Section 11(b) of proposed Rule 2D would set out the process by which an Agent Clearing Member may transfer the Agent Clearing Member Transactions of a defaulting Customer in one or more of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts. It would provide that, to the extent permitted under applicable laws and regulations, an Agent Clearing Member may, upon a default of a Customer and the consent of NSCC, transfer the Agent Clearing Member Transactions of the Customer established in one or more of the Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts from such Agent Clearing Member Customer Omnibus Accounts to the Agent Clearing Member's proprietary account at NSCC as a Member. As proposed, any such transfer shall occur by novation, such that the obligations between NSCC and the relevant Customer in respect of the Agent Clearing Member Transactions shall be terminated and replaced with identical obligations between NSCC and the Agent Clearing Member, acting as principal. Section 11(b) would also provide the Agent Clearing Member shall indemnify NSCC, and its employees, officers, directors, shareholders, agents, and Members, for any and all losses, liability, or expenses incurred by them arising from, or in relation to, any such transfer.

Proposed Rule 2D, Section 12 (Customer Acknowledgments)

Section 12 of proposed Rule 2D would provide that each Agent Clearing Member on behalf of each of its Customers agrees that such Customer, by participating in and entering into Agent Clearing Member Transactions through the Agent Clearing Member, understands, acknowledges, and agrees that: (a) The service provided by NSCC with regard to the Customer Clearing Service would be subject to and governed by the Rules; (b) the Rules shall govern the novation of Agent Clearing Member Transactions and all transactions between the Customer and its Agent Clearing Member resulting in the novation of such transactions, and at the time of novation of an Agent Clearing Member Transaction, the Customer on whose behalf it was submitted would be bound by the Agent Clearing Member Transaction automatically and without any further

action by the Customer or by its Agent Clearing Member, and the Customer agrees to be bound by the applicable provisions of the Rules in all respects; (c) NSCC shall be under no obligation to deal directly with the Customer, and NSCC may deal exclusively with the Customer's Agent Clearing Member; (d) NSCC shall have no obligations to the Customer with respect to any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, including with respect to any payment or delivery obligations; and (e) the Customer shall have no right to receive from NSCC, or any right to assert a claim against NSCC with respect to, nor shall NSCC be liable to the Customer for, any payment or delivery obligation in connection with any Agent Clearing Member Transactions submitted by an Agent Clearing Member on behalf of the Customer, and NSCC shall make any such payments or redeliveries solely to the relevant Agent Clearing Member.

(C) Proposed Rule 56—Securities Financing Transaction Clearing Service

NSCC is proposing to add Rule 56, entitled ''Securities Financing Transaction Clearing Service.'' This new rule would govern the proposed SFT Clearing Service and would be comprised of 18 sections, each of which is described below.

In connection with the proposed SFT Clearing Service, NSCC is proposing to add the following terms and definitions, as described below.

The term ''Aggregate Net SFT Close-out Value'' would mean, with respect to an SFT Member, the sum of the SFT Close-out Value (as defined below and in the proposed rule change) for each SFT Position to which the SFT Member is a party.

The term ''Approved SFT Submitter'' would mean a provider of transaction data on an SFT that the parties to the SFT have selected and NSCC has approved, subject to such terms and conditions as to which the Approved SFT Submitter and NSCC may agree.

The term ''Bilaterally Initiated SFT'' would mean an SFT, the Initial Settlement of which occurred prior to the submission of such SFT to NSCC.

The term ''Buy-In Amount'' would mean a net amount equal to (x) the Buy-In Costs or Deemed Buy-In Costs (as defined below and in the proposed rule change) of the SFT Securities (as defined below and in the proposed rule change) in respect of which a Transferor has effected a Buy-In, less (y) the amount of the SFT Cash for the relevant SFT (unless the Transferor effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, in which case (y) shall be the amount of the Corresponding SFT Cash (as defined below and in the proposed rule change)).

The term ''Contract Price'' would mean, with respect to SFT Securities subject to an SFT, the price of such securities at the time the SFT is submitted to NSCC for novation, which price shall be determined by the SFT Member parties to the relevant SFT and provided by an Approved SFT Submitter to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose; provided that if no such price is provided by the time required by NSCC, the ''Contract Price'' shall be the Current Market Price of the SFT Securities.

The term ''Corresponding SFT Cash'' would mean (a) in respect of a Recalled SFT (as defined below and in the proposed rule change) for which a Transferor has effected a Buy-In in respect of some, but not all, of the SFT Securities that are the subject of the SFT, the portion of the SFT Cash for such SFT equal to the product of (i) the percentage of the SFT Securities in respect of which the Transferor effected a Buy-In and (ii) the SFT Cash of the SFT; and (b) in respect of a Settling SFT which has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the portion of the SFT Cash of the Settling SFT equal to the product of (i) the percentage of the SFT Securities of the Settling SFT that the Linked SFT has as its subject and (ii) the SFT Cash of the Settling SFT.

The term ''Deemed Buy-In Costs'' would mean the product of the number of SFT Securities subject to the relevant Buy-In and the per-share price therefor on the date of the Buy-In obtained from a generally recognized source or the last bid quotation from such a source at the most recent close of trading for the SFT Security.

The term ''Defaulting SFT Member'' would mean an SFT Member for which NSCC has ceased to act in accordance with Section 14 of proposed Rule 56, as described below.

The term ''Distribution'' would mean, with respect to any SFT Security at any time, any cash payment of amounts equivalent to dividends and other distributions on the SFT Security.

The term ''Distribution Amount'' would mean, in respect of an SFT, an amount of cash equal to the product of: (a) The amount per security in respect of (x) a cash dividend on the SFT Securities that are the subject of the SFT or (y) an exchange of the SFT Securities that are the subject of the SFT for cash; and (b) the number of the relevant SFT Securities subject to the SFT.

The term ''Distribution Payment'' would mean an amount payable by one party to an SFT to the other party to the SFT during the term of the SFT in respect of a Distribution on the SFT Securities subject to the SFT.

The term ''Existing Master Agreement'' would mean, in respect of an SFT, a written agreement that (i) exists at the time transaction data for the SFT is submitted to NSCC by an Approved SFT Submitter, (ii) provides for, among other things, terms governing the payment and delivery obligations of the parties and (iii) the parties have established (by written agreement, oral agreement, course of conduct or otherwise) would govern such SFT.

The term ''Final Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (b) of the proposed definition of Securities Financing Transaction.

The term ''Final Settlement Date'' would mean the Business Day on which the final settlement of a transaction is scheduled to occur. If the transaction is an SFT, the Final Settlement Date means the Business Day on which the Final Settlement of the SFT is scheduled to occur in accordance with proposed Rule 56 or, if the SFT is accelerated in accordance with proposed Rule 56, the date to which the Final Settlement obligations have been accelerated.

The term ''Incremental Additional Independent Amount SFT Cash'' would mean, (a) in respect of a Linked SFT, the excess, if any, of the Independent Amount SFT Cash of the Linked SFT over the Independent Amount SFT Cash of the Settling SFT; (b) in respect of a Non-Returned SFT, the portion of the Price Differential payable by the Transferee, if any, that is attributable to the Independent Amount SFT Cash of the SFT (which shall be calculated by multiplying such Priced Differential by the excess, if any, of the Independent Amount Percentage (as defined below and in the proposed rule change) over 100%); and (c) in respect of any other SFT, the Independent Amount SFT Cash of such SFT.

The term ''Independent Amount Percentage'' would mean, in respect of an SFT, a percentage obtained by dividing the SFT Cash of such SFT by the Market Value SFT Cash (as defined below and in the proposed rule change) of such SFT.

The term ''Independent Amount SFT Cash'' would mean the portion, if any, of the SFT Cash for an SFT equal to the amount by which the SFT Cash for such

SFT at the time of the Initial Settlement exceeds the Contract Price of the SFT Securities that are the subject of such SFT.

The term ''Ineligibility Date'' would mean, with respect to an SFT, the date on which the SFT Security that is the subject of the SFT becomes an Ineligible SFT Security (as defined below and in the proposed rule change).

The term ''Ineligible SFT'' would mean an SFT that has, as its subject, SFT Securities that have become Ineligible SFT Securities.

The term ''Ineligible SFT Security'' would mean an SFT Security that is not eligible to be the subject of a novated SFT.

The term ''Initial Settlement'' would mean the exchange of SFT Securities for SFT Cash described in clause (a) of the proposed definition of Securities Financing Transaction.

The term ''Linked SFT'' would mean an SFT entered into by the pre-novation SFT Member parties to a Settling SFT that has the same Transferor, Transferee and subject SFT Securities (including CUSIP) as the Settling SFT. As proposed, a Linked SFT would include an SFT that has as its subject fewer SFT Securities than the corresponding Settling SFT but would not include an SFT that has as its subject more SFT Securities than the corresponding Settling SFT.

The term ''Market Value SFT Cash'' would mean the portion of the SFT Cash for an SFT equal to the amount of the SFT Cash for such SFT minus the Independent Amount SFT Cash of such SFT.

The term ''Price Differential'' would mean (a) for purposes of the discharge of offsetting Final Settlement and Initial Settlement obligations, (i) the SFT Cash for the Settling SFT (or if the Settling SFT has a greater quantity of SFT Securities as its subject than the corresponding Linked SFT, the Corresponding SFT Cash) minus (ii) the SFT Cash for the Linked SFT; and (b) for all other purposes, (i) the SFT Cash for the SFT minus (ii) the product of the Independent Amount Percentage, if any, and the Current Market Price of the SFT Securities.

The term ''Rate Payment'' would mean an amount payable from one party to an SFT to the other party to the SFT at the Final Settlement expressed as a percentage of the amount of SFT Cash for the SFT. As an example, if the Rate Payment is specified as 0.02%, the amount payable would be the product 0.02% and the SFT Cash for the SFT.

The term ''Recall Date'' would mean, in respect of a Recall Notice, the second Business Day following NSCC's receipt of such Recall Notice.

The term ''Recall Notice'' would mean a notice that triggers the provisions of Section 9(b) of proposed Rule 56, relating to a Buy-In in respect of an SFT and that is submitted by an Approved SFT Submitter on behalf of a Transferor in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

The term ''Recalled SFT'' would mean an SFT that has been novated to NSCC in respect of which a Recall Notice has been submitted.

The term ''Securities Financing Transaction'' or ''SFT'' would mean a transaction between two SFT Members pursuant to which (a) one SFT Member agrees to transfer specified SFT Securities to another SFT Member versus the SFT Cash; and (b) the Transferee agrees to retransfer such specified SFT Securities or equivalent SFT Securities (including quantity and CUSIP) to the Transferor versus the SFT Cash on the following Business Day.

The term ''Settling SFT'' would mean, as of any Business Day, an SFT that has been novated to NSCC, the Final Settlement of which is scheduled to occur on that Business Day.

The term ''SFT Account'' would mean a ledger maintained on the books and records of NSCC that reflects the outstanding SFTs that an SFT Member enters into and that have been novated to NSCC, the SFT Positions or SFT Cash associated with those transactions and any debits or credits of cash associated with such transactions effected pursuant to Rule 12 (Settlement). As proposed, the term ''SFT Account'' would include any Agent Clearing Member Customer Omnibus Account and any Sponsored Member Sub-Account.

The term ''SFT Cash'' would mean the specified amount of U.S. dollars that the Transferee agrees to transfer to the Transferor at the Initial Settlement of an SFT, (i) plus any Price Differential paid by NSCC to the SFT Member as Transferor or by the SFT Member as Transferee to NSCC during the term of the SFT and (ii) less any Price Differential paid by NSCC to the SFT Member as Transferee or by the SFT Member as Transferor to NSCC during the term of the SFT.

The term ''SFT Close-out Value'' would mean, with respect to an SFT Position of an SFT Member, an amount equal to: (i) If the SFT Member is the Transferor of the SFT Securities that are the subject of such SFT, (a) the CNS Market Value of the SFT Securities that are the subject of such SFT minus (b) the SFT Cash for such SFT; and (ii) if the SFT Member is a Transferee of the SFT Securities that are the subject of such SFT, (a) the SFT Cash for such SFT minus (b) the CNS Market Value of the SFT Securities that are the subject of such SFT.

The term ''SFT Long Position'' would mean the number of units of an SFT Security which an SFT Member is entitled to receive from NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''SFT Member'' would mean any Member, Sponsored Member acting in its principal capacity, Sponsoring Member acting in its principal capacity or Agent Clearing Member acting on behalf of a Customer, in each case that is a party to an SFT, permitted to participate in NSCC's SFT Clearing Service.

The term ''SFT Position'' would mean an SFT Member's SFT Long Position or SFT Short Position (as defined below and in the proposed rule change) in an SFT Security that is the subject of an SFT that has been novated to NSCC.

The term ''SFT Security'' would mean a security that is eligible to be the subject of an SFT novated to NSCC and is included in the list for which provision is made in proposed Section 1(g) of Rule 3 (Lists to be Maintained), as described below. As proposed, if any new or different security is exchanged for any SFT Security in connection with a recapitalization, merger, consolidation or other corporate action, such new or different security shall, effective upon such exchange, become an SFT Security in substitution for the former SFT Security for which such exchange is made.

The term ''SFT Short Position'' would mean the number of units of an SFT Security that an SFT Member is obligated to deliver to NSCC at Final Settlement of an SFT against payment of the SFT Cash.

The term ''Transferee'' would mean the SFT Member party to an SFT that agrees to receive SFT Securities from the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

The term ''Transferor'' would mean the SFT Member party to an SFT that agrees to transfer SFT Securities to the other SFT Member party to the SFT in exchange for SFT Cash in connection with the Initial Settlement of the SFT.

Proposed Rule 56, Section 1 (General)

Section 1 of proposed Rule 56 would be a general provision regarding the SFT Clearing Service applicable to Members, Sponsoring Members and Agent Clearing Members that participate in the proposed SFT Clearing Service.

Section 1(a) of proposed Rule 56 would establish that NSCC may accept for novation SFTs entered into between (i) a Member and another Member, (ii) a Sponsoring Member and its Sponsored Member, or (iii) an Agent Clearing Member acting on behalf of a Customer and either (x) a Member or (y) the same or another Agent Clearing Member acting on behalf of a Customer.

Section 1(b) of proposed Rule 56 would provide that any SFT that is submitted to NSCC for novation, and any Member and Sponsored Member that enters into an SFT (and any Customer on behalf of whom an Agent Clearing Member enters into an SFT) shall be subject to the provisions of proposed Rule 56; provided that Sections 15 and 16 of proposed Rule 56 shall only apply to Sponsoring Members, Agent Clearing Members, Sponsored Members and Customers, as applicable.

Section 1(c) of proposed Rule 56 would further provide that any amount of cash described in proposed Rule 56 may be rounded up to the nearest one cent, five cents, 10 cents, 25 cents or dollar according to the rounding convention requested by the SFT Member parties to the relevant SFT as conveyed to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose.

Proposed Rule 56, Section 2 (Eligibility for SFT Clearing Service: SFT Member)

Section 2 of proposed Rule 56 would establish the eligibility requirements for using the proposed SFT Clearing Service.

Under Section 2 of proposed Rule 56, NSCC may permit any Member acting in its principal capacity, Sponsored Member acting in its principal capacity, or Agent Clearing Member acting on behalf of a Customer to be an SFT Member and participate in the proposed SFT Clearing Service.

Section 2 of proposed Rule 56 would provide that the rights, liabilities and obligations of SFT Members in their capacity as such shall be governed by the proposed Rule 56. References to a Member would not apply to an SFT Member in its capacity as such, unless specifically noted in the proposed Rule 56 or in such other Rules as applicable to an SFT Member.

Section 2 of proposed Rule 56 would also provide that an SFT Member that participates in NSCC in another capacity pursuant to another Rule, or which has entered into an agreement with NSCC independent from proposed Rule 56, shall continue to have all the rights, liabilities and obligations set forth in such other Rule or pursuant to such agreement, and such rights, liabilities and obligations shall be separate from its rights, liabilities and obligations as an SFT Member, except as contemplated under Sections 15 and 16 of proposed Rule 56, as described below.

Proposed Rule 56, Section 3 (Membership Documents)

Section 3 of proposed Rule 56 would govern the documents that SFT Member applicants would be required to complete and deliver to NSCC. Specifically, Section 3 of proposed Rule 56 would provide that to become an SFT Member, each applicant shall complete and deliver to NSCC documents in such forms as may be prescribed by NSCC from time to time and any other information requested by NSCC.

Proposed Rule 56, Section 4 (Securities Financing Transaction Data Submission)

Section 4 of proposed Rule 56 would govern the submission of transaction data for SFTs into NSCC for novation by Approved SFT Submitters on behalf of Transferors (*e.g.,* lenders) and Transferees (*e.g.,* borrowers).

Section 4(a) of proposed Rule 56 would provide that in order for an SFT to be submitted to NSCC, the transaction data for the SFT must be submitted to NSCC by an Approved SFT Submitter in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Any such transaction data shall be submitted to NSCC on a locked-in basis. In determining whether to accept transaction data from an Approved SFT Submitter, NSCC may require the Approved SFT Submitter to provide a Cybersecurity Confirmation. This is consistent with the existing requirement in Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) for organizations reporting trade data to NSCC.[73]

Section 4(b) of proposed Rule 56 would provide that NSCC would not act upon any instruction received from an Approved SFT Submitter in respect of an SFT unless each SFT Member (other than an SFT Member that is a Sponsored Member) designated by the Approved SFT Submitter as a party to such SFT has consented, in a writing delivered to NSCC, to the Approved SFT Submitter acting on behalf of the SFT Member in respect of SFTs.

Section 4(c) of proposed Rule 56 would provide that the obligations reflected in the transaction data on an SFT shall be deemed to have been confirmed and acknowledged by each SFT Member designated by the Approved SFT Submitter as a party thereto and to have been adopted by such SFT Member and, for the purposes of determining the rights and obligations between NSCC and such SFT Member under the proposed Rule 56 and such other Rules applicable to SFTs, shall be valid and binding upon such SFT Member. In addition, Section 4(c) would provide that an SFT Member which has been so designated by an Approved SFT Submitter shall resolve any differences or claims regarding the rights and obligations reflected in the transaction data submitted by the Approved SFT Submitter with the Approved SFT Submitter, and NSCC shall have no responsibility in respect thereof or to adjust its records or the accounts of the SFT Member in any way, other than pursuant to the instructions of the Approved SFT Submitter. Section 4(c) would also provide that any such adjustment shall be in the sole discretion of NSCC.

Section 4(d) of proposed Rule 56 would provide that NSCC makes no representation, whether expressed or implied, as to the complete and timely performance of an Approved SFT Submitter's duties and obligations. Section 4(d) would also provide that NSCC assumes no liability to any SFT Member for any act or failure to act by an Approved SFT Submitter in connection with any information received by NSCC or given to the SFT Member by NSCC via the Approved SFT Submitter, as the case may be.

Section 4(e) of proposed Rule 56 would provide that the submission of each SFT to NSCC and the performance of any obligation under such SFT shall constitute a representation to NSCC and covenant by the Transferor and the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee and any Agent Clearing Member that is acting on behalf of a Customer in connection with such SFT that its participation in such SFT is in compliance, and would continue to comply, with all applicable laws and regulations, including without limitation Rule 15c3–3 and all other applicable rules and regulations of the Commission, any applicable provisions of Regulation T, Regulation U and Regulation X of the Board of Governors of the Federal Reserve System, and the

[73] Section 6 of Rule 7 (Comparison and Trade Recording Operation (Including Special Representative/Index Receipt Agent)) provides that NSCC may require organizations that deliver trade data to NSCC as described in that Rule to provide a Cybersecurity Confirmation before agreeing to accept such trade data. *Supra* note 4.

rules of FINRA and any other regulatory or self-regulatory organization to which the Transferor, the Transferee, any Sponsoring Member that is acting on behalf of the Transferor or Transferee or any Agent Clearing Member that is acting on behalf of a Customer is subject.

Section 4(f) of proposed Rule 56 would provide that the submission of each SFT to NSCC shall constitute an authorization to NSCC by the Transferor, the Transferee and any Agent Clearing Member that is acting on behalf of a Customer for NSCC to give instructions regarding the SFT to DTC in respect of the relevant accounts of the Transferor, Transferee and Agent Clearing Member at DTC.

Proposed Rule 56, Section 5 (Novation of Securities Financing Transactions)

Section 5 of proposed Rule 56 would govern the nature and timing of the novation to NSCC of obligations related to an SFT.

Section 5(a) of proposed Rule 56 would provide that NSCC to only novate an SFT if, at the time of novation, the Final Settlement of such transaction is scheduled to occur one Business Day following the Initial Settlement and the SFT Cash is no less than 100% of the Contract Price of the SFT.

Section 5(b) of proposed Rule 56 would provide that each SFT that is a Bilaterally Initiated SFT, including any Sponsored Member Transaction, and validated pursuant to the Rules shall be novated to NSCC as of the time NSCC provides the Approved SFT Submitter for such SFT a report confirming such novation in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 5(b) would also provide that each SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction and that is validated pursuant to the Rules shall be novated to NSCC as of the time (x) the Initial Settlement of such SFT has completed by (i) the Transferor instructing DTC to deliver from the relevant DTC account of the Transferor to NSCC's account at DTC the subject SFT Securities versus payment of the amount of the SFT Cash, (ii) NSCC instructing DTC to deliver from NSCC's account at DTC to the relevant DTC account of the Transferee the subject SFT Securities versus payment of the amount of SFT Cash and (iii) DTC processes the deliveries in accordance with the rules and procedures of DTC, or (y) the Initial Settlement obligations of such SFT have been discharged in accordance with Section 8 of proposed Rule 56, as described below. In addition, Section 5(b) would provide that if the Initial Settlement obligations of an SFT that is neither a Bilaterally Initiated SFT nor a Sponsored Member Transaction are not discharged in accordance with clause (x) or (y), then such SFT shall be deemed void *ab initio.*

Section 5(c) of proposed Rule 56 would provide that, subject to Sections 5(d) and 5(e) of proposed Rule 56 as described below, the novation of SFTs shall consist of the termination of the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements between the parties to the SFT with respect to such SFT and their replacement with obligations and entitlements to and from NSCC to perform, in accordance with the Rules, the Final Settlement, Rate Payment, and Distribution Payment obligations and entitlements under the SFT.

Section 5(d) of proposed Rule 56 would govern the novation of SFTs having Incremental Additional Independent Amount SFT Cash and provides when the obligation to return Independent Amount SFT Cash for which an associated Clearing Fund deposit has not been made will be novated away from a Transferor to NSCC. Specifically, Section 5(d)(i) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, then, unless the SFT is a Sponsored Member Transaction and the Sponsoring Member is the Transferee,[74] the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee shall not be terminated and novated to NSCC (nor shall NSCC otherwise be required to return such Incremental Additional Independent Amount SFT Cash), except to the extent that the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied the associated Independent Amount SFT Cash Deposit Requirement. As proposed, to the extent the associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash at the time of the Initial Settlement, the obligation to return the Independent Amount SFT Cash would not be novated to NSCC.

Section 5(d)(ii) of proposed Rule 56 would provide that to the extent the Transferor, Sponsoring Member or Agent Clearing Member has not satisfied the associated Independent Amount SFT Cash Deposit Requirement, the Transferor's (or in the case of a Non-Returned SFT, NSCC's) obligation to return the Incremental Additional Independent Amount SFT Cash shall: (1) If the SFT is an Agent Clearing Member Transaction for which the Agent Clearing Member, acting on behalf of the Customer, is the Transferor, be terminated and replaced with an obligation of the Agent Clearing Member, in its capacity as principal, to return the Incremental Additional Independent Amount SFT Cash to the Transferee; or (2) otherwise, remain (or in the context of a Non-Returned SFT, be terminated and replaced with) a bilateral obligation of the Transferor to the Transferee. As proposed, if the associated Clearing Fund deposit has not been made in respect of Independent Amount SFT Cash, the Independent Amount SFT Cash would be owed by the Transferor to the Transferee as a bilateral principal-to-principal obligation, unless the Transferor is a Customer of an Agent Clearing Member, in which case the obligation to return the Independent Amount SFT Cash in respect of which the Clearing Fund has not been made would be novated from the Customer to the Agent Clearing Member, and the Agent Clearing Member would owe the Independent Amount SFT Cash back to the Transferee as principal.[75]

Section 5(d)(iii) of proposed Rule 56 would provide that each SFT Member agrees that any obligation to return Incremental Additional Independent Amount SFT Cash that is novated to an Agent Clearing Member or that remains (or becomes) a bilateral obligation of the Transferor to the Transferee in accordance with Section 5(d)(ii) of proposed Rule 56, is a binding and enforceable obligation of the Agent Clearing Member or Transferor, as applicable, regardless of whether the Transferee has entered into an Existing Master Agreement with the Agent Clearing Member or Transferor. In addition, Section 5(d)(iii) would provide that each SFT Member further agrees that any such obligation shall only be due and payable to the Transferee upon the final discharge of NSCC's Final Settlement obligations to

[74] Where the Transferor is a Sponsored Member receiving Independent Amount SFT Cash, NSCC would not be requiring Independent Amount SFT Cash Deposit Requirement. This is because in the case of the Sponsored Member's default, the party giving the Independent Amount SFT Cash, *i.e.,* Sponsoring Member, is the guarantor of the settlement obligation of the Sponsored Member Independent Amount SFT Cash back to NSCC.

[75] This interim novation is designed to avoid any credit concerns that would manifest if the Customer and the Transferee had to have a principal bilateral obligation to each other for the Independent Amount SFT Cash.

the Transferor under the portion of the SFT that has been novated to NSCC in accordance with Section 5(b) of proposed Rule 56, as described above.

Section 5(d)(iv) of proposed Rule 56 would provide that, until the Transferor, Sponsoring Member or Agent Clearing Member has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under such SFT, equal the SFT Cash of the SFT less the Incremental Additional Independent Amount SFT Cash.

Section 5(d)(v) of proposed Rule 56 would provide that once the Transferor, Sponsoring Member or Agent Clearing Member, as applicable, has satisfied in full its Independent Amount SFT Cash Deposit Requirement, the obligation of the Transferor to return the Incremental Additional Independent Amount SFT Cash to the Transferee (or, in the case of an SFT that is an Agent Clearing Member Transaction, any obligation of the Agent Clearing Member to return the Incremental Additional Independent Amount SFT Cash to the Transferee) shall be novated to NSCC, and the SFT Cash of the SFT shall, for purposes of determining the obligations owing to and from NSCC under the SFT, include the full amount of the SFT Cash of such SFT.

Section 5(e) of proposed Rule 56 would govern novation in respect of certain corporate actions and provide that NSCC would (i) have an obligation to pay the cash distribution to the Transferor and the Transferee would have an obligation to pay the cash distribution to NSCC, and (ii) not novate any obligations related to unsupported corporate actions and distributions. Specifically, Section 5(e)(i) of proposed Rule 56 would provide that regardless of anything to the contrary in any Existing Master Agreement (including a provision addressing when an issuer pays different amounts to different security holders due to withholding tax or other reasons), the Distribution Payment obligations and entitlements between NSCC and each party to an SFT that has been novated to NSCC shall be the obligation of NSCC to pay to the Transferor and the obligation of the Transferee to pay to NSCC the Distribution Amount in respect of each Distribution and the corresponding entitlements of the Transferor and NSCC, in each case, in accordance with the Rules.

Section 5(e)(ii) of proposed Rule 56 would provide that NSCC shall maintain a list of corporate actions and distributions that NSCC does not support with respect to SFTs. Section 5(e)(ii) would further provide that no Final Settlement, Rate Payment, Distribution Payment or other obligation resulting from a corporate action or distribution that is not supported by NSCC shall be novated to NSCC. In addition, Section 5(e)(ii) would provide that none of such unsupported corporate action shall modify the Final Settlement, Rate Payment, Distribution Payment or other obligations of NSCC, Transferor and Transferee under an SFT that has been novated to NSCC. Section 5(e)(ii) would also provide that each SFT Member agrees that any obligation under an SFT resulting from a corporate action or distribution not supported by NSCC shall remain a binding and enforceable bilateral obligation between the Transferor and the Transferee, regardless of whether the Transferor and Transferee have entered into an Existing Master Agreement.

Section 5(f) of proposed Rule 56 would provide that the novation of SFTs shall not affect the fundamental substance of the SFT as a transfer of securities by one party in exchange for a transfer of cash by the other party and an agreement by each party to return the property it received and shall not affect the economic obligations or entitlements of the parties under the SFT except that following novation, the Final Settlement, Rate Payment and Distribution Payment obligations and entitlements shall be owed to and by NSCC rather than the original counterparty under the SFT.

Section 5(g) of proposed Rule 56 would provide that the representations and warranties made by each of the parties to an SFT that has been novated to NSCC under the parties' Existing Master Agreement, if any, shall (x) to the extent that they are inconsistent with the Rules, be eliminated and replaced with the Rules and (y) to the extent that they are not inconsistent with the Rules, remain in effect as between the parties to the original SFT, but shall not impose any additional obligations on NSCC.

Proposed Rule 56, Section 6 (Rate and Distributions)

Section 6 of proposed Rule 56 would govern the settlement of Rate Payments and supported Distributions by NSCC for novated SFTs. Section 6(a) of proposed Rule 56 would provide that NSCC shall debit and credit the Rate Payment from and to the SFT Accounts of the SFT Member parties to an SFT that has been novated to NSCC as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service) on the scheduled Final Settlement Date for the SFT, irrespective of whether Final Settlement of such SFT occurs on such date.

Section 6(b) of proposed Rule 56 would provide that if (x) a cash dividend is made on or in respect of an SFT Security that is the subject of an SFT that has been novated to NSCC or (y) cash is exchanged, in whole or in part, for such an SFT Security in a merger, consolidation or similar transaction, and the Transferor under the SFT would have been entitled to a cash payment related to the event described in clause (x) or (y) had it not transferred the SFT Securities that are the subject of the SFT to the Transferee in the Initial Settlement, then NSCC shall, within the time period determined by NSCC from time to time, credit the Distribution Amount to the Transferor's SFT Account and debit the Distribution Amount from the Transferee's SFT Account as part of its end of day final money settlement process in accordance with Rule 12 and Procedure VIII. Section 6(b) would further provide that if cash is exchanged in whole for such an SFT Security, then the completion of the actions described in the preceding sentence shall discharge NSCC's Final Settlement obligations to the relevant Transferor and the Transferee's Final Settlement obligations to NSCC.

Proposed Rule 56, Section 7 (Final Settlement of Securities Financing Transactions)

Section 7 of proposed Rule 56 would govern the mechanics of Final Settlement of SFTs by providing that, subject to Section 11 of proposed Rule 56, as described below, the Final Settlement of an SFT that has been novated to NSCC shall be scheduled to occur on the Business Day immediately following the date the SFT was novated to NSCC. Section 7 would further provide that unless the Final Settlement obligations under such an SFT are discharged in accordance with Section 8 of proposed Rule 56, as described below, Final Settlement of the SFT shall occur by (x) NSCC instructing DTC to (i) deliver from the relevant DTC account of the Transferee to NSCC's account at DTC the subject SFT Securities versus payment of the amount of SFT Cash and (ii) deliver from NSCC's account at DTC to the relevant DTC account of the Transferor the subject SFT Securities versus payment of the amount of SFT Cash, and (y) the processing of such deliveries by DTC in accordance to the rules and procedures of DTC; provided that if such transfers do not occur and a Buy-In does not occur in respect of the SFT, then the Final Settlement Date

shall be rescheduled for the following Business Day as described in Section 9 of proposed Rule 56, as described below. The obligation of a Transferor (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferor or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Cash to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to pay the SFT Cash and, if applicable, the Rate Payment to NSCC against the transfer of the relevant SFT Securities by NSCC. The obligation of a Transferee (or a Sponsoring Member that guarantees to NSCC the obligation of a Transferee or an Agent Clearing Member that is responsible for the performance of the obligation under an SFT that is an Agent Clearing Member Transaction to return SFT Securities to NSCC) in respect of the Final Settlement of an SFT that has been novated to NSCC shall be to transfer the SFT Securities and, if applicable, the Rate Payment to NSCC against the transfer of SFT Cash by NSCC.

Section 7 of proposed Rule 56 would also provide that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion, whether pursuant to Sections 7, 8, 9(d) or 13(c) of proposed Rule 56. Section 7 would also provide that from and after the Final Settlement of an SFT, or a portion thereof, pursuant to any Sections 7, 8, 9(d) or 13(c) of proposed Rule 56, NSCC shall be discharged from its obligations to the Transferor and the Transferee, and NSCC shall have no further obligation in respect of the SFT or such portion. This is to make it clear to SFT Members the point at which settlement of an SFT is deemed to be complete and final.[76]

Proposed Rule 56, Section 8 (Discharge of Offsetting Final Settlement and Initial Settlement Obligations)

Section 8 of proposed Rule 56 would govern the ''roll'' (*i.e.,* pair off or offset) process whereby the Final Settlement obligations on one SFT (*i.e.,* the Settling SFT) between two parties can be offset with the Initial Settlement obligations on another SFT between the same parties (*i.e.,* the Linked SFT) through the debiting and crediting of the difference in cash collateral between the two offsetting SFTs (*i.e.,* the Price Differential).

Section 8(a) of proposed Rule 56 would provide that, subject to the provisions of Section 13(c) of proposed Rule 56, as described below, if, on any Business Day, the pre-novation SFT Member parties to a Settling SFT enter into a Linked SFT and the Approved SFT Submitter provides an appropriate instruction to NSCC in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose, the Final Settlement obligations of the parties to the Settling SFT and the Initial Settlement obligations of the parties to the Linked SFT shall be discharged once NSCC has instructed DTC to debit and credit the relevant DTC accounts, of the SFT Member parties, as described below in Section 8(b) of proposed Rule 56, and DTC processes such debits and credits in accordance with the rules and procedures of DTC. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). If the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. If the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. However, if the Linked SFT has as its subject fewer SFT Securities than the Settling SFT, then only the following Final Settlement obligations under the Settling SFT shall be discharged in accordance with Section 8 of proposed Rule 56: (i) The Transferee's and NSCC's Final Settlement obligations in respect of a quantity of SFT Securities equal to the quantity of SFT Securities that are the subject of the Linked SFT and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 8(b) of proposed Rule 56 would provide that if the Price Differential is positive, NSCC shall (x) instruct DTC to debit an amount equal to the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferee and (y) instruct DTC to debit an amount equal to the Price Differential from the relevant DTC account of the Transferor and credit such amount to NSCC's account at DTC. If the Price Differential is negative, NSCC shall (x) instruct DTC to debit an amount equal to the absolute value of the Price Differential from NSCC's account at DTC and credit such amount to the relevant DTC account of the Transferor and (y) instruct DTC to debit an amount equal to the absolute value of the Price Differential from the relevant DTC account of the Transferee and credit such amount to NSCC's account at DTC.

Proposed Rule 56, Section 9 (Non-Returned Securities Financing Transactions and Recalls)

Section 9 of proposed Rule 56 would govern the processing of a novated SFT for which the Final Settlement obligations have not been discharged either through Final Settlement in accordance with Section 7 of proposed Rule 56 (as described above) or a pair off in accordance with Section 8 of proposed Rule 56 (as described above), and the recall and buy-in process for such an SFT.

Specifically, Section 9(a) of proposed Rule 56 would provide that if (x) the Transferee does not satisfy its Final Settlement obligations in respect of an SFT that has been novated to NSCC on the Final Settlement Date, (y) such Final Settlement obligations have not been discharged in accordance with the provisions of Section 8 of proposed Rule 56, as described above, and (z) a Buy-In has not occurred in respect of such SFT or a portion thereof (such SFT, a ''Non-Returned SFT''), the Final Settlement Date of the Non-Returned SFT shall be rescheduled for the following Business Day, and NSCC shall instruct DTC to debit and credit the relevant DTC accounts of the SFT Member parties, as described in subsection (b) of Section 8 above. To the extent the Price Differential is not processed by DTC in accordance with the rules and procedures of DTC, NSCC shall debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the Non-Returned SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(a) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT

[76] With respect to an SFT between a Sponsoring Member and its Sponsored Member, the SFT would settle on the books of the Sponsoring Member because the Sponsored Member are not participants at DTC and thus would not have accounts at DTC. Accordingly, the finality of the settlement of such SFT would occur when the Sponsoring Member credits the securities and cash on its or the relevant custodian's books and records.

Account; if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. This process would continue until Final Settlement, a pair off in accordance with Section 8 of proposed Rule 56 (as discussed above), or a Buy-In.

Section 9(b) of proposed Rule 56 would provide that if NSCC receives a Recall Notice in respect of an SFT that has been novated to NSCC and the Transferee does not satisfy its Final Settlement obligations by the Recall Date for the Recall Notice, the Transferor may, in a commercially reasonable manner,[77] purchase some or all of the SFT Securities that are the subject of the SFT [78] or elect to be deemed to have purchased the SFT Securities, in each case in accordance with such timeframes and deadlines as established by NSCC for such purpose (a ''Buy-In''); provided that in the case of a Default-Related SFT (as defined below and in the proposed rule change), the commercial reasonableness of a Buy-In shall be determined by NSCC based on whether, in the opinion of NSCC, such Buy-In would create a disorderly market in the relevant SFT Security. Following such purchase or deemed purchase, the Transferor shall (x) give written notice to NSCC of the Transferor's costs to purchase the relevant SFT Securities (including the price paid by the Transferor and any broker's fees and commissions and reasonable out-of-pocket transaction costs, fees or interest expenses incurred in connection with such purchase) (such costs, the ''Buy-In Costs'') or, if the Transferor elects to be deemed to have purchased the SFT Securities, the Deemed Buy-In Costs, and (y) indemnify NSCC, and its employees, officers, directors, shareholders, agents and Members (collectively the ''Buy-In Indemnified Parties''), for any and all losses, liability or expenses of a Buy-In Indemnified Party arising from any claim disputing the calculation of the Buy-In Costs, the Deemed Buy-In Costs or the method or manner of effecting the Buy-In. Section 9(b) would further provide that each SFT Member acknowledges and agrees that each SFT Security is of a type traded in a recognized market and that, in the absence of a generally recognized source for prices or bid or offer quotations for any SFT Security, the Transferor may, for purposes of a Buy-In, establish the source therefor in its commercially reasonable discretion. In addition, Section 9(b) would provide that each SFT Member further acknowledges and agrees that NSCC would not calculate any Buy-In Costs or Deemed Buy-In Costs and shall have no liability for any such calculation. Section 9(b) would also provide that NSCC would assign to any Transferee whose SFT is subject to a Buy-In any rights it may have against the Transferor to dispute the Transferor's calculation of the Buy-In Costs or Deemed Buy-In Costs.

Section 9(c) of proposed Rule 56 would provide that on the Business Day following NSCC's receipt of written notice of the Transferor's Buy-In Costs, NSCC shall debit and credit the Buy-In Amount from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service). Section 9(c) would provide that if the Buy-In Amount is positive, NSCC would (x) credit the value of the Buy-In Amount to the Transferor's SFT Account and (y) debit the value of the Buy-In Amount from the Transferee's SFT Account. Section 9(c) would further provide that if the Buy-In Amount is negative, NSCC would (x) credit the value of the Buy-In Amount to the Transferee's SFT Account and (y) debit the value of the Buy-In Amount from the Transferor's SFT Account.

Section 9(d) of proposed Rule 56 would provide that following the application of such Buy-In Amount, the Final Settlement obligations under the SFT shall be discharged; provided that if the Transferor effected a Buy-In in respect of some but not all of the SFT Securities that are the subject of an SFT, then only the following obligations shall be discharged: (i) The Transferee's and NSCC's Final Settlement obligations in respect of the SFT Securities for which the Transferor effected the Buy-In and (ii) the Transferor's and NSCC's Final Settlement obligations in respect of the Corresponding SFT Cash.

Section 9(e) of proposed Rule 56 would provide that a Recalled SFT shall be treated as a Non-Returned SFT by NSCC until the earlier of the time that the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described below, shall not apply. Section 9(e) would further provide that if the Transferor effects the Buy-In in respect of some, but not all, of the SFT Securities that are the subject of a Recalled SFT, the Final Settlement obligations of the Recalled SFT that are not discharged in accordance with Section 9(d) of proposed Rule 56 shall be treated as a Non-Returned SFT until the SFT settles or a Buy-In is processed by NSCC in accordance with Section 9 of proposed Rule 56, and the additional SFT Deposit required under Section 12(c) of proposed Rule 56, as described below, for Non-Returned SFTs shall apply.

Proposed Rule 56, Section 10 (Cancellation, Modification and Termination of Securities Financing Transactions)

Section 10 of proposed Rule 56 would govern the process for cancellations, modifications and terminations of SFTs in NSCC's systems.

Section 10(a) of proposed Rule 56 would provide that transaction data on an SFT that has not been novated to NSCC may be cancelled upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(a) would further provide that an SFT that is so cancelled by NSCC would be deemed to be void *ab initio.*

Section 10(b) of proposed Rule 56 would provide the Rate Payment on an SFT that has been novated to NSCC may be modified upon receipt by NSCC of appropriate instructions from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 10(b) would further provide that any instructions submitted by an Approved SFT Submitter to modify the Rate Payment of an SFT must be submitted on behalf of both SFT Member parties to the SFT.

Section 10(c) of proposed Rule 56 would provide an SFT that has been novated to NSCC in accordance with Section 5 of proposed Rule 56, as described above, may be terminated upon receipt by NSCC of appropriate

[77] The requirement that a party exercising buy-in rights do so in a ''commercially reasonable manner'' is market standard. *See, e.g.,* Section 13.1 of the Master Securities Loan Agreement published by Securities Industry and Financial Markets Association (''SIFMA''). NSCC has proposed to include this language in order to align the standards applicable to an exercise of remedies in relation to SFTs with those applicable in the bilateral uncleared space. NSCC believes that such alignment will increase certainty for SFT Members and allow them to follow standards with which they are familiar.

[78] The Transferor would purchase these securities from one or more third parties.

instructions from the Approved SFT Submitter with respect to such SFT on behalf of both SFT Member parties thereto, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purposes. Section 10(c) would further provide that following any such termination, no amounts or further obligations shall be owing in respect of the SFT between NSCC and Transferor or NSCC and the Transferee.

Proposed Rule 56, Section 11 (Accelerated Final Settlement)

Section 11 of proposed Rule 56 would allow a Transferee (*i.e.,* the borrower) to do a same day return of borrowed securities, if necessary, to satisfy its regulatory purpose requirements by accelerating the Final Settlement of an SFT that has been novated to NSCC. Specifically, Section 11 would provide that the Transferee may accelerate the scheduled Final Settlement of an SFT that has been novated to NSCC upon receipt by NSCC of appropriate instruction from the Approved SFT Submitter with respect to such SFT, submitted in accordance with the communication links, formats, timeframes and deadlines established by NSCC for such purpose. Section 11 would further provide that such accelerated Final Settlement shall be effected by NSCC in accordance with the provisions of Section 7 of proposed Rule 56, as described above.

Proposed Rule 56, Section 12 (Clearing Fund Obligations)

Section 12 of proposed Rule 56 would set out the Clearing Fund obligations for SFT Members with respect to their SFT activity.

Section 12(a) of proposed Rule 56 would provide each SFT Member, other than an SFT Member that is a Sponsored Member, shall make and maintain on an ongoing basis a deposit to the Clearing Fund with respect to its SFT Positions (the ''SFT Deposit''). Section 12(a) would provide that, for the avoidance of doubt, the SFT Positions for an SFT Member that is a Sponsoring Member shall include all SFT Positions held in its Sponsored Member Sub-Account(s) in addition to its proprietary account(s).

Section 12(b) of proposed Rule 56 would provide that the SFT Deposit shall be held by NSCC or its designated agents as part of the Clearing Fund, to be applied as provided in Sections 1 through 12 of Rule 4 (Clearing Fund).

Section 12(c) of proposed Rule 56 would provide that NSCC shall calculate the amount of each such SFT Member's required deposit for SFT Positions, subject to a $250,000[79] minimum (excluding the minimum contribution to the Clearing Fund as required by Procedure XV (Clearing Fund Formula and Other Matters), Section II.(A)), by applying the Clearing Fund formula for CNS Transactions in Sections I.(A)(1)(a), (b), (c), (e) (f), (g) of Procedure XV as well as the additional Clearing Fund formula in Section I.(B)(5) (Intraday Mark-to-Market Charge) of Procedure XV, except as noted otherwise, in the same manner as such sections apply to CNS Transactions submitted to NSCC for regular way settlement, plus, with respect to any Non-Returned SFT, an additional charge that is calculated by (x) multiplying the Current Market Price of the SFT Securities that are the subject of such Non-Returned SFTs by the number of such SFT Securities that are the subject of the SFT and (y) multiplying such product by (i) 5% for SFT Members rated 1 through 4 on the Credit Risk Rating Matrix, (ii) 10% for SFT Members rated 5 or 6 on the Credit Risk Rating Matrix, or (iii) 20% for SFT Members rated 7 on the Credit Risk Rating Matrix shall be applied to each SFT Member that is a party thereto[80] (collectively and includes any and all Independent Amount SFT Cash Deposit Requirements, the ''Required SFT Deposit''); provided, however, notwithstanding anything to the contrary, (A) a minimum of 40% of an SFT Member's Required SFT Deposit shall be made in the form of cash and/or Eligible Clearing Fund Treasury Securities and (y) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit, with a minimum of $250,000, must be made and maintained in cash;[81] provided, further, the additional Clearing Fund formula in Sections I.(B)(1) (Additional Deposits for Members on the Watch List); (2) (Excess Capital Premium); (3) (Backtesting Charge); (4) (Bank Holiday Charge); Minimum Clearing Fund and Additional Deposit Requirements in Sections II.(A)1(a)–(b), II.(B), II.(C), and II.(D); as well as Section III (Collateral Value of Eligible Clearing Fund Securities) of Procedure XV shall apply to SFT Members in the same manner as such sections apply to Members. As noted in the proposed rule text, for the purpose of applying Section I.(A)(1)(a)(i) of Procedure XV (Value-at-Risk (VaR) charge), the volatility of an SFT Member's SFT Positions shall be the sum of (a) the highest resultant value between Section I.(A)(1)(a)(i)I. (Core Parametric Estimation) and Section I.(A)(1)(a)(i)III. (Margin Floor) and (b) the resultant value of Section I.(A)(1)(a)(i)II. (Gap Risk Measure). Also, as noted in the proposed rule text, for the purpose of applying Section I.(A)(1)(g) of Procedure XV (Margin Liquidity Adjustment (MLA) charge), SFT Positions shall be aggregated with Net Unsettled Positions, as defined in Rule 1,[82] in the same asset group or subgroup; provided, however, in the event such aggregation results in a reduction of the aggregate positions in the relevant asset group or subgroup, NSCC shall apply the greater of (a) the sum of MLA charges separately calculated for SFT Positions and Net Unsettled Positions in the asset group or subgroup and (b) the MLA charge calculated from aggregating the SFT Positions and the Net Unsettled Positions in the asset group or subgroup.

Section 12(d) of proposed Rule 56 would provide that NSCC shall have the discretion to require an SFT Member to post its Required SFT Deposit in proportion of cash higher than as required under subsection (c) of proposed Section 12, as determined by NSCC from time to time in view of market conditions and other financial and operational capabilities of the SFT Member. Section 12(d) would further provide that NSCC shall make any such determination based on such factors as

[79] *Supra* note 32.

[80] The Required SFT Deposit multipliers proposed for Non-Returned SFTs are identical to the Required Fund Deposit multipliers applied to CNS Fails Positions. *See* Procedure XV (Clearing Fund Formula and Other Matters), Section I.(A)(1)(d)), *supra* note 4. While the concept of a ''fail'' does not exist in the securities lending market in the same manner as it does in the cash market, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, whether directly or through a pair off as described in Section 8 of proposed Rule 56 (as discussed above), that could potentially be a result of a ''squeeze'' or other market dislocation whereby NSCC may face increased market risk in the event of the default of either the Transferor or the Transferee. As a result, NSCC believes it is prudent to apply the same Required Fund Deposit multiplier to a Non-Returned SFT as it does to CNS Fails Positions.

The Credit Risk Rating Matrix is a financial model utilized by NSCC in its ongoing monitoring of Members based on various risk criteria. Each Member is rated by the Credit Risk Rating Matrix on a 7-point rating system, with ''1'' being the strongest credit rating and ''7'' being the weakest credit rating. As described above, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, NSCC, as a central counterparty, is exposed to market risks. Such exposures generally increase when the SFT Member's risk of default increases, as reflected by the SFT Member's Credit Risk Rating Matrix credit rating. As such, the Required SFT Deposit multipliers proposed for Non-Returned SFTs vary based on the SFT Member's credit rating to reflect the potential increase in market risk from SFT Members with higher risk of default.

[81] *Supra* note 34.

[82] *Supra* note 33.

NSCC determines to be appropriate from time to time.

Section 12(e) of proposed Rule 56 would provide that if an SFT has Incremental Additional Independent Amount SFT Cash, the Transferor shall make an additional deposit to the Clearing Fund that equals the amount of the Incremental Additional Independent Amount SFT Cash for such SFT (''Independent Amount SFT Cash Deposit, and such requirement the ''Independent Amount SFT Cash Deposit Requirement''). Section 12(e) would also provide that the Independent Amount SFT Cash Deposit Requirement must be satisfied in cash and may, at the discretion of NSCC, be satisfied using Independent Amount SFT Cash Deposits that have previously been made by the Transferor in respect of SFTs with the same Transferee that have since settled.[83] Section 12(e) would further provide that the Transferor shall satisfy any Independent Amount SFT Cash Deposit Requirement in respect of an SFT on the date that the SFT is novated to NSCC pursuant to the timeframes and deadlines established by NSCC for such purpose. In addition, Section 12(e) would provide that if, on a given day, the Transferor satisfies its Independent Amount SFT Cash Deposit Requirement for some, but not all, SFTs novated to NSCC on that day, NSCC will consider the Transferor to have satisfied its Independent Amount SFT Cash Deposit Requirement for none of the SFTs that were novated to NSCC on that day.

Section 12(f) of proposed Rule 56 would provide that each SFT Member, other than an SFT Member that is a Sponsored Member, so long as such Member is an SFT Member, shall also provide Supplemental Liquidity Deposits to the Clearing Fund, as may be required pursuant to Rule 4A. In addition, Section 12(f) would also provide that references to Clearing Fund in the other Rules shall include and apply to SFT Deposit, and references to Required Fund Deposit shall include and apply to Required SFT Deposit, unless specifically noted otherwise in proposed Rule 56 or in such other Rules.

[83] This could occur in a situation in which an existing SFT settles and then the Transferor enters into a new SFT with the same Transferee (*e.g.,* in a pair off as described in Section 8 of proposed Rule 56, discussed above). In that situation, if the Transferee (or Sponsoring Member or Agent Clearing Member) has not yet called back the Independent Amount SFT Cash Deposit it posted in respect of the Settling SFT, then NSCC may apply the deposit to the Independent Amount SFT Cash Deposit obligation associated with the new SFT.

Proposed Rule 56, Section 13 (Ineligible SFT Securities and Supported Corporate Actions)

Section 13 of proposed Rule 56 would govern the processing of SFTs where the underlying securities become ineligible SFT Securities and the processing of SFTs in the context of supported corporate actions.

Specifically, Section 13(a) of proposed Rule 56 would provide that NSCC would remove an Ineligible SFT Security from the list maintained by NSCC as set forth in Rule 3 (Lists to be Maintained); provided that NSCC may not be able to identify that an SFT Security is an Ineligible SFT Security and remove such SFT Security from the list maintained by NSCC if the reason for the ineligibility is that the SFT Security is undergoing a corporate action or distribution not supported by NSCC and NSCC is not in receipt of reasonably advanced notice of such corporate action or distribution.

Section 13(b) of proposed Rule 56 would provide that notwithstanding Section 12 of proposed Rule 56, as described above, if an SFT Security becomes an Ineligible SFT Security because the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, the Required SFT Deposit of each SFT Member party to an SFT which has such Ineligible SFT Security as its subject shall include an additional amount equal to the product of 100% of the Current Market Price of such Ineligible SFT Security and the number of such Ineligible SFT Securities that the SFT has as its subject.[84] The threshold that would be established by NSCC is currently $5.00, which could be modified by NSCC[85] at a later date after NSCC gains more experience with the nature of the SFT portfolios submitted for clearing, as discussed above.

Section 13(c) of proposed Rule 56 would provide that if NSCC declares that an SFT Security has or would become an Ineligible SFT Security because the security is or would become ineligible for processing or is or would be undergoing a corporate action or distribution that is not supported by NSCC, the Final Settlement of all SFTs that have been novated to NSCC and have such SFT Security as their subject must occur before the Ineligibility Date.[86] In addition, Section 13(c) would provide that if following such declaration the Transferee does not satisfy its Final Settlement obligations in respect of any such SFT as provided in Section 7 of proposed Rule 56, as described above, by the Ineligibility Date, NSCC shall, unless NSCC has previously debited and credited the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT in accordance with Section 8 of proposed Rule 56, as described above, on Ineligibility Date, debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement process in accordance with Rule 12 (Settlement) and Procedure VIII (Money Settlement Service).[87] Section 13(c) would further provide that if the Price Differential is positive, NSCC shall (x) credit an amount equal to the Price Differential to the Transferee's SFT Account and (y) debit an amount equal to the Price Differential from the Transferor's SFT Account. Section 13(c) would also provide that if the Price Differential is negative, NSCC shall (x) credit an amount equal to the absolute value of the Price Differential to the Transferor's SFT Account and (y) debit an amount equal to the absolute value of the Price Differential from the Transferee's SFT Account. Furthermore, Section 13(c) would provide that following the application of Price Differential to an Ineligible SFT on or after the relevant Ineligibility Date, all rights and obligations as between NSCC and the SFT Member parties thereto with respect to such SFT shall be discharged.

Section 13(d) of proposed Rule 56 would provide that if a corporate action supported by NSCC in respect of the SFT Securities that are the subject of an SFT is scheduled to occur, NSCC may

[84] If the Current Market Price of the SFT Security falls below the threshold established by NSCC from time to time, NSCC would assess the additional amount as part of the Required SFT Deposit.

[85] *Supra* note 23.

[86] The duration between the declaration and Ineligibility Date would vary. If the ineligibility is because the SFT Security will become ineligible for processing (*i.e.,* no longer CNS eligible), the duration would depend on the timing of the CNS ineligibility triggering event (*e.g.,* compliance with regulatory orders, risk concerns, trading suspension, etc.).

If the ineligibility is because the SFT Security will be undergoing an unsupported corporate action or distribution, then it would depend on when the issuer of the relevant SFT Security announces the particular corporate action or distribution event and the record date for such corporate action or distribution. Specifically, when announcements from the issuers are received by DTC, DTC would announce the corporate action or distribution event. NSCC would notify Members of such event when it is announced by DTC and would generally tie the Ineligibility Date to shortly before or on the record date for the corporate action or distribution.

[87] NSCC is proposing this simplified process for applying Price Differentials to Ineligible SFTs because NSCC anticipates such instances would occur on a much less frequent basis than those in connection with Linked SFTs pursuant to Section 8(a) of proposed Rule 56 and Non-Returned SFTs pursuant to Section 9(a) of proposed Rule 56.

cease to permit the discharge of the SFT's Final Settlement obligations, whether pursuant to Section 8 of proposed Rule 56, as described above, or otherwise, and treat the SFT as a Non-Returned SFT for such period of time determined by NSCC as necessary to process the corporate action, except that the additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall not apply. Section 13(d) would further provide that notwithstanding the foregoing, NSCC shall not limit the ability of a Member to accelerate the Final Settlement of an SFT in accordance with Section 11 of proposed Rule 56, as described above, provided that any Price Differential for the SFT has settled in accordance with Section 9(a) of proposed Rule 56, as described above, and that such accelerated Final Settlement is permitted in accordance with the rules and procedures of DTC.

Proposed Rule 56, Section 14 (Cease to Act Procedures for SFT Members With Open Securities Financing Transactions)

Section 14 of proposed Rule 56 would establish NSCC's procedures for when it ceases to act for an SFT Member with open SFTs, including recalling a non-defaulting SFT Member that is a Transferee and liquidating the Defaulting SFT Member's SFT Positions by deeming NSCC to have bought in or sold out some or all the SFT Securities that are the subject of such SFTs at prevailing market price or by crossing.

Section 14(a) of proposed Rule 56 would provide that the provisions of Rule 18 (Procedures for When the Corporation Ceases to Act) shall not apply to the SFTs except for Sections 1 and 8 of Rule 18.

Section 14(b) of proposed Rule 56 would provide that if NSCC has ceased to act for an SFT Member and subject to Section 14 of proposed Rule 2C, as described above:

(i) Except as otherwise may be determined by the Board of Directors, any SFT entered into by the SFT Member that, at the time NSCC ceased to act for such SFT Member, has not been novated to NSCC pursuant to proposed Rule 56, shall be excluded from all operations of NSCC applicable to such SFT.

(ii) NSCC may decline to act upon any instructions, transaction data or notices submitted by such SFT Member or an Approved SFT Submitter on behalf of such SFT Member.

(iii) NSCC shall close-out such SFT Member's proprietary SFT Positions as well as any SFT Positions established in the SFT Member's Agent Clearing Member Customer Omnibus Account by (x) buying in or selling out, as applicable, some or all of the SFT Securities that are the subject of each SFT of the SFT Member that has been novated to NSCC but for which the Final Settlement has not occurred, (y) deeming NSCC to have bought in or sold out some or all such SFT Securities at the bid or ask price therefor, respectively, from a generally recognized source or at such price or prices as NSCC is able to purchase or sell, respectively, some such SFT Securities, or (z) otherwise liquidating such SFT Member's SFT Positions.

(iv) Any Sponsored Member Transactions for which a Defaulting SFT Member is the Sponsoring Member and which have been novated to NSCC shall continue to be processed by NSCC. NSCC, in its sole discretion, would determine whether to close-out the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts (if any), which close out shall be effected in accordance with the provisions of Section 14(b)(iii), as described above, or instead permit the relevant Sponsored Members to complete settlement of the relevant Sponsored Member Transactions.

(v) If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a profit to NSCC, such profit shall be applied to any loss to NSCC arising from the closing out of such Defaulting SFT Member (including losses arising from closing out the SFT Positions established in any of the Defaulting SFT Member's Agent Clearing Member Customer Omnibus Accounts or Sponsored Member Sub-Accounts or losses arising from closing out any Net Close Out Positions of the Defaulting SFT Member). If, in the aggregate, the close-out of a Defaulting SFT Member's proprietary SFT Positions results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vi) If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a profit to NSCC, such profit shall be credited to the Agent Clearing Member Customer Omnibus Accounts. If, in the aggregate, the close-out of the SFT Positions established in the Agent Clearing Member Customer Omnibus Accounts of a Defaulting SFT Member results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by the NSCC to such SFT Member in its proprietary capacity, and thereafter debited from the Defaulting SFT Member's Clearing Fund deposit at NSCC.

(vii) If, in the aggregate, the close-out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a profit to NSCC, such profit shall be credited to the Sponsored Member Sub-Accounts. If, in the aggregate, the closing out of the SFT Positions established in a Defaulting SFT Member's Sponsored Member Sub-Accounts results in a loss to NSCC, such loss shall be netted against, or otherwise applied to, any amounts owed by NSCC to such SFT Member in its proprietary capacity and thereafter debited from such Defaulting SFT Member's Clearing Fund deposit at NSCC.

(viii) The Final Settlement Date of each SFT that has been novated to NSCC and that, prior to novation, was with a Defaulting SFT Member (each, a ''Default-Related SFT'') shall be the Business Day following the day on which NSCC ceased to act for the Defaulting SFT Member.

(ix) Until Final Settlement, each Default-Related SFT shall be treated as a Non-Returned SFT, and NSCC would pay and collect the Price Differential amounts described in Section 9(a) of proposed Rule 56, as described above. NSCC shall have all of the rights of a Transferor in relation to any Default-Related SFT in respect of which the Defaulting SFT Member was the Transferor, including the ability to deliver a Recall Notice in relation to such Default-Related SFT and to effect a Buy-In, and all of the rights of a Transferee in relation to any Default-Related SFT in respect of which the Defaulting SFT Member was the Transferee, including the ability to accelerate the scheduled Final Settlement Date of the Default-Related SFT. However, no additional SFT Deposit required for Non-Returned SFTs under Section 12(c) of proposed Rule 56, as described above, shall apply to any Default-Related SFT, and no Rate Payments shall accrue on Default-Related SFTs after the date on which NSCC ceases to act for the Defaulting SFT Member.

Proposed Rule 56, Section 15 (Sponsored Member SFT Clearing)

Section 15 of proposed Rule 56 would govern the requirements for Sponsored Member participation in the proposed SFT Clearing Service.

Section 15(a) of proposed Rule 56 would provide that a Sponsoring Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC Sponsored Member Transactions between itself and its Sponsored Member in accordance with the provisions of proposed Rule 56 and proposed Rule 2C.

Section 15(b) of proposed Rule 56 would provide that NSCC shall maintain for the Sponsoring Member one or more Sponsored Member Sub-Accounts. Section 15(b) would further provide that the SFT Deposits for each Sponsored Member Sub-Account shall be calculated separately based on the SFT Positions in such Sponsored Member Sub-Account, and the Sponsoring Member, as principal, shall be required to satisfy the SFT Deposits for each of the Sponsoring Member's Sponsored Member Sub-Accounts.

Section 15(c) of proposed Rule 56 would provide that settlement of the Final Settlement, Rate Payment, Price Differential, Distribution Payment and other obligations of a Sponsored Member Transaction that have been novated to NSCC shall be effected by the Sponsoring Member, as settlement agent for the relevant Sponsored Member, crediting and debiting the account the Sponsoring Member maintains for the Sponsored Member on the Sponsoring Member's books and records.

Proposed Rule 56, Section 16 (Customer SFT Clearing)

Section 16 of proposed Rule 56 would govern the requirements for participation by Agent Clearing Members and their Customers in the proposed SFT Clearing Service.

Section 16(a) of proposed Rule 56 would provide that an Agent Clearing Member shall be permitted to submit, either directly as an Approved SFT Submitter or via another Approved SFT Submitter, to NSCC for novation SFTs that are Agent Clearing Member Transactions. Section 16(a) would further provide that any such submission shall be in accordance with proposed Rule 56 and proposed Rule 2D.

Section 16(b) of proposed Rule 56 would provide that with respect to an Agent Clearing Member that submits SFTs to NSCC for novation on behalf of its Customers, NSCC shall maintain one or more Agent Clearing Member Customer Omnibus Accounts in the name of the Agent Clearing Member for the benefit of its Customers in which all SFT Positions and SFT Cash carried by the Agent Clearing Member on behalf of its Customers are reflected; provided, that each Agent Clearing Member Customer Omnibus Account may only contain activity where the Agent Clearing Member is acting as Transferor on behalf of its Customers, or as Transferee on behalf of its Customers, but not both.

Section 16(c) of proposed Rule 56 would provide that with respect to SFTs entered into on behalf of its Customers and maintained in the Agent Clearing Member Customer Omnibus Account, the Agent Clearing Member shall act solely as agent of its Customers in connection with the clearing of such SFTs; provided, that the Agent Clearing Member shall remain fully liable for the performance of all obligations to NSCC arising in connection with such SFTs; and provided further, that the liabilities and obligations of NSCC with respect to such SFTs entered into by the Agent Clearing Member on behalf of its Customers shall extend only to the Agent Clearing Member. Without limiting the generality of the foregoing, NSCC shall not have any liability or obligation arising out of or with respect to any SFT to any Customer of an Agent Clearing Member.

Section 16(d) of proposed Rule 56 would provide the SFT Deposits for each Agent Clearing Member Customer Omnibus Account shall be calculated separately based on the SFT Positions in such Agent Clearing Member Customer Omnibus Account, and the Agent Clearing Member shall, as principal, be required to satisfy the SFT Deposit for each of Agent Clearing Member's Agent Clearing Member Customer Omnibus Accounts.

Proposed Rule 56, Section 17 (Corporation Default)

Section 17 of proposed Rule 56 would govern the close-out netting process that would apply with respect to SFTs that have been novated to NSCC in the event of a default of NSCC.

Section 17(a) of proposed Rule 56 would provide that if a ''Corporation Default'' occurs pursuant to Section 2 of Rule 41 (Corporation Default), all SFTs that have been novated to NSCC but not yet settled, and all obligations and rights arising thereunder which have been assumed by NSCC pursuant to proposed Rule 56, shall be immediately terminated, and the Board of Directors shall determine the Aggregate Net SFT Close-out Value owed by or to each SFT Member with respect to each of its SFT Positions.

Section 17(b) of proposed Rule 56 would provide that for purposes of Section 17 of proposed Rule 56, a Member shall be considered a different SFT Member in respect of each of (i) its proprietary SFT Positions; (ii) the SFT Positions established in its Agent Clearing Member Customer Omnibus Accounts (if any); and (iii) the SFT Positions established in its Sponsored Member Sub-Accounts (if any).

Section 17(c) of proposed Rule 56 would provide that each SFT Member's Aggregate Net SFT Close-out Value shall be netted and offset as described in Section 14(b)(v) through Section 14(b)(vii) of proposed Rule 56, as though NSCC had ceased to act for each SFT Member.

Section 17(d) of proposed Rule 56 would provide that the Board of Directors shall notify each SFT Member of the Aggregate SFT Close-out Value, taking into account the netting and offsetting provided for above. SFT Members that have been notified that they owe an amount to NSCC shall pay that amount on or prior to the date specified by the Board of Directors, subject to any applicable setoff rights. SFT Members who have a net claim against NSCC shall be entitled to payment thereof along with other Members' and any other creditors' claims pursuant to the underlying contracts with respect thereto, the Rules and applicable law. Section 17(d) would further provide that nothing therein shall limit the rights of NSCC upon an SFT Member default (including following a Corporation Default), including any rights under any Clearing Agency Cross-Guaranty Agreement or otherwise.

Proposed Rule 56, Section 18 (Other Applicable Rules, Procedures, and Addendums)

Section 18 of proposed Rule 56 would establish certain other Rules as being applicable to SFTs and SFT Members, unless expressly stated otherwise.

Specifically, Section 18 of proposed Rule 56 would provide that Rule 1 (Definitions and Descriptions), Rule 2 (Members, Limited Members and Sponsored Members), Rule 5 (General Provisions), Rule 12 (Settlement), Rule 13 (Exception Processing), Rule 17 (Fine Payments), Rule 19 (Miscellaneous Rights of the Corporation), Rule 21 (Honest Broker), Rule 22 (Suspension of Rules), Rule 23 (Action by the Corporation), Rule 24 (Charges for Services Rendered), Rule 26 (Bills Rendered), Rule 27 (Admission to Premises of the Corporation—Powers of Attorney, Etc.), Rule 28 (Forms), Rule 29 (Qualified Securities Depositories), Rule 32 (Signatures), Rule 33 (Procedures), Rule 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 38 (Governing Law and Captions), Rule 39

(Reliance on Instructions), Rule 40 (Wind-Down of a Member, Fund Member or Insurance Carrier/Retirement Services Member), Rule 41 (Corporation Default), Rule 42 (Wind-down of the Corporation), Rule 45 (Notice), Rule 47 (Interpretation of Rules), Rule 48 (Disciplinary Proceedings), Rule 49 (Release of Clearing Data and Clearing Fund Data), Rule 55 (Settling Banks and AIP Settling Banks), Rule 58 (Limitations on Liability), Rule 60 (Market Disruption and Force Majeure), Rule 60A (Systems Disconnect: Threat of Significant Impact to the Corporation's Systems), Rule 63 (SRO Regulatory Reporting), Procedure I (Introduction), Procedure VIII (Money Settlement Service), Procedure XII (Time Schedule), Procedure XIII (Definitions), Procedure XIV (Forms, Media and Technical Specifications), Procedure XV (Clearing Fund Formula and Other Matters), Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History), Addendum H (Interpretation of the Board of Directors Release of Clearing Data), Addendum L (Statement of Policy Pertaining to Information Sharing), and Addendum P (Fine Schedule) shall apply to SFTs and SFT Members, unless the context otherwise requires.

(D) Other Rule Changes

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to make conforming and technical changes to the following Rules to accommodate the proposed introduction of the new membership categories and the proposed SFT Clearing Service.

Rule 1 (Definitions and Descriptions)

In connection with proposed Rules 2C, 2D and 56, NSCC is proposing to add the following defined terms to Rule 1, in alphabetical order: Agent Clearing Member, Agent Clearing Member Agreement, Agent Clearing Member Customer Omnibus Account, Agent Clearing Member Required Fund Deposit, Agent Clearing Member Termination Date, Agent Clearing Member Transaction, Agent Clearing Member Voluntary Termination Notice, Aggregate Net SFT Close-out Value, Approved SFT Submitter, Bilaterally Initiated SFT, Buy-In, Buy-In Amount, Buy-In Costs, Buy-In Indemnified Parties, Contract Price, Corresponding SFT Cash, Customer, Customer Clearing Service, Deemed Buy-In Costs, Defaulting SFT Member, Default-Related SFT, Distribution, Distribution Amount, Distribution Payment, Existing Master Agreement, Final Net Settlement Position, Final Settlement, Final Settlement Date, Former Sponsored Member, Incremental Additional Independent Amount SFT Cash, Independent Amount Percentage, Independent Amount SFT Cash, Independent Amount SFT Cash Deposit, Independent Amount SFT Cash Deposit Requirement, Ineligibility Date, Ineligible SFT, Ineligible SFT Security, Initial Settlement, Linked SFT, Market Value SFT Cash, Net Capital, Net Member Capital, Net Worth, Non-Returned SFT, Price Differential, Rate Payment, Recall Date, Recall Notice, Recalled SFT, Required SFT Deposit, Securities Financing Transaction or SFT, Securities Financing Transaction Clearing Service or SFT Clearing Service, Settling SFT, SFT Account, SFT Cash, SFT Close-out Value, SFT Deposit, SFT Long Position, SFT Member, SFT Position, SFT Security, SFT Short Position, Sponsored Member, Sponsored Member Agreement, Sponsored Member Liquidation Amount, Sponsored Member Sub-Account, Sponsored Member Termination Date, Sponsored Member Transaction, Sponsored Member Voluntary Termination Notice, Sponsoring Member, Sponsoring Member Agreement, Sponsoring Member Guaranty, Sponsoring Member Liquidation Amount, Sponsoring Member Required Fund Deposit, Sponsoring Member Settling Bank Omnibus Account, Sponsoring Member Termination Date, Sponsoring Member Voluntary Termination Notice, Sponsoring/Sponsored Membership Program Indemnified Parties or SMP Indemnified Parties, Transferee, Transferor and Volatility Charge.

In addition, NSCC is proposing to add three defined terms: ''CNS Market Value'', which is already defined in Rule 41 (Corporation Default), ''CNS Transaction'', which is already defined in Rule 11 (CNS System), and ''Corporation Default'', which is already defined in Rule 41 (Corporation Default).

NSCC is also proposing to add the defined term ''FICC'' to mean Fixed Income Clearing Corporation. The term ''FICC'' is already used in Addendum P (Fine Schedule) but has not been defined.

Furthermore, NSCC is proposing to reorder the defined term Index Receipt Agent so it would be in alphabetical order.

In connection with proposed Rules 2C, 2D and 56, NSCC is also proposing to modify the definitions for the following defined terms in Rule 1, in alphabetical order: Clearing Fund, FFI Member, Qualified Securities Depository, and Required Fund Deposit. Specifically, NSCC is proposing to expand the definition of Clearing Fund to include SFT Deposit, unless noted otherwise in the Rules. NSCC is also proposing to revise the definition of FFI Member and the definition of Tax Certification [88] to add references to Sponsored Members. Furthermore, NSCC is proposing to revise the definition of Qualified Securities Depository to include a reference to transfer of securities in respect of the proposed SFT Clearing Service. Lastly, NSCC is proposing to expand the definition of Required Fund Deposit to include Sponsoring Member Required Fund Deposit, the Agent Clearing Member Required Fund Deposit, and the Required SFT Deposit, unless noted otherwise in the Rules.

Rule 2 (Members and Limited Members)

NSCC is proposing to revise the title of Rule 2 to include a reference to Sponsored Members. As proposed, Rule 2 would be retitled as ''Members, Limited Members and Sponsored Members''.

NSCC is also proposing to revise Section 2 of Rule 2. Specifically, NSCC is proposing to clarify in Section 2(i) that a Member shall include a Member in its capacity as a Sponsoring Member to the extent specified in proposed Rule 2C and an Agent Clearing Member to the extent specified in proposed Rule 2D. In addition, NSCC is proposing to add a new subsection (iii) to Section 2 that would describe Sponsored Members as any Person that has been approved by NSCC to become a Sponsored Member and only participates in NSCC's SFT Clearing Service as provided for in proposed Rule 56. In addition, NSCC is proposing to add references to Sponsored Members in the last paragraph of Section 2, Sections 4(i) and 4(ii).

Rule 2B (Ongoing Membership Requirements and Monitoring)

NSCC is proposing to add references to Sponsored Member in Section 5 [89] of Rule 2B.

Rule 3 (Lists To Be Maintained)

NSCC is proposing to add subsection (g) to Section 1 of Rule 3 to provide that NSCC shall maintain a list of the securities that may be the subject of a

[88] NSCC recently added Tax Certification as a defined term in Rule 1 (Definitions and Descriptions). *See* Securities Exchange Act Release No. 92682 (August 17, 2021), 86 FR 47172 (August 23, 2021) (SR–NSCC–2021–009).

[89] NSCC recently added Section 5 to Rule 2B (Ongoing Membership Requirements and Monitoring). *See* Securities Exchange Act Release No. 93278 (October 8, 2021), 86 FR 57229 (October 14, 2021) (SR–NSCC–2021–007).

novated SFT and may from time to time add securities to such list or remove securities therefrom.

NSCC is also proposing to modify Sections 3(b) and 4 of Rule 3 to include references to Sponsored Members.

Rule 4 (Clearing Fund)

NSCC is proposing to modify Section 1 of Rule 4 in order to make it clear that the minimum Required Fund Deposit amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Rule 5 (General Provisions)

NSCC is proposing to modify Section 1 of Rule 5 in order to provide that delivery of SFT Securities and SFT Cash to NSCC shall be made through the facilities of a Qualified Securities Depository. In addition, NSCC is also proposing changes in Section 1 of Rule 5 to provide that delivery and payment with respect to SFT Securities and SFT Cash shall be effected as prescribed in the Rules and regulations as NSCC may from time to time adopt.

Rule 24 (Charges for Services Rendered)

NSCC is proposing to modify Section 1 of Rule 24 to include a reference to Sponsored Members. In addition, NSCC is proposing to add an additional paragraph in Section 1 to clarify that Members shall be responsible for all fees pertaining to their respective Sponsoring Member activity or Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[90]

Rule 26 (Bills Rendered)

NSCC is proposing to modify the first paragraph of Rule 26 to include a reference to Sponsored Members. In addition, NSCC is proposing to add a sentence in that paragraph to clarify that Members shall receive bills for their respective aggregate Sponsoring Member activity and Agent Clearing Member activity, if applicable, as set forth in NSCC's Fee Structure.[91]

Rule 32 (Signatures)

NSCC is proposing to modify Rule 32 to include a reference to Sponsored Member. Specifically, NSCC is proposing to modify Rule 32 to provide that the use of an electronic signature shall have the same validity and effect as the use of a signature affixed by hand with respect to any and all agreements and other documents entered into between a Sponsored Member and NSCC.

Rule 38 (Governing Law and Captions)

NSCC is proposing to modify Section 1 of Rule 38 to include a reference to Sponsored Member. Specifically, NSCC is proposing to modify Section 1 of Rule 38 to provide that Rules and all agreements and other documents entered into between a Sponsored Member and NSCC or otherwise delivered to or by NSCC pursuant to the Rules, and the rights and obligations under the Rules thereunder, shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed and performed therein, unless otherwise provided.

Rule 39 (Reliance on Instructions)

NSCC is proposing to modify Rule 39 to include references to Sponsored Member and Approved SFT Submitter, where applicable. Specifically, NSCC is proposing to modify the first paragraph of Rule 39 to provide that NSCC may accept or rely upon instructions given to NSCC by a Sponsored Member or Approved SFT Submitter, in addition to the various participant types currently provided in Rule 39. Similarly, NSCC is proposing to add references to Approved SFT Submitter in the second and last paragraphs of Rule 39 so that those paragraphs would also apply to instructions submitted by an Approved SFT Submitter.

Rule 42 (Wind-Down of the Corporation)

NSCC is proposing to modify Rule 42 to include references to Sponsored Members. Specifically, for purposes of Rule 42, NSCC is proposing to revise the defined term ''Limited Member'' to include Sponsored Members.

Rule 49 (Release of Clearing Data and Clearing Fund Data)

NSCC is proposing to modify Rule 49 to clarify that NSCC would release Clearing Data of a Sponsored Member to its Sponsoring Member upon the Sponsoring Member's written request. Specifically, as proposed, Section (a) of Rule 49 would provide that if the participant is a Sponsored Member, NSCC would also release Clearing Data relating to transactions of such participant to such participant's Sponsoring Member upon the Sponsoring Member's written request.

Rule 58 (Limitations on Liability)

NSCC is proposing to modify Rule 58 to clarify that NSCC would not be responsible for the completeness or accuracy of the transaction data received from the Approved SFT Submitters, nor shall NSCC, absent gross negligence on NSCC's part, be responsible for any errors, omissions or delays that may occur in the transmission of transaction data from an Approved SFT Submitter.

Rule 64 (DTCC Shareholders Agreement)

The proposed changes to Section 4 of Rule 64 and footnote 4 thereto would provide that Rule 64 would not be applicable to a Sponsored Member. However, if the Sponsored Member is also a member or participant of another clearing agency subsidiary of DTCC, the Sponsored Member may be a Mandatory Purchaser Participant or a Voluntary Purchaser Participant pursuant to the terms of the Shareholders Agreement and the rules and procedures of such other subsidiary.

Procedure XV (Clearing Fund Formula and Other Matters)

NSCC is proposing to modify subsection A of Section II (Minimum Clearing Fund and Additional Deposit Requirements) in Procedure XV in order to make it clear that the minimum contribution amount provided therein shall not include Required SFT Deposit, which is subject to a separate minimum $250,000 deposit requirement pursuant to Section 12(c) of proposed Rule 56, as described above. In addition, NSCC is proposing to modify Section II.A of Procedure XV to make it clear that calculation of a Member's Required Fund Deposit amount that must be in cash shall exclude the Required SFT Deposit, which is subject to a separate $250,000 minimum cash requirement pursuant to Section 12(c) of proposed Rule 56, as described above.

Addendum B (Qualifications and Standards of Financial Responsibility, Operational Capability and Business History)

NSCC is proposing an additional section for the Sponsored Members. Specifically, NSCC is proposing to add Section 12 to Addendum B that would describe the qualification and operational capability that NSCC would require from Sponsored Members.

In addition, NSCC is proposing a conforming change to replace ''net worth'' in Section 3.B.4. with ''Net Worth'' to reflect the proposed defined term in Rule 1 (Definitions).

Addendum P (Fine Schedule)

NSCC is proposing to modify paragraph (2) of Addendum P to reflect the proposed notification obligations of

[90] *See* Addendum A (Fee Structure), *supra* note 4.

[91] *Id.*

Sponsoring Members, Sponsored Members and Agent Clearing Members as proposed under Sections 2(i) and 3(d) of proposed Rule 2C and Section 2(i) of proposed Rule 2D.

(vii) Impact of the Proposed SFT Clearing Service on Various Persons

The proposed SFT Clearing Service would be voluntary. Institutional firm clients that wish to become Sponsored Members, and Members that wish to participate in the proposed SFT Clearing Service would have an opportunity to review the proposed rule change and determine if they would like to participate. Choosing to participate would make these entities subject to all of the rule changes that would be applicable to the proposed SFT Clearing Service and membership type, as described below.

The proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members because it would impose various requirements on them. These requirements include, but are not limited to, proposed Rule 56 and the following sections of proposed Rule 2C: (1) Eligibility, approval process and on-going membership requirements as specified in Sections 3 and 4, (2) requirements related to restriction on access to NSCC services in Section 11, (3) requirements related to insolvency of a Sponsored Member in Section 13, and (4) requirements related to liquidation of positions resulting from Sponsored Member Transactions in Section 14. Specific details on the requirements and the manner in which the proposed SFT Clearing Service would affect institutional firm clients that choose to become Sponsored Members can be found above in Item II(A)1(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members.

The proposed SFT Clearing Service would affect Members that choose to participate in the service because it would impose various requirements on them, depending on whether they are participating in the service as a Sponsoring Member, an Agent Clearing Member and/or as a Member. These requirements include, but are not limited to, the requirements specified in proposed Rule 2C for Members participating in the service as a Sponsoring Member; the requirements specified in proposed Rule 2D for Members participating in the service as an Agent Clearing Member; and for all Members participating in the service, the requirements specified in proposed Rule 56. Specific details on these requirements and the manner in which the proposed SFT Clearing Service would affect Members that choose to participate in the proposed SFT Clearing Service are described above in Sections 3(a)(vi)(A)—Proposed Rule Changes—Proposed Rule 2C—Sponsoring Members and Sponsored Members, (vi)(B)—Proposed Rule Changes—Proposed Rule 2D—Agent Clearing Members, and (vi)(C)—Proposed Rule Changes—Proposed Rule 56—Securities Financing Transaction Clearing Service.

The proposed SFT Clearing Service would not materially affect existing Members that do not choose to participate in it. First, the proposed SFT Clearing Service would not materially affect the operation of CNS or any other services offered by NSCC. In addition, SFT Members would be subject to the same or higher credit standards and market risk management requirements as those applicable to Members that choose not to participate in the proposed SFT Clearing Service, as described above. Moreover, although Members who choose not to participate in the proposed SFT Clearing Service would be subject to potential loss allocation in the event of an SFT Member default (just as SFT Members would be subject to potential loss allocation in the event of the default of a Member that chooses not to participate in the proposed SFT Clearing Service), the underlying securities that would be subject of any such default-related liquidation of an SFT Member are a subset of the same CNS-eligible securities with respect to which NSCC today guarantees settlement in the cash equity market, thus not materially affecting the nature of the loss allocation risk applicable to Members.

2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency for the reasons described below.

Establishing New Membership Categories and Requirements for Sponsoring Members and Sponsored Members

NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Section 17A(b)(3)(F)[92] of the Act and Rule 17Ad–22(e)(18),[93] as promulgated under the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions.[94] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with these requirements for the reasons described below.

Safeguarding of Securities and Funds

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[95] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would allow NSCC to help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible. Specifically, as proposed, all Sponsoring Member applicants would be subject to an approval process that is separate from their original Member applications, ongoing credit surveillance in their capacity as Sponsoring Members, as well as the calculation of the Sponsoring Member Required Fund Deposits on a gross basis with no offsets for netting of positions as between different Sponsored Members.

In addition, as proposed, all Sponsoring Member applicants would be subject to the same or higher financial requirements as those that apply to them with respect to their respective Member category. Furthermore, NSCC would reserve the right to impose greater financial requirements based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through NSCC, and the overall financial condition of such applicant. An activity limit would also be imposed on a Sponsoring Member's Sponsored

[92] 15 U.S.C. 78q–1(b)(3)(F).

[93] 17 CFR 240.17Ad–22(e)(18).

[94] 15 U.S.C. 78q–1(b)(3)(F).

[95] *Id.*

Member activity so that the Sponsoring Member would only be permitted to submit new Sponsored Member activity to NSCC to the extent its aggregate Volatility Charges do not exceed its Net Member Capital, unless otherwise determined by NSCC in order to promote orderly settlement.

Moreover, as proposed, NSCC would reserve the right to require each Sponsoring Member, or any Member applicant to become such, to furnish to NSCC such adequate assurances of its financial responsibility and operational capability within the meaning of Rule 15 as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.

By structuring the proposal in a way that addresses potential market and credit risks, NSCC believes that the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[96]

Remove Impediments to and Perfect the Mechanism of a National System; Protect Investors and Public Interest

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[97] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would allow NSCC to help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

Specifically, NSCC believes the proposal would help alleviate capital constraints and decrease settlement and operational risk that market participants would otherwise face. This is because the proposal would expand access to central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty. As described above, NSCC believes that having securities transactions cleared through a central counterparty may create capital benefits for market participants and thereby help alleviate capital constraints otherwise applicable to bilateral securities transactions. In addition, by having a greater number of securities transactions cleared through a central counterparty, the proposal would decrease the settlement and operational risks that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By alleviating capital constraints and decreasing settlement and operational risk that market participants would otherwise face, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[98]

The proposal would also protect investors and the public interest by lowering the risk of liquidity drain and protecting against fire sale risks as it would expand access to central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty. Specifically, NSCC believes that having securities transactions cleared and settled by a central counterparty would lower the risk of liquidity drain in the U.S. financial market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. The central counterparty would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. In addition, NSCC believes that having securities transactions cleared and settled by a central counterparty would protect against fire sale risk through the central counterparty's ability to centralize and control the hedging and liquidation of a defaulting counterparty's portfolio. By lowering the risk of liquidity drain in the U.S. financial market and protecting against fire sale risk, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would protect investors and the public interest, consistent with the Section 17(A)(b)(3)(F) of the Act.[99]

Promote Prompt and Accurate Clearance and Settlement

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.[100] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would allow NSCC to help promote the prompt and accurate clearance and settlement of securities transactions. Specifically, by expanding the access of central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty, NSCC believes the proposal would help decrease settlement and operational risk that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By decreasing settlement and operational risk, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[101]

By structuring the proposal in a way that would allow NSCC to help (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and

[96] *Id.*

[97] *Id.*

[98] *Id.*

[99] *Id.*

[100] *Id.*

[101] *Id.*

settlement of securities transactions, NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Section 17A(b)(3)(F) of the Act.[102]

Rule 17Ad–22(e)(18) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.[103] NSCC believes the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Sponsoring Members and Sponsored Members. Specifically, as proposed, in order for an applicant to become a Sponsoring Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. Likewise, in order for an applicant to become a Sponsored Member, the applicant would be required to meet certain objective, risk-based eligibility criteria. Specifically, an applicant would be eligible to apply to become a Sponsored Member if it is either a ''qualified institutional buyer'' as defined by Rule 144A [104] under the Securities Act,[105] or a legal entity that, although not organized as an entity specifically listed in paragraph (a)(1)(i)(H) of Rule 144A under the Securities Act, satisfies the financial requirements necessary to be a ''qualified institutional buyer'' as specified in that paragraph. If approved, the requirements for proposed new Sponsoring Member and Sponsored Member membership categories would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Sponsoring Members and Sponsored Members. Therefore, NSCC believes that the proposed changes to establish new membership categories and requirements for Sponsoring Members and Sponsored Members are consistent with Rule 17Ad–22(e)(18) under the Act.[106]

Establishing a New Membership Category and Requirements for Agent Clearing Members

NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with Section 17A(b)(3)(F) [107] of the Act and Rule 17Ad–22(e)(18),[108] as promulgated under the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions.[109] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with these requirements for the reasons described below.

Safeguarding of Securities and Funds

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.[110] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would allow NSCC to help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible. Specifically, as proposed, all Agent Clearing Member applicants would be subject to an approval process that is separate from their original Member applications, ongoing credit surveillance in their capacity as Agent Clearing Members, as well as the calculation of the Agent Clearing Member Required Fund Deposits on a gross basis with no offsets for netting of positions as between different Customers.

In addition, as proposed, all Agent Clearing Member applicants would be subject to the same or higher financial requirements as those that apply to them with respect to their respective Member category. Furthermore, NSCC would reserve the right to impose greater financial requirements based upon the level of the anticipated positions and obligations of such applicant, the anticipated risk associated with the volume and types of transactions such applicant proposes to process through NSCC, and the overall financial condition of such applicant. An activity limit would also be imposed on an Agent Clearing Member's Customer activity so that the Agent Clearing Member would only be permitted to submit new Customer activity to NSCC to the extent its aggregate Volatility Charges do not exceed its Net Member Capital, unless otherwise determined by NSCC in order to promote orderly settlement.

Moreover, as proposed, NSCC would reserve the right to require each Agent Clearing Member, or any Member applicant to become such, to furnish to NSCC such adequate assurances of its financial responsibility and operational capability within the meaning of Rule 15 as NSCC may at any time or from time to time deem necessary or advisable in order to protect NSCC, its participants, creditors or investors, to safeguard securities and funds in the custody or control of NSCC and for which NSCC is responsible, or to promote the prompt and accurate clearance, settlement and processing of securities transactions.

By structuring the proposal in a way that addresses potential market and credit risks, NSCC believes that the proposed changes to establish a new membership category and requirements for Agent Clearing Members would assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[111]

Remove Impediments to and Perfect the Mechanism of a National System; Protect Investors and Public Interest

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect

[102] *Id.*

[103] 17 CFR 240.17Ad–22(e)(18).

[104] 17 CFR 230.144A.

[105] 15 U.S.C. 77a *et seq.*

[106] 17 CFR 240.17Ad–22(e)(18).

[107] 15 U.S.C. 78q–1(b)(3)(F).

[108] 17 CFR 240.17Ad–22(e)(18).

[109] 15 U.S.C. 78q–1(b)(3)(F).

[110] *Id.*

[111] *Id.*

investors and the public interest.[112] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would allow NSCC to help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

Specifically, NSCC believes the proposal would help alleviate capital constraints and decrease settlement and operational risk that market participants would otherwise face. This is because the proposal would expand access to central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty. As described above, NSCC believes that having securities transactions cleared through a central counterparty may create capital benefits for market participants and thereby help alleviate capital constraints otherwise applicable to bilateral securities transactions. In addition, by having a greater number of securities transactions cleared through a central counterparty, the proposal would decrease the settlement and operational risks that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By alleviating capital constraints and decreasing settlement and operational risk that market participants would otherwise face, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[113]

The proposal would also protect investors and the public interest by lowering the risk of liquidity drain and protecting against fire sale risks as it would expand access to central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty. Specifically, NSCC believes that having securities transactions cleared and settled by a central counterparty would lower the risk of liquidity drain in the U.S. financial market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. The central counterparty would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. In addition, NSCC believes that having securities transactions cleared and settled by a central counterparty would protect against fire sale risk through the central counterparty's ability to centralize and control the hedging and liquidation of a defaulting counterparty's portfolio. By lowering the risk of liquidity drain in the U.S. financial market and protecting against fire sale risk, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would protect investors and the public interest, consistent with the Section 17(A)(b)(3)(F) of the Act.[114]

Promote Prompt and Accurate Clearance and Settlement

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.[115] NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would allow NSCC to help promote the prompt and accurate clearance and settlement of securities transactions. Specifically, by expanding the access of central clearing for institutional firms and thus enable a greater number of securities transactions to be cleared and settled by a central counterparty, NSCC believes the proposal would help decrease settlement and operational risk that market participants would otherwise face to the extent they were required to clear and settle their securities transactions bilaterally because those securities transactions would be subject to novation and independent risk management by the central counterparty. By decreasing settlement and operational risk, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[116]

By structuring the proposal in a way that would allow NSCC to help (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions, NSCC believes the proposed changes to establish a new membership category and requirements for Agent Clearing Members are consistent with Section 17A(b)(3)(F) of Act.[117]

Rule 17Ad–22(e)(18) under the Act requires, in part, that NSCC establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation.[118] NSCC believes the proposed changes to establish new a membership category and requirements for Agent Clearing Members would establish objective, risk-based, and publicly disclosed criteria for participation in NSCC as Agent Clearing Members. Specifically, as proposed, in order for an applicant to become an Agent Clearing Member, the applicant would be required to satisfy a number of objective and risk-based eligibility criteria. First, the applicant must be a Member. In addition, if the applicant is a Registered-Broker-Dealer, then it would be required to have (i) Net Worth of at least $25 million and (ii) excess net capital over the minimum net capital requirement imposed by the SEC (or such higher minimum capital requirement imposed by the applicant's designated examining authority) of at least $10 million. If approved, the requirements for proposed new Agent Clearing Member membership category would become part of the Rules, which are publicly available on DTCC's website (*www.dtcc.com*), and market participants would be able to review them in connection with their evaluation of potential participation in NSCC as Agent Clearing Members. Therefore, NSCC believes that the proposed changes to establish a new membership category and requirements for Agent Clearing Members are

[112] *Id.*

[113] *Id.*

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] *Id.*

[118] 17 CFR 240.17Ad–22(e)(18).

consistent with Rule 17Ad–22(e)(18) under the Act.[119]

Establishing the SFT Clearing Service

NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Section 17A(b)(3)(F)[120] of the Act and Rules 17Ad–22(e)(7) and (8),[121] as promulgated under the Act.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions.[122] NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with these requirements for the reasons described below.

Safeguarding of Securities and Funds

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.[123] NSCC believes that the proposed changes to establish the SFT Clearing Service would allow NSCC to help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

The proposal is structured in a manner that allows NSCC to protect itself from associated market risk. Specifically, as described above, except with respect to the VaR charge, SFT activity would be risk managed by NSCC in a manner consistent with Members' CNS positions. Moreover, except with respect to the MLA charge, all SFT Positions would be margined independently of the Member's other positions, *i.e.,* Required SFT Deposit. The Required SFT Deposit would generally be calculated using the same procedure applicable to CNS positions, but with a separate $250,000 minimum.[124]

Moreover, consistent with the manner in which clearing fund requirements are satisfied by members of FICC for their cleared securities financing transactions, NSCC would require that (i) a minimum of 40% of an SFT Member's Required SFT Deposit consist of a combination of cash and Eligible Clearing Fund Treasury Securities and (ii) the lesser of $5,000,000 or 10% of an SFT Member's Required SFT Deposit (but not less than $250,000) consist of cash.[125] [126] NSCC would also have the discretion to require a Member to post its Required SFT Deposit in proportion of cash higher than would otherwise be required.[127] NSCC's determination to impose any such requirement would be made in view of market conditions and other financial and operational capabilities of the relevant SFT Member.

Furthermore, NSCC would require additional Clearing Fund deposits to address two situations that may present unique risk. First, if the share price of underlying securities of an SFT that has already been novated to NSCC falls below the threshold established by NSCC from time to time, NSCC would require both pre-novation counterparties to the SFT to post Clearing Fund equal to 100% of the market value of such underlying securities until such time as the per share price of the underlying securities equals or exceeds such threshold.[128] Second, in the event an SFT is subject to a collateral haircut (*i.e.,* the SFT Cash exceeds the market value of the securities), NSCC would require the Transferor (or in the case of an Agent Clearing Member Transaction, the Agent Clearing Member) to post Clearing Fund equal to such excess.[129]

Additionally, the Sponsoring Member Required Fund Deposits and Agent Clearing Member Required Fund Deposits would each be calculated on a gross basis, and no offsets for netting of positions as between different Sponsored Members or different Customers, as applicable, would be permitted. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above).

NSCC is also proposing to limit the SFTs eligible for clearing to overnight transactions on securities that are CNS-eligible equity securities with a share price that equals or exceeds the threshold established by NSCC from time to time and that are fully collateralized by cash. NSCC believes these limitations, in addition to the Clearing Fund requirements, would limit the potential market risk associated with SFTs.

The proposal is also structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would provide that the Final Settlement obligations and Price Differential of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle RVP/DVP at DTC.[130] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. Therefore each DTC participant's Final Settlement obligation would complete at DTC on a fully collateralized basis, and the associated debit (if any) would be subject to DTC's risk controls.

To the extent the Price Differential is not processed by DTC, for example if a receiver does not satisfy DTC's risk controls, NSCC would debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement.

In the event NSCC ceases to act for a Defaulting SFT Member, on the Business Day that NSCC ceased to act, NSCC's daily liquidity need calculation would include all Price Differential debits owed by the Defaulting SFT Member not processed at DTC. On subsequent days of the liquidation of the Defaulting SFT Member's SFT Positions, NSCC's total liquidity need calculations would include all novated SFT activity that has not reached Final Settlement on the Business Day NSCC ceased to act, netted together with all other outstanding settlement activity of the Defaulting SFT Member at NSCC.

Until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[131] NSCC would take into account such Price Differential payment obligations, as well as any Final Settlement obligations to non-defaulting SFT Members, when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[132] [133] By

[119] *Id.*

[120] 15 U.S.C. 78q–1(b)(3)(F).

[121] 17 CFR 240.17Ad–22(e)(7) and (8).

[122] 15 U.S.C. 78q–1(b)(3)(F).

[123] *Id.*

[124] *See* Section 12(c) of proposed Rule 56.

[125] *Supra* note 34.

[126] *Supra* note 35.

[127] *See* Section 12(d) of proposed Rule 56.

[128] *See* Section 13(b) of proposed Rule 56.

[129] *See* Section 12(e) of proposed Rule 56.

[130] *Supra* note 27.

[131] *See* proposed Rule 56, Section 14(b)(ix).

[132] *Id.*

[133] 17 CFR 240.17Ad–22(e)(7).

continuing to process these Payment Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in largely the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. This is because even though the non-payment of the Rate Payment in an SFT Member default context may have an impact on non-defaulting SFT Members, such impact is generally de minimis. To the extent NSCC is required to pay a Price Differential, as well as any Final Settlement obligations, to a non-defaulting SFT Member, NSCC would rely on NSCC's liquidity resources, including the Required SFT Deposit and any SLD that may be collected, when applicable, in order to cover the liquidity need associated with any such Price Differential and Final Settlement obligations, consistent with the Clearing Agency Liquidity Risk Management Framework.[134]

The proposal is also structured in a manner that allows NSCC to protect itself from associated credit risk. In addition to the Clearing Fund requirements discussed above, any Member that elects to participate in the proposed SFT Clearing Service would be subject to the same initial membership requirements and ongoing membership requirements and monitoring as any other Member. Moreover, any Member that opts to apply to become a Sponsoring Member or an Agent Clearing Member would be subject to an activity limit (as described above) in addition to an approval process that is separate from its original Member applications, as well as ongoing credit surveillance in its capacity as a Sponsoring Member or Agent Clearing Member, as applicable.

The proposal is also structured in a manner that allows NSCC to protect itself from associated operational risk. NSCC proposes to utilize to a significant extent the same processes and infrastructure as it has used for many years to clear and settle cash market transactions for purposes of clearing and settling SFTs. NSCC staff is well versed in such processes and infrastructure and has been actively involved in the development of the proposed SFT Clearing Service, thereby allowing for ready integration of support for the proposed SFT Clearing Service into NSCC staff's current workflows.

By structuring the proposal in a way that addresses potential market, liquidity, credit and operational risks, NSCC believes that the proposed changes to establish the SFT Clearing Service would help assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible, consistent with Section 17A(b)(3)(F) of the Act.[135]

Remove Impediments to and Perfect the Mechanism of a National System; Protect Investors and Public Interest

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest.[136] NSCC believes the proposed changes to establish the SFT Clearing Service would allow NSCC to help remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

Specifically, NSCC believes the proposal would help alleviate capital constraints and decrease settlement and operational risk that market participants would otherwise face. As described above, NSCC believes, by expanding the availability of NSCC's infrastructure to SFTs via the proposed SFT Clearing Service, the proposal may create capital benefits for market participants and thereby help alleviate capital constraints otherwise applicable to bilateral SFTs. In addition, the proposal would decrease settlement and operational risk that market participants would otherwise face by making a greater number of securities transactions eligible to be cleared, settled and risk managed through NSCC via the proposed SFT Clearing Service. By alleviating capital constraints and decreasing settlement and operational risk that market participants would otherwise face, NSCC believes the proposed changes to establish the SFT Clearing Service would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[137]

The proposal would also protect investors and the public interest by lowering the risk of liquidity drain and protecting against fire sale risks. Specifically, the proposal would lower the risk of liquidity drain in the U.S. equity securities financing market by lessening counterparties' likely inclination to unwind transactions in a stressed market scenario. NSCC would use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario.

In addition, the proposal would protect against fire sale risk. As described above, in the event of a default, NSCC would conduct a centralized, orderly liquidation of the defaulter's SFT Positions. Such an organized liquidation should result in substantially less price depreciation and market disruption than multiple independent non-defaulting parties racing against one another to liquidate the positions. In addition, NSCC would only need to liquidate the defaulter's net positions. Limiting the positions that need to be liquidated to the defaulter's net positions should reduce the volume of required sales activity, which in turn should limit the price and market impact of the close-out of the defaulter's positions. NSCC would also use its risk management resources to provide confidence to market participants that they will receive back their cash or securities, as applicable, which should limit the propensity for market participants to seek to unwind their transactions in a stressed market scenario. By lowering the risk of liquidity drain in the U.S. equity securities financing market and protecting against fire sale risk, NSCC believes the proposed changes to establish the SFT Clearing Service would protect investors and the public interest, consistent with the Section 17(A)(b)(3)(F) of the Act.[138]

Promote Prompt and Accurate Clearance and Settlement

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.[139] NSCC believes the proposed changes to establish the SFT Clearing Service would allow NSCC to help promote the prompt and accurate clearance and settlement of securities transactions. Specifically, by expanding the availability of NSCC's infrastructure to SFTs via the proposed SFT Clearing Service, NSCC believes the proposal

[134] *Supra* note 39.

[135] 15 U.S.C. 78q–1(b)(3)(F).

[136] *Id.*

[137] *Id.*

[138] *Id.*

[139] *Id.*

would help decrease settlement and operational risk that market participants would otherwise face by making a greater number of securities transactions eligible to be cleared, settled and risk managed through NSCC. By decreasing settlement and operational risk, NSCC believes the proposed changes to establish the SFT Clearing Service would promote the prompt and accurate clearance and settlement of securities transactions, consistent with Section 17A(b)(3)(F) of the Act.[140]

By structuring the proposal in a way that would allow NSCC to help (i) assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, (ii) remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, to protect investors and the public interest, and (iii) promote the prompt and accurate clearance and settlement of securities transactions, NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Section 17A(b)(3)(F) of the Act.[141]

Rule 17Ad–22(e)(7) under the Act requires NSCC to establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency.[142] NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) because, as described above, the proposal is structured in a manner that allows NSCC to protect itself from associated liquidity risk. Specifically, the proposal would provide that the Final Settlement obligations and Price Differential of each SFT, other than a Sponsored Member Transaction, that is novated to NSCC would settle RVP/DVP at DTC.[143] SFT deliver orders would be processed in accordance with DTC's rules and procedures, including provisions relating to risk controls. Therefore each DTC participant's Final Settlement obligation would complete at DTC on a fully collateralized basis, and the associated debits (if any) would be subject to DTC's risk controls.

To the extent the Price Differential is not processed by DTC, for example if a receiver does not satisfy DTC's risk controls, NSCC would debit and credit the Price Differential from and to the SFT Accounts of the SFT Member parties to the SFT as part of its end of day final money settlement.

In the event NSCC ceases to act for a Defaulting SFT Member, on the Business Day that NSCC ceased to act, NSCC's daily liquidity need calculation would include all Price Differential debits owed by the Defaulting SFT Member not processed at DTC. On subsequent days of the liquidation of the Defaulting SFT Member's SFT Positions, NSCC's total liquidity need calculations would include all novated SFT activity that has not reached Final Settlement on the Business Day NSCC ceased to act, netted together with all other outstanding settlement activity of the Defaulting SFT Member at NSCC.

Until NSCC has satisfied the Final Settlement obligations owing to non-defaulting SFT Members, NSCC would continue paying to and receiving from non-defaulting SFT Members the applicable Price Differential (*i.e.,* the change in market value of the relevant securities) with respect to their novated SFTs.[144] NSCC would take into account such Price Differential payment obligations, as well as any Final Settlement obligations to non-defaulting SFT Members, when calculating the amount of liquidity resources that NSCC may require in the event of the default of the participant family that would generate the largest aggregate payment obligation for NSCC in extreme but plausible market conditions.[145] [146] By continuing to process these Price Differential payments until Final Settlement occurs, NSCC would ensure that non-defaulting SFT Members are kept in largely the same position as if the Defaulting SFT Member had not defaulted and the pre-novation counterparties had instead agreed to roll the SFTs. This is because even though the non-payment of the Rate Payment in an SFT Member default context may have an impact on non-defaulting SFT Members, such impact is generally de minimis. To the extent NSCC is required to pay a Price Differential, as well as any Final Settlement obligations, to a non-defaulting SFT Member, NSCC would rely on NSCC's liquidity resources, including the Required SFT Deposit and any SLD that may be collected, when applicable, in order to cover the liquidity need associated with any such Price Differential and Final Settlement obligations, consistent with the Clearing Agency Liquidity Risk Management Framework.[147] Therefore, NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(7) under the Act.[148]

Rule 17Ad–22(e)(8) under the Act[149] requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final to be no later than the end of the day on which the payment or obligation is due. NSCC believes that the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8)[150] because, as described above, the proposal would make it clear to SFT Members the point at which settlement is final with respect to SFTs cleared through NSCC. Specifically, Section 7 in the proposed Rule 56 (Securities Financing Transaction Clearing Service) provides that an SFT, or a portion thereof, shall be deemed complete and final upon Final Settlement of the SFT, or such portion. Having clear provisions in this regard would enable SFT Members to better identify the point at which settlement is final with respect to their SFTs. As such, NSCC believes the proposed changes to establish the SFT Clearing Service are consistent with Rule 17Ad–22(e)(8) under the Act.[151]

Making Other Amendments and Clarifications

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.[152] NSCC believes that the proposed changes to make other amendments and clarifications to the Rules would allow NSCC to help promote prompt and accurate clearance and settlement of securities transactions. This is because the proposed amendments and clarifications to the Rules are conforming and technical changes that would ensure consistency in the Rules and that the Rules remain clear and accurate. Having clear and accurate Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling

[140] *Id.*

[141] *Id.*

[142] 17 CFR 240.17Ad–22(e)(7).

[143] *Supra* note 27.

[144] *See* proposed Rule 56, Section 14(b)(ix).

[145] *Id.*

[146] 17 CFR 240.17Ad–22(e)(7).

[147] *Supra* note 39.

[148] 17 CFR 240.17Ad–22(e)(7).

[149] 17 CFR 240.17Ad–22(e)(8).

[150] *Id.*

[151] *Id.*

[152] 15 U.S.C. 78q–1(b)(3)(F).

Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposed changes to make other amendments and clarifications are consistent with Section 17A(b)(3)(F) of the Act.[153]

*(B) Clearing Agency's Statement on Burden on Competition*

NSCC believes that the proposed rule change to establish the SFT Clearing Service and the additional membership categories in connection therewith would promote competition by increasing the types of entities that may participate in NSCC and therefore permit more market participants to utilize NSCC's services.

At the same time, the proposed rule change may impose a burden on competition by limiting participation in the proposed SFT Clearing Service to institutions that are eligible to participate in the service. The proposed rule change may also impose a burden on competition by (i) calculating Required Fund Deposits for Sponsoring Members and Agent Clearing Members on a gross basis with no offsets for netting of positions between different Sponsored Members or different Customers, as applicable, and (ii) imposing an additional charge with respect to any Non-Returned SFT that is calculated based on the relevant SFT Member's Credit Risk Rating Matrix rating. However, NSCC believes any burden on competition that may result from the proposed rule change would not be significant and would be necessary and appropriate in furtherance of the purposes of the Act,[154] for the reasons described below.

Although the proposal would limit full participation in the proposed SFT Clearing Service to Members, and such limitation may impact institutional firm clients that are unable to satisfy such eligibility requirements by excluding them from being able to directly submit their equity securities financing activity in SFT eligible securities to NSCC for novation (and avail themselves of the commensurate benefits described above in Item II(A)1(i)—Background), NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such eligibility requirements are designed to allow NSCC to prudently manage the risks associated with SFT Members' participation in the proposed SFT Clearing Service by ensuring that SFT Members are able to satisfy their obligations to NSCC. In addition, although the proposal would limit the scope of entities eligible to be Sponsored Members to those institutions that are able to satisfy the eligibility criteria discussed above, NSCC does not believe such limit would materially impact market participants that are unable to satisfy such eligibility requirements because such market participants would be able to have their equity securities financing activity in SFT eligible securities submitted to NSCC for novation through an Agent Clearing Member. Moreover, any burden on competition would be necessary and appropriate in furtherance of the purposes of the Act because the eligibility requirements applicable to Sponsored Members are designed to ensure the financial sophistication of Sponsored Members and to prudently manage the risk associated with Sponsored Members' participation in NSCC. Additionally, although the proposal would limit the scope of entities able to submit equity securities financing activity in SFT eligible securities to NSCC on behalf of others to entities that are able to satisfy the eligibility criteria for Sponsoring Members and Agent Clearing Members, as specified in proposed Rules 2C and 2D (*i.e.,* be an existing Member and, if the Member applicant is a Registered Broker-Dealer, having to satisfy certain minimum financial threshold amounts), and such limitation may impact institutions that are unable to satisfy such eligibility requirements by excluding them from being able to submit transactions on behalf of others (and avail themselves of the commensurate benefits described above in Item II(A)1(i)—Background), NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such eligibility requirements are designed to allow NSCC to prudently manage the risks associated with Sponsoring Members' and Agent Clearing Members' participation in the proposed SFT Clearing Service by ensuring that such institutions have the operational capability and sufficient financial ability to meet all of their anticipated obligations to NSCC. Furthermore, NSCC believes any related burden on competition would not be significant because, as described above in Item II(A)1(vii)—Impact of the Proposed SFT Clearing Service on Various Persons, participation in the proposed SFT Clearing Service would be entirely voluntary and would not restrict the ability of firms to enter into bilateral securities financing transactions outside of NSCC.

Although the proposal would require the Sponsoring Member Required Fund Deposits and Agent Clearing Member Required Fund Deposits to be calculated on a gross basis with no offsets for netting of positions across different Sponsored Members or different Customers, as applicable, and such requirement may limit the ability of certain Members to participate as a Sponsoring Member and/or an Agent Clearing Member in the proposed SFT Clearing Service, NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such requirement is designed to allow NSCC to prudently manage the risks associated with these Members' participation in the proposed SFT Clearing Service by ensuring that NSCC's volatility-based Clearing Fund deposit requirements represent the sum of each individual institutional firm's activity. Furthermore, NSCC believes any related burden on competition would not be significant because, as described above in Item II(A)1(vii)—Impact of the Proposed SFT Clearing Service on Various Persons, participation in the proposed SFT Clearing Service would be entirely voluntary and would not restrict the ability of firms to enter into bilateral securities financing transactions outside of NSCC.

Although the proposal would impose an additional charge with respect to any Non-Returned SFT that is calculated based on the relevant SFT Member's Credit Risk Rating Matrix rating and such requirement may limit the ability of certain Members to participate in the proposed SFT Clearing Service, NSCC believes that any related burden on competition would be necessary and appropriate in furtherance of the purposes of the Act. This is because such requirement is designed to allow NSCC to prudently manage increased risks associated with Non-Returned SFTs. As described above, to the extent that the Final Settlement of an SFT is scheduled on a particular date but does not occur, whether directly or through a pair off in accordance with Section 8 of proposed Rule 56 (as discussed above), that could potentially be a result of a ''squeeze'' or other market dislocation whereby NSCC may face increased market risk in the event of the default of either the Transferor or the Transferee. The proposed requirement would help to ensure that NSCC's Clearing Fund deposit requirements take into account increased market risk

[153] *Id.*

[154] 15 U.S.C. 78q–1(b)(3)(I).

that NSCC may face in connection with Non-Returned SFTs. Furthermore, NSCC believes any related burden on competition would not be significant because, as described above in Item II(A)1(vii)—Impact of the Proposed SFT Clearing Service on Various Persons, participation in the proposed SFT Clearing Service would be entirely voluntary and would not restrict the ability of firms to enter into bilateral securities financing transactions outside of NSCC.

NSCC does not believe the proposal to make technical and conforming changes would impact competition. These changes are being proposed to ensure consistency in the Rules. They would not change NSCC's current practices or affect Members' rights and obligations. As such, NSCC believes the proposal to make technical and conforming changes would not have any impact on competition.

*(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NSCC reviewed the proposed rule change with various Members and market participants (*e.g.,* agent lenders, brokers, matching service providers, and books and records service providers) in order to benefit from their expertise and industry knowledge. Written comments relating to this proposed rule change have not been received from Members or any other person. 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.

NSCC 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.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

**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–NSCC–2022–003 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–NSCC–2022–003. 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 NSCC and on DTCC's website (*https://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–NSCC–2022–003 and should be submitted on or before May 10, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[155]

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2022–08170 Filed 4–18–22; 8:45 am]

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[155] 17 CFR 200.30–3(a)(12).

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## LIST OF PUBLIC LAWS

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**Last List April 15, 2022**

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